

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6
7 PURDUE PHARMA L.P.

8
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 Tele/Video Proceedings

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15
16 August 23, 2021

17 9:50 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: UNKNOWN

1 HEARING re Notice of Continuation of Hearing on Confirmation
2 of Seventh Amended Joint Chapter 11 Plan of Reorganization
3 of Purdue Pharma L.P. and Its Affiliated Debtors filed by
4 Eli J. Vonnegut on behalf of Purdue Pharma L.P.. with
5 hearing to be held on 8/23/2021 at 10:00 AM (ECF #3617)

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P R O C E E D I N G S

1
2 THE COURT: On oral argument, the record having
3 been closed at the end of last week's hearing, I know
4 there's been some back and forth by the parties as to the
5 time allotted, as opposed to the actual issues and the order
6 in which they would be heard. I don't actually think this
7 really is the appropriate subject of a -- any sort of
8 additional conference or discussion. This meaning, how much
9 time the parties are going to take. Ultimately oral
10 argument is for the Court's benefit. The Court has already
11 received lengthy, in fact, over the page limit, although I
12 authorized it, briefing on most of these issues, including
13 the one that the parties propose taking the most time on.
14 I'll just cut people off if they're being repetitive.

15 So, I'm happy to begin with oral argument, unless
16 there's any other announcement that the parties would like
17 to make.

18 MR. HUEBNER: Your Honor, good morning, for the
19 record, Marshall Huebner, Davis Polk & Wardwell, on behalf
20 of the Debtors. Can I be heard and seen clearly?

21 THE COURT: Yes.

22 MR. HUEBNER: Terrific. Thank you, Your Honor.
23 Your Honor, before we actually start oral argument, in our
24 other capacity as just resharing and stewards of the cases,
25 we have three things to announce on what the Court, through

1 it and others, these things more or less, two of them
2 appeared on the docket, but it is important, I think,
3 because it does narrow the issues.

4 The newest piece of news is that Dr. Rothfein and
5 his client, the Emergency Room Physician, we have reached a
6 settlement, and so their issues are going to be resolved.
7 That settlement has the support of the AHC and the MSGE, and
8 the UCC does not expect any problem in approving it. It
9 essentially, on its face, contemplates a \$375,000 broadly
10 supported substantial contribution claim for the work that
11 the doctor and his counsel have done. There have been some
12 changes, obviously, into some of the issues that they
13 raised, periodically throughout the case, and with that,
14 that issue is resolved and needs no other further
15 discussion, nor oral argument.

16 We will, obviously, file appropriate papers as we
17 did with, for example, Mr. Stuart (indiscernible), resolving
18 their objections, and again, we already have, I believe, the
19 support we need since I was able to note is the residual
20 money that the Debtors hope to be able to make available to
21 abatement, or it goes to non-Federal Governmental creditors,
22 and so between the UCC, AHC, and MSG, those are all of the
23 organized groups, essentially, whose representatives, in
24 essence, having their recoveries diminished by that amount
25 and they are all either supportive over all or they

1 (indiscernible) supported. So hopefully we can -- one third
2 of one box, I'll have it can make to (indiscernible)
3 chambers.

4 I would like to apologize to the NCSG and the two
5 halves, or really 62 percent and 37 percent, who just did
6 not have time, this only happened a few minutes ago, but
7 although, Peter (indiscernible) and Mr. (indiscernible), by
8 seeming looking happy on the webcam, as Your Honor was
9 walking out. He obviously he will explain this either to
10 Mr. Troop, if he is still representing the full group, per
11 this is other than confirmation, to which I believe he is,
12 plus obviously, happened to talk to any individual non-
13 consenting states, but, you know, to say it in its more
14 simple form, we would probably save more for these very
15 creditors by not continuing to wrestle with these issues,
16 but an opinion contemplates, which is one of many reasons
17 why we believe the settlement is appropriate. I hope that
18 no party is offended, but we're desperately looking to
19 settle things, and my other attorneys that were on phone
20 calls, literally this happened, Mr. McClammy stepped out and
21 made these phone calls in about the last 120 seconds, and so
22 this is about as hot and breaking a piece of news as one
23 could possibly have.

24 THE COURT: Okay. So just to -- just to be clear,
25 this is a -- an agreement to support a substantial

1 contribution claim in that amount?

2 MR. HUEBNER: Mr. McClammy, please keep me honest,
3 is that correct? That's what I've been told. We got this -
4 - literally just happened.

5 THE COURT: Okay. Okay.

6 MR. HUEBNER: Your Honor, the second piece of good
7 news, and I'm about to turn over the podium, because I think
8 both of the next two things are from Mr. Vonnegut, they are
9 complicated and -- and not for me, I have no capacity and
10 ability to describe them, are that we have settled with the
11 DMP's. And this is a very material development in the case,
12 letting the Court knows it avoided needing to -- oh, it's
13 not a full settlement, but Mr. Vonnegut will walk us through
14 it. And then the third thing, which he will also walk us
15 through is taking our cue as we have from the first moment
16 of this case, both from what creditors and other
17 stakeholders articulate to us, as their needs and concerns
18 and issues, and of course, listening to the Court as he as
19 we know how. We did file, I believe in the middle of the
20 night last night, because there has been negotiating until
21 moments before it was filed, amended documents that I do
22 believe narrow and change a variety of things that have been
23 the subject of objections, and so, probably to avoid
24 inaccuracy, which would help no one, I think I will probably
25 sit down and ask Mr. Vonnegut to walk the Court and parties,

1 and Ms. Deedee, I'm sure, will keep him honest of the DMP
2 side, where we are on those two issues, and then after that
3 we can turn to oral argument on the --

4 THE COURT: Okay. I -- I did see the eighth
5 amended plan, and I -- actually, I was a little late getting
6 onto the bench because I was reviewing the black line. But
7 I'm happy to hear a brief explanation of the settlement with
8 the, so called, DMP group.

9 MR. VONNEGUT: Good morning, Your Honor, for the
10 record, I'm Eli Vonnegut of the Davis Polk & Wardwell, on
11 behalf of the Debtors, can you hear me clearly?

12 THE COURT: Yes, thanks.

13 MR. VONNEGUT: Thank you. So to respect the
14 allocation of time for argument, I will only be giving a
15 factual explanation of the plan revisions that were filed
16 overnight.

17 Those revisions, in the eighth amended plan, fall
18 into a few principal categories. First, we have revisions
19 agreed to with the distributors, manufacturers, and
20 pharmacies, I will call them the DMP's to resolve the bulk
21 of their objections to the plan. On this I will be
22 describing only the agreed revisions. My co-counsel,
23 Jeffrey Gleit of Sullivan, and Worcester, is acting as
24 conflicts counsel for the Debtor, with respect to the sole
25 component that the DMP's objection that remains unresolved,

1 and he will be addressing that later in argument.

2 Next we have revisions to the release provisions
3 to attempt to narrow concerns that have been raised, and
4 also, hopefully just to make it a little easier to
5 understand the releases. Lastly, there are three
6 miscellaneous changes that I will just cover very briefly.

7 So first, with respect to the DMP settlement, the
8 agreement reached with the DMP's resolves all aspects of
9 their objections other than those related to the Debtor's
10 insurance policies, which Mr. Gleit will be addressing
11 later. The crux of the agreement is very simple. It's a
12 bilateral release. The DMP's have agreed to release their
13 co-defendant claims against the Debtors, and to the
14 assumption of their contracts without payment of those
15 claims. The Debtors, in turn, have agreed to release their
16 claims against the DMP's, including those that arise under
17 the assumed contract and to remove the DMP's from the
18 schedule of excluded parties.

19 The DMP's have also now been added to the
20 reciprocal release, meaning that they receive a release from
21 the Sacklers and the other shareholder release parties.
22 There are a couple exceptions to this overall framework.
23 Both the Debtors and the DMP's preserve their ordinary
24 course, claims that are not related to opioid litigation,
25 and as before, all holders of co-defendant claims, continue

1 to retain what we call their co-defendant defensive rights.
2 Those are rights that they have to attempt to reduce their
3 liabilities, judgements, or obligations, but those co-
4 defendant, defensive rights cannot be used to seek or obtain
5 any affirmative recovery from any protected party.

6 Mechanically, this settlement is implemented in a
7 few different places in the plan. In Section 4.16, which
8 covers the treatment of co-defendant claims, we've just
9 simplified this a lot. It now just says that co-defendant
10 claimholders don't receive any distributions but do retain
11 their defensive rights. Section 8.4, addressed treatment of
12 co-defendant contracts, contracts that have -- that give
13 rise to co-defendant claims. That now just says that those
14 agreements are assumed with all co-defendant claims arising
15 under those contracts, having been released.

16 This treatment, with the exception of the issue
17 that Mr. Gleit is going to address, is now consensual as to
18 all counterparties. The DMP's withdrew the objections that
19 they filed for this treatment and no other parties objected
20 to this treatment prior to the deadline, which was August
21 2nd.

22 Lastly, for the DMP settlement, excluded party,
23 the defining term now does not include any settling co-
24 defendants. Settling co-defendants is the DMP's. These
25 parties also become reciprocal releasees, which means that's

1 how they get a release from the Sacklers and the other
2 shareholder related parties. The settling co-defendants
3 have also been added to both releasing parties and released
4 parties, so on both sides. And then lastly, 10.6 preserves
5 the ordinary commercial claims I referred to earlier, and
6 Section 10.18 preserves the defensive rights of the co-
7 defendants.

8 Unless, Your Honor, has any questions about the
9 DMP settlement --

10 THE COURT: I did have -- I did have a question,
11 you describe this essentially as a mutual release of claims
12 with the exceptions for ordinary course claims, and the
13 like, so given that, there is no third-party release of the
14 DMP's under the plan? If someone has a third-party claim
15 against them, that's not being released?

16 MR. VONNEGUT: The DMP's are now removed from the
17 excluded party schedule, which means that if they are -- if
18 they are a released party in other capacities, that they
19 would be included in the third-party release, by virtue of
20 having them removed from the excluded party schedule.

21 THE COURT: See I -- I don't understand that
22 provision. There are -- I'm not sure who is included within
23 the DMP group, but there's pending litigation against
24 distributors and manufacturers, it's not stayed by me,
25 around the country, including in the MDL, and I wouldn't

1 think that the plan would be able to release them in that
2 litigation.

3 MR. VONNEGUT: I'm -- I'm sorry, Your Honor. No,
4 that litigation is -- is not released. So in -- in the
5 definition of released parties, I actually, in the inserted
6 language, clause 3, Subsection B, the settling co-defendants
7 and their related parties are become released parties for
8 Section 10.6A, which is the release granted by the Debtor.

9 THE COURT: Okay.

10 MR. TROOP: Your Honor, Andrew Troop, on behalf of
11 the Non-Consenting States --

12 THE COURT: Go ahead.

13 MR. TROOP: -- thank you for asking my question.
14 But it seems to me that the plan should be perfectly clear
15 about this (indiscernible) --

16 THE COURT: I -- I agree. I just wanted to make
17 sure I understood the intent. I think you do, Mr. Vonnegut,
18 did point me, correctly, to the fact that that for purposes
19 of the definition, it's just for 1.06, but I think you
20 probably should beef that up, because just based on the
21 breadth of the third-party litigation around the country,
22 there shouldn't be any confusion on this point.

23 MR. VONNEGUT: Thank you, Your Honor, happy to
24 clarify that.

25 THE COURT: Okay.

1 MS. STEEGE: Your Honor, this is Catherine Steege,
2 on behalf of the DMP's, I think no one thought to go through
3 the language, it is very clear that the relief they're
4 receiving is from the Debtor and from the Sackler
5 shareholder parties, or whatever that terms is. It does not
6 in --

7 THE COURT: I think --

8 MS. STEEGE: -- in any way suggest that other
9 parties are released from this.

10 THE COURT: I think that's right, but I -- I
11 understand that to be the case, but since the third-party
12 release also uses the term, released parties, maybe -- I
13 mean, my suggestion might be that you drop a footnote in the
14 definition of released parties where it says in Section
15 10.6A, and just make it clear that -- that this is the
16 Debtor release and not any third-party release.

17 MR. VONNEGUT: We're happy to do that, Your Honor.

18 THE COURT: Okay.

19 MS. STEEGE: And Your Honor, we would expect the
20 Debtor would share whatever language it's requesting --

21 THE COURT: Of course, sure.

22 MS. STEEGE: -- with the Court.

23 MR. VONNEGUT: Both parties.

24 THE COURT: Right.

25 MS. STEEGE: The other point, Your Honor, I'd make

1 about the withdrawal of our objection to the plan, is we
2 have preserved one objection, which is the objection to the
3 provisions that only insurance flights, we've agreed to rest
4 on our brief's in connection with that objection. In
5 addition, many of the DMP's are involved in litigation up in
6 Canada, or are only involved in Canadian litigation, and
7 they all reserve their rights to make the appropriate
8 arguments in the Canadian courts, including in the
9 recommended decision.

10 THE COURT: With respect to -- with respect to
11 what?

12 MS. STEEGE: With respect to preservation of their
13 defensive rights up there and there are other issues up
14 there that interplay with the litigation that they need to
15 be able to argue in the Canadian Courts.

16 THE COURT: But I just want to make sure, is it
17 the preservation of their rights goes to the reserved issue
18 here that the parties have briefed as to rights to
19 insurance, and the -- and the carveout for their defenses
20 judgement reduction, those sorts of points?

21 MS. STEEGE: Yes, Your Honor, that's correct.

22 THE COURT: All right. Not that they will --
23 then we argue in Canada, in the recognition proceeding, the
24 objection that they've waived here?

25 MS. STEEGE: No, Your Honor, well, we would not be

1 rearguing the objections that we've agreed to in the plan
2 here.

3 THE COURT: All right. Fine. Thank you. Okay.
4 Thanks for those two updates.

5 MR. JONES: Your Honor, Evan Jones of O'Melveny
6 Myers, we represent Johnson and Johnson, which is one of the
7 DMP's. In Your Honor's question, we do believe under
8 Canadian law, it may be appropriate to (indiscernible) the
9 recognition of this Court's order, if the plan is confirmed,
10 and we're reserving that. We're not going to reargue an
11 objection to the plan, but to the extent Canadian law limits
12 recognition, we believe it is appropriate to reserve.

13 THE COURT: All right. I -- my point's a very
14 simple one. I wanted to make sure that that reservation of
15 rights doesn't include raising the same objection that has
16 been settled here.

17 MR. EVANS: Understood, Your Honor.

18 THE COURT: Okay. All right. Very well, thank
19 you.

20 MR. VONNEGUT: Thank you, Your Honor. Next I will
21 outline the revisions made to the release provisions on our
22 few miscellaneous changes. So on the releases, I'd just
23 like to revisit, briefly the basic architecture of the
24 releases, I think it's -- it's helpful in understanding
25 them.

1 In order to be released, a claim has to be first,
2 held by a releasing party. Second, asserted against either
3 a released party or a shareholder released party, and third,
4 based on relating to or arising from, in full or in-part,
5 the Debtors, their states, or the in the Chapter 11 cases.
6 It also has to be not held by the federal government, not
7 against an excluded party and not an excluded claim.

8 The simplest revisions to the releases that we
9 made fall into the category of just fixing bad drafting,
10 that tends to result when you have a document being
11 commented on by as many intensely interested parties as we
12 have in this case. So you'll see, throughout, we've removed
13 duplicative language; in many cases we've attempted to
14 streamline use of defining terms, like cause of action. I
15 won't go through that in detail, unless, Your Honor, has any
16 questions.

17 Sections 10.6 and 10.7, they've gotten a lot
18 shorter, and we hope a lot clearer. We've removed
19 duplicative or otherwise unnecessary language, and our core
20 standard in sections 10.6 and 10.7 is that in order to be
21 released, the cause of action must be based on or relating
22 to, or in any manner arising from, in whole or in part, the
23 Debtors, the estates, or the Chapter 11 cases, and we have a
24 parenthetical illustrating certain types of claims that
25 might relate to the Debtors, but that does not expand their

1 provision in any way. Those claims still all have to relate
2 to the Debtors. We don't do any of those revisions as
3 substantively changing the scope, we're just trying to make
4 things a little bit easier to read.

5 On the more substantive side, we have revised both
6 what is an excluded claim and who is a shareholder released
7 party, to attempt to address concerns about the breadth of
8 the releases. So in the definition of excluded claim, the
9 two most substantive additions are 1) mindful of, Your
10 Honor's commentary and input from creditors regarding claims
11 related to non-opioid issues. We've now excluded from the
12 releases non-opioid related claims against shareholder
13 released parties, or those shareholder released parties on
14 willful misconduct. There are a set of definitions that
15 impact this. We've added new defining terms for what
16 constitutes willful misconduct, and what constitutes a
17 willful non-opioid claim, which is a non-opioid claim
18 arising from willful misconduct.

19 We also heard concerns regarding the breadth of
20 the releases for advisors and contractors of the Sacklers,
21 and so we have also excluded claims against those parties
22 for their own willful misconduct, regardless of whether they
23 are opioid related or not opioid related. That provision,
24 again, is founded on the definition of willful misconduct
25 and the term for those claims that are excluded is willful

1 party related claim, which means a claim against a
2 shareholder, released party that is identified in Subsection
3 VII(b) of Shareholder released party or such parties,
4 actually and separate, willful misconduct. And that means
5 it's their own conduct, not conduct that was imputed to
6 them.

7 Both of these provisions have a deep keeping
8 function pertinent to the plan to provide some protection
9 against strike suits. This lives in new Section 11.01(e),
10 and that requires a claimant that believes they have a claim
11 that fits one of these carveouts, before they prosecute that
12 claim, to first come to the bankruptcy court and make a
13 showing that their claim is both colorable and within one of
14 the two definitions.

15 Also, in excluded claim, we did some less
16 substantive cleanup to just try to address some provisions
17 that seem to have been causing confusion. First in II, we
18 made clear that nobody is getting income tax claims
19 released. This was always the case, but we took apart that
20 use to apply to only to shareholder released parties and
21 make -- and made it global, just to make clear what we're
22 doing there.

23 Next in V, we eliminated a provision that only
24 applied to releases among different shareholder released
25 parties. That now lives in its own provision in Section

1 10.7(b), and lastly, we excluded any cause of action based
2 on conduct after the effective date. This again was always
3 the case, but there were a lot of questions about future
4 conduct during the -- during the presentation of evidence,
5 so we just wanted to make that very clear.

6 Next in the definition of shareholder released
7 party. We've heard concerns about the scope of releases for
8 transferees of the Sacklers, and so in VI, we have
9 simplified that prong so that persons in which the Sackler's
10 own an interest are no longer released parties, and we've
11 replaced that with a provision for mediate and immediate
12 transferees of the Sacklers, but that is very strictly
13 limited to make clear that those parties are only released
14 in their capacity as such, and only for the amounts that
15 they received.

16 Other revisions to that -- that term, were just
17 clarifying and we did not give a substantives. Unless, Your
18 Honor, has any questions, I can briefly cover the -- the few
19 other revisions that were made to the plan.

20 THE COURT: Okay. I -- I had a couple of
21 questions on this topic.

22 MR. VONNEGUT: Sure.

23 THE COURT: First, in the definition of willful
24 misconduct, it -- it comes under an action taken or not
25 taken in bad faith and with actual knowledge that such

1 action or failure to act is unlawful, prohibited, or false,
2 and will be harmful to another. It -- it doesn't include
3 the word fraud, and much of the litigation here, asserts
4 fraud claims, one way or another, including under Consumer
5 Protection Act statutes, and I just want to make sure is
6 fraud included within this?

7 MR. VONNEGUT: Well, I don't want to get ahead of
8 Mr. Uzzi, who looks like he's ready to address that.

9 MR. UZZI: Your Honor, for the record, Gerard
10 Uzzi, Milbank, on behalf of the Raymond Sackler Family. It
11 was actually rose to address just a clarification on the --
12 the prior statements with which I -- which I can address,
13 but to answer this question. Your Honor, I -- I -- I think
14 we mean what we say here. It's not intended to -- to pick
15 up fraud. It's intended to pick up what it says here.

16 THE COURT: I think you should pick up fraud.

17 MR. UZZI: All right. Understood, Your Honor. We
18 will -- we will -- we will take -- we will discuss that with
19 our clients, Your Honor.

20 THE COURT: Okay.

21 MR. UZZI: The clarification I wanted to make,
22 Your Honor, is Mr. Vonnegut had made -- we made -- we made a
23 correction as it relates to -- I'm sorry, I'm just flipping
24 the page to get there, Your Honor, but the definition of
25 shareholder of these parties, as it related to transferees

1 and we did clarify that and we limited that language, but
2 Mr. Vonnegut made a statement that we had taken out the
3 reference to Sackler owned entities, that's true as a
4 cleanup comment, but that's just simply because it's picked
5 up later in the definition as far as a catchall for
6 subsidiaries and controlled affiliates.

7 THE COURT: Right.

8 MR. UZZI: So it was a cleanup on transferees.

9 THE COURT: The purpose -- the purposes of this
10 change was to limit the release to -- to those that would be
11 otherwise sued, as being the recipient of a fraudulent
12 transfer that's released under the plan, right, and in that
13 accord --

14 MR. UZZI: Correct, Your Honor -- correct, Your
15 Honor.

16 THE COURT: All right.

17 MR. UZZI: Or similar theories.

18 THE COURT: Right. Okay. All right. The
19 other -- the other point I had is a much smaller one, and
20 again, I'm not -- I'm just trying to understand what's in
21 here, I'm not -- I'm not commenting the merits of the
22 changes or whether they're enough. Although, I appreciate
23 the work done to narrow the release. If you go to the last
24 paragraph of 10.6, I think there's -- I think there's
25 potential for a little confusion in the fourth line there.

1 It says, in each case, unrelated to the Chapter 11 cases or
2 the subject matter of the pending opioid actions, I think
3 you probably should put unrelated, and then add the word
4 either to the Chapter 11 cases or to, I think that's
5 supposed to be disjunctive, right? It's unrelated to either
6 one of those two or both?

7 MR. UZZI: Yes, sir, that's right.

8 THE COURT: All right. I had to read that a
9 couple of times to figure that out and I think that would
10 make it clearer.

11 MR. UZZI: We will fix that, Your Honor.

12 THE COURT: Okay. Okay.

13 MR. UZZI: Your Honor, so, but the last three
14 changes, just to highlight for the Court and the parties,
15 one in continuing foundation members, which describes the
16 individuals that will be appointed to run the two Sackler
17 Family Foundations, we've just removed from -- from that
18 term, the possibility of the Court appointing those people,
19 which the State of New York didn't like and didn't like and
20 frankly we thought the Court might not like, so now that --
21 those foundations will just be run by either the NOAT
22 Trustees or people otherwise agreed to by the Debtors, the
23 governmental consent parties, and counsel for the newly
24 consenting states.

25 THE COURT: A good change.

1 MR. UZZI: Thank you. In Section 11.1, XVII, we
2 fixed a conflict between the plan and the NOAT and Prime
3 Trust documents regarding jurisdiction over those documents,
4 to make clear that they will be concurrent and not exclusive
5 bankruptcy court jurisdiction over those entities. And
6 lastly, to conform to the revisions to the confirmation
7 order, we've removed the waiver of the 14 days stay imposed
8 under Rule 3020, from 9.2, and we adjusted Section 12.8 to
9 conform there.

10 THE COURT: Okay.

11 MR. UZZI: And that is it, Your Honor.

12 THE COURT: Okay. Very well.

13 MR. FOGELMAN: Your Honor, Lawrence Fogelman from
14 the US Attorney's office. I wanted to quick thank the
15 (indiscernible), we did get a draft on Saturday of some of
16 the changes, but just this morning when we woke up, a lot of
17 the changes that we had discussed over the weekend weren't
18 there, and some others were different. So and a lot of it
19 deals with the releases, which are an important part to what
20 my offices has been the states, and the Debtors in our
21 office don't necessarily always agree on interpretation of
22 the same language. So to the extent that we -- we can
23 (indiscernible), I guess the new language that came up,
24 since it's hard to do it on the fly, I just would ask that
25 to be involved in this and to be allowed to revisit an

1 issue, if we discover something prior to the final -- final
2 (indiscernible).

3 THE COURT: Okay.

4 MR. VONNEGUT: Your Honor, that's very much
5 understood. We were just describing the revisions made and
6 did not mean to suggest that they resolved anybody's
7 objection, unless somebody has said their own objection is
8 resolved.

9 THE COURT: Right. I -- I --

10 MR. FOGELMAN: We would not think, Your Honor,
11 that revisions developed a new issue that we didn't know
12 about 12 hours ago. We want to be able to look at those
13 documents and figure that out.

14 THE COURT: That -- that's fair, but I also think
15 it's helpful to confine the oral argument on this point to
16 the actual wording of the plan, at this point. Which, as I
17 said, may or may not be sufficiently narrow.

18 MR. FOGELMAN: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. VONNEGUT: Okay. Thank you, Your Honor, I
21 think I will turn the podium over to Mr. Huebner.

22 THE COURT: Okay.

23 MR. TROOP: Your Honor -- Your Honor, Andrew Troop
24 for the Non-consenting States, just -- just quickly on this
25 point. I have not objected, nor have I reserved any time as

1 part of the oral argument, but in light of this particular
2 change, there is a question that has been raised about the
3 formulation with regard to what the third-parties and state
4 law, that a Uniformed Deceptive Trade Practices, I have to
5 thank for the uniform one, that -- that imposes liability
6 without there having to be a proof of willful misconduct or
7 fraud, and so we may need to fold some time in for me when
8 other parties are talking about releases or later, as I come
9 up to speed on that particular issue.

10 THE COURT: Okay.

11 MR. TROOP: If that's fine with everyone, just to
12 be clear.

13 THE COURT: That's fine. I mean, I think -- I
14 mean, my view on this is that when you're covering related
15 parties, which are independent contractors, co-promoters,
16 third-party sales representatives, medical liaisons,
17 subcontractors, agents, and the like, it's a big step
18 forward to carve out the defined term, willful misconduct,
19 but there may well be other types of misconduct that should
20 fit into that definition. I think, generally, independent
21 conduct that is wrongful is what is really meant by that
22 language, and if an applicable law covers that, as opposed
23 to just some form of strict liability, because you're in the
24 -- in the same room or the same building, then I think it
25 probably should be covered by the carve out.

1 MR. TROOP: Okay. Thank you, Your Honor. We'll
2 review that language again and make a proposal to the
3 Debtors before the close of argument on Wednesday, so that
4 if we have to revisit it --

5 THE COURT: I mean, to be fair, I think that the
6 consumer laws that might apply here all are largely
7 addressed to engaging in activity that's misleading or
8 fraudulent. They may not use the word fraud, they may use
9 the word misleading, but it's some activity that where
10 someone has their own independent role in it.

11 Okay.

12 MR. TROOP: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. VONNEGUT: Thank you, Your Honor.

15 MR. HUEBNER: Good morning, Your Honor. Again,
16 for the record, Marshall Huebner, Davis Polk. Can the Court
17 hear and see me clearly?

18 THE COURT: Yes.

19 MR. HUEBNER: Your Honor, Mr. Kaminetzky and I are
20 splitting the Debtors' -- well, what we thought was an
21 allocated one hour, 50/50. I will be handling more of the
22 Iridium and TMT Trailer and explain the releases. Mr.
23 Kaminetzky will be doing the more technical legal issues of
24 equal important on constitutionality, due process,
25 Metromedia, et cetera, just to give the Court some sign

1 posting on how we're splitting things up.

2 THE COURT: Okay.

3 MR. HUEBNER: Your Honor, let me begin with an
4 admission. This Plan is most assuredly not perfect. No
5 plan in these unthinkably painful and complex cases possibly
6 could be. There is no allocation, no plan, no settlement,
7 no amount of money that could ever compensate for the loss
8 and devastation suffered by those impacted. The imperfect
9 task that is, in fact, before us is to find the best
10 available resolution for over 614,000 contingent opioid-
11 related civil claims for money, by which the objectors'
12 civil claims for money are one part.

13 At the beginning of this journey, the most likely
14 scenario for the Purdue Bankruptcy was years of endless
15 wasteful litigation. We had many -- a myriad of creditor
16 claims, federal, state, and local governments, commercial
17 counterparties, hospitals, personal injury victims, and
18 others. Each fought with one another and with the Sacklers
19 year after year over a diminishing asset.

20 So, during -- there will no doubt be two
21 contentious days of legal arguments -- let's not lose sight
22 of the extraordinary thing so many have collectively
23 achieved. More than 95 percent of Purdue's creditors,
24 including 97 percent of its governmental creditors, have
25 come together in support of a Plan that will allow as much

1 pot value as possible to be used as soon as possible, for
2 only two purposes and no others, abatement of the opioid
3 crisis and compensation of the individual victims, to save,
4 ameliorate, and improve as many human lives as possible in
5 the face of one of the worst health crises in world history.

6 If we do not seize this opportunity, if we squander
7 this moment, billions of dollars, and the creation of a
8 public benefit company, all dedicated to abatement of the
9 opioid crisis will be lost.

10 The legal inquiry at the heart of this hearing is
11 whether the many interlocking, interdependent settlements
12 embodied in the Plan and the releases are "fair and
13 equitable" in the best interests of the estates, which of
14 course, include their stakeholders, consistent with the Supreme
15 Court's TMT Trailer decision and the seven Iridium factors.

16 The Plan is a tightly woven tapestry of no fewer
17 than 14 incredibly complex and totally mutually dependent
18 sets of settlements among tens of thousands of the Debtors'
19 creditors, including:

- 20 1. The split of value between the public and
21 private side, agreed to in phase one mediation;
- 22 2. Allocation among the many private groups from
23 phase one mediation;
- 24 3. Allocation of funds among different
25 individual victims;

1 4. The interstate allocation incorporate into
2 NOAT;

3 5. The intrastate allocation among the states
4 and municipalities incorporated into NOAT;

5 6. Resolution of the claims of the public
6 schools;

7 7. Allocation to Tribal creditors;

8 8. Resolution of the civil and criminal claims
9 of the United States;

10 9. Allocation of the resolution of the fees due
11 to the attorneys of both public and private creditors;

12 10. Resolution of federal healthcare claims and
13 liens pertaining to personal injury recoveries;

14 11. Resolution of private healthcare claims and
15 liens relating to personal injury recoveries;

16 12. Resolution among the United States and the
17 AHC of certain claims of the United States that could easily
18 -- or could have massively impacted the recovery of non-
19 federal governmental entities;

20 13. The Shareholder Settlement itself; and

21 14. Allocation among the 10 family groups of the
22 Sackler family.

23 And this list of 14, Your Honor, most of which
24 were fully supported by the group formerly, and sort of
25 currently known, as the nonconsenting states, that includes

1 the objecting states, is a simplified count. Mr. Price's
2 number is 30 interconnected settlements. This is likely,
3 whatever the number, whether it's 14 or 24 or 34, the most
4 complex set of interlocking mutually dependent settlements
5 involving the representatives of hundreds of thousands of
6 partis, more than 10 ad hoc groups, and the federal
7 government ever reached in the history of Chapter 11. Pull
8 out a core thread, and the tapestry unravels.

9 At face, Your Honor, maybe it's an
10 oversimplification, but I have always thought that a court's
11 job is to apply the facts to the law, and that a lawyer's
12 job is to demonstrate that the law is on their side when
13 applied to the facts.

14 At face, the Sackler aspect of the settlement
15 involves the giving of releases and getting \$4.325 billion
16 in cash, and scores of pages of binding covenants and other
17 material concessions. So, it is truly remarkable that not a
18 single one of the objectors even cites TMT Trailer. That's
19 right, Your Honor, there's not one cite to the Supreme
20 Court's governing decision in a single objection. Almost as
21 remarkably, only two objectors, Washington and Oregon, even
22 mention Iridium, the governing Second Circuit case, and even
23 then, it is only in passing.

24 The objections are no less empty with respect to
25 the facts. Despite 450 pages of objections and six trial

1 days, the affirmative factual case, including direct
2 testimony by 17 expert witnesses and 18 fact witnesses, is
3 virtually uncontroverted. For the record, of the 35
4 witnesses offered by the Plan proponents, 14 of them, 3 fact
5 witnesses and 11 expert witnesses, had their direct
6 testimony admitted with no objection and no cross-
7 examination by any party.

8 In our view, clearly the objectors will it
9 somewhat differently, there remaining 21 witnesses were
10 asked non-germane questions, and not very many of those
11 either, and their written and oral testimony is overwhelming
12 in support of confirmation.

13 Not only have the objectors not challenged the
14 overwhelming affirmative evidence of the Debtors, the UCC,
15 fiduciary for all creditors, the AHC, and other parties,
16 which includes over 4,000 pages of sworn declarations and
17 expert reports -- 4,000 pages of evidence, Your Honor, had
18 we had to put those witnesses on, we would have heard weeks
19 of affirmative testimony that went unchallenged. Perhaps
20 even more shockingly, they have no facts of their own, no
21 evidence, none.

22 So, the objectors totally ignore the governing
23 law, both from the Supreme Court of the United States of
24 America and the Court of Appeals for the Second Circuit.
25 They have no evidence and they have done nothing to even tap

1 the massive overwhelming fact record in favor of
2 confirmation.

3 Please allow me now to turn to the Iridium factors
4 which will frame out the necessity and propriety of these
5 releases.

6 Factor one, the balance between the litigation's
7 possibility of success and the settlement's future benefits.
8 The enormous, monumental, varied benefits of the Plan
9 settlements are undeniable and unobtainable other than under
10 the Plan. As so many parties have advised in their briefs,
11 and testified under oath, and the UCC has it in their
12 letter, the Plan is the only, only viable solution that can
13 provide this extraordinary set of benefits to the
14 stakeholders of this case and the American people.

15 Among these benefits:

16 1. The preservation and dedication of 100
17 percent of the Debtors' very material assets to opioid
18 abatement and victims, all while maintaining continuity of
19 supply of the many medicines made by the Debtors to ensure
20 access for appropriate patients, subject to comprehensive
21 covenants and injunctions and under the oversight of both a
22 monitor and a new Board of Directors.

23 2. Comprehensive resolution of all claims
24 relating to these Debtors, thereby avoiding years and
25 probably decades of intercreditor and other litigation.

1 More on that to come.

2 3. \$4.325 billion of additional value on top of
3 everything the estate has.

4 4. The commitment to spend all of those billions
5 specifically for funding opioid abatement and the PIs.

6 On the first day of the case, every one of us
7 swore that this would not be another tobacco, this would not
8 be a case where the money went to potholes and redecorating.
9 Only this Plan and no other can deliver on this collective
10 vow. Because, Your Honor, absent the NOAT structure, and we
11 checked, we believe that pretty much every state attorney
12 general is legally bound to deposit settlement monies in
13 their general state treasuries, just like they did in
14 tobacco. See, e.g., Section 7-310.1 of Maryland State
15 Finance and Procurement Code, which provides, and I quote,
16 "Any money received by the State or otherwise subject to the
17 director or control of a State official, as a result of a
18 settlement, judgment, or consent decree...shall be deposited
19 in the State treasury."

20 5. The ability to maximize value even further to all
21 parties through the public good spillover and multiplier
22 effect of abatement spending. This is the evidence in this
23 case, and it is uncontroverted.

24 Professor Gaurisankaran testified, both in writing
25 at length, and quite eloquently on the witness stand, about

1 the material public good and poverty spillover effect and
2 multiplier, economic value provided to yet far more
3 Americans than even the many hundreds of thousands of direct
4 beneficiaries under the Plan.

5 6. Of tremendous import to noneconomic benefits.
6 Let's start with the public document repository. Tens of
7 millions of documents, the most in history, including tens
8 of thousands of attorney-client privileged documents,
9 basically never before in any major case in history,
10 released to the public as far as we know.

11 And, Your Honor, there was testimony on this.
12 It's not lawyer argument. There's testimony of Mr.
13 Weinberger and Ms. Conroy about the monumental importance to
14 our society of this unprecedented repository and its
15 potential to reveal lessons to stop a crisis like this from
16 ever happening to the American people again.

17 Next, the creation of a public benefit company,
18 that will operate with substantial oversight in a
19 responsible and sustainable manner, not only providing cash
20 to the abatement trust, but also developing or providing at
21 or below-cost life-saving medicines for the treatment of
22 opioid use disorder and for reversing overdoses.

23 Next, the complete removal of the Sackler families
24 from any and all involvement with Purdue or its assets from
25 the end of 2018 until the end of time.

1 Next, the Sackler families' exit from the opioid
2 business globally over time, under a complex reticulated
3 covenant that many have been involved in negotiating.

4 And next, barring the Sackler families for seeking
5 or requesting any new naming rights with respect to
6 charitable or similar donations for years until they have
7 fulfilled their core obligations under the Settlement
8 Agreement.

9 But, Your Honor, now we need to flip it over
10 because equally important, and maybe even more important
11 than the extraordinary, monumental benefits of the Plan is
12 avoiding the Hobbesian Horror that is its only alternative.

13 But without the shareholder settlement the many
14 other mutually dependent and equally important complex
15 settlements fail. For example, first the phase one
16 mediation agreement expressly conditioned by the states
17 themselves including the objecting states on Sackler
18 participating in the Plan, all fail. There are no more any
19 agreed public/private splits. There are no more intra-
20 private splits. There are no more intrastate splits, and no
21 more interstate splits. All gone, replaced by a maelstrom
22 of years of litigation.

23 Second, there is not enough value, nor the
24 emergence of a public benefit corporation or similar entity
25 to satisfy the conditions precedent for the \$1.775 billion

1 DOJ forfeiture judgment credit. This would require the
2 Debtors to pay the DOJ at least \$2 billion in cash that the
3 Debtors do not have. It would also raise the specter of the
4 DOJ having billions and billions of other potentially
5 priority non-dischargeable claims.

6 Third, billions of dollars that will not go to
7 abatement. The evidence -- it is evidence, it is not
8 argument -- is clear and uncontested that the only
9 alternative to the Debtors' Plan is the global May deal
10 scenario described by Mr. Turner in his declaration.

11 Mr. DelConte testified that the alternative would
12 provide, at most, \$669.1 million in aggregate recoveries for
13 all than the more than 614,000 contingent liability
14 creditors who have asserted tens of trillions of dollars in
15 damages.

16 And for the record, no objector challenged the
17 results of Mr. Turner's alternative plan analysis for the
18 scenarios considered. No objector identified any other
19 feasible scenario. No objector submitted a competing
20 liquidation analysis. The facts are uncontroverted and
21 incontrovertible.

22 Fourth, unthinkable intercreditor warfare for
23 years. Other than under this Plan, the over 600,000 private
24 creditors absolutely, positively, under no circumstances
25 would agree to limit their collective recoveries to only

1 about 20 percent of their recoveries from Purdue and the
2 Sacklers. Rather, as they have told us again and again,
3 absent this deal, they will object to the claims of the
4 states, they will seek to subordinate the claims of the
5 states, while asserting their own trillions of dollars of
6 damage claims.

7 Fifth, uncontrollable and uncoordinated litigation
8 by thousands or tens of thousands of creditors and the
9 Estate itself against the Sacklers. The creditors would be
10 brutally competing against one another in hundreds or
11 thousands of suits, each seeking hundreds of millions or
12 billions or tens of billions or hundreds of billions,
13 collectively seeking tens of trillions against the same set
14 of defendants.

15 Sixth, a delay of years or decades in getting
16 money out to help victims and facilitate abatement because
17 while this fire tornado of inter and intra-creditor
18 litigation and claim allowance and reconciliation grievously
19 eroded value month after month, year after year, there would
20 likely be no material cash flows from the Debtors' business,
21 no public health initiative to save lives, and a significant
22 risk of supply disruption of much needed approved drugs.

23 And seventh, and finally, Your Honor, hundreds of
24 millions of dollars, perhaps \$1.56 billion or more in legal
25 fees, not even counting the additional public and private

1 resources that would need to be spent as creditors, the
2 estates, and state, and local governments, and the Sacklers,
3 engaged in a war of all against all. And this is not
4 speculation, this is not a lawyer spouting a doomsday
5 scenario, it is in the record evidence, including the
6 declarations of Mr. DelConte and Mr. O'Connell. Your Honor,
7 that's just factor one.

8 Now, please let me turn to Iridium factor two.
9 The likelihood of complex and protracted litigation with its
10 attendant expense, inconvenience and delay, including the
11 difficulty in collecting on the judgment. Your Honor,
12 probably happily for all, I actually will be quite brief on
13 this point because from Page 69 to Page 103 of our
14 confirmation brief, we address this factor at great length,
15 and tie it to the record evidence that is now undisputed
16 again and again.

17 So, I will tap this only very lightly. The road
18 to winning and collecting net judgments in excess of \$4.325
19 billion against the Sacklers would be a fight that would be
20 long, hard-fought, uncertain, and incredibly expensive. I
21 don't think anybody disputes that.

22 The Debtors, like many other parties, passionately
23 believe that they have strong and material claims against
24 the Sacklers. But even the most valuable claims, including
25 intentional or constructive fraudulent transfer will of

1 course be litigated to the bitter end by the Sacklers,
2 including as to statutes of limitation, solvency, intent,
3 and recoverability of tax distributions, and the many other
4 factors described both in our disclosure statement and in
5 the UCC Plan support letter.

6 The issues are many and they are not simple, and
7 material loss on even one of them could be a material
8 potential hit to the recovery profile.

9 Finally, Your Honor, for very good reason, we have
10 all used the phrase, "the Sacklers" as shorthand throughout
11 these cases. But if it ever comes to it, you can't file a
12 lawsuit and have the defendant be "the Sacklers." You
13 actually have to sue, and serve process, and mitigate, and
14 win, and collect judgments against actual persons and trusts
15 and companies.

16 To give one sense of this -- and then I'll turn
17 Iridium three -- there are 204 Sackler Trusts in six
18 jurisdictions. There are 57 individual members of the
19 Sackler families, including spouses, children, minors, and
20 decedent estates, in five jurisdictions. And many of the
21 Sacklers were never on the Board, live overseas, and are not
22 U.S. citizens. And there are 201 IACs and 2(a) entities in
23 58 jurisdictions.

24 Iridium factor three, the paramount interests of
25 the creditors. I believe I already addressed in factors one

1 and two, so I will actually not address it further at all.
2 As I've indicated, it's so clear and so overwhelming that it
3 was also tied to factor four, whether other parties in
4 interest affirmatively support a proposed settlement.

5 The facts are in. 97 percent of the 4,924-voting
6 governmental non-federal creditors and 95 -- it's actually
7 really 96, but we usually say 95, so nobody can say, which
8 way did you do it -- of a over 120,000 voting creditors, the
9 most voting creditors in the history of Chapter 11, support
10 the Plan. Every single voting class carried by massive
11 margins, and every single one of the 10 ad hoc groups and
12 the UCC supports the Plan.

13 The group include (1) the UCC, (2) the AHC, (3)
14 the MSG, (4) the Native American Tribes, (5) the adult PI
15 victims, (6) the NASBI victims, (7) the NAS medical
16 monitoring claimants, (8) the hospitals, (9) the third-party
17 payors, (10) the late payers, and (11) of the independent
18 school districts.

19 As to the states, of course, Your Honor, let us
20 not lose sight of this. 15 of the 24 formerly nonconsenting
21 states that fought us all through the case, more than 62
22 percent, now support the Plan. Which brings us, after the
23 further improvements they got in phase three of mediation,
24 to 38 of the 48 states participating in these cases, and
25 also Puerto Rico -- which when I checked a couple of years

1 ago, I think was something like the 21st most populous, had
2 to be considered a state.

3 In dramatic, dramatic contrast, the objectors to
4 the settlements are the attorneys general of nine states the
5 District of Columbia, one city, and the U.S. Trustee, who
6 collectively comprise less than one, five-hundredth of one
7 percent of the Debtors' creditors -- one five-hundredth of
8 one percent.

9 Out of the approximately 22,495 cities, towns,
10 villages, and counties in the United States, one city,
11 Seattle, literally one, objected.

12 As to the nine states and the District of
13 Columbia, even if we stick them into their own states-only
14 class, more on that later, that class carried by 80 percent,
15 well over the 66 and two-thirds in 1,126, which is really 50
16 percent, paint by number, and even greater than the 75
17 percent arguably, analogously, intellectually relevant in
18 the 524. The class they were actually in, Class 4, had
19 4,924 voters, and carried by 97 percent.

20 Moreover, Your Honor, and I say this with some
21 trepidation, but unfortunately, I mean it, it is not
22 actually clear to me who the few objecting attorneys general
23 are even speaking for because on average 95 percent of the
24 private and 97 percent of the governmental stakeholder
25 within their own states, all support the Plan. And

1 basically, zero claimants -- basically, literally zero in
2 each of the states who has objected has joined them in
3 objecting.

4 THE COURT: Can I --

5 MR. HUEBNER: In other words --

6 THE COURT: -- can I get in a word for a second?
7 How do you -- how do you arrive at the figure -- how do you
8 know that those supporting the Plan are voting in favor of
9 the Plan, comprise -- in the states where there have been
10 objections, comprise 95 percent of those, that group?

11 MR. HUEBNER: Your Honor, I don't know, which I
12 said on average. Your Honor, we don't -- we didn't use
13 Prime Clerk to give us customized analysis to use at trial.
14 I don't know the break down per state, I just know on
15 average across the country. It's certainly possible that in
16 some of those states the vote was 99 percent, and in some
17 states it was lower. And of course, each class had a
18 different voting percentage, right? They ranged from 88
19 percent to 100 percent. So, I can't know how exactly it
20 splits. It's more of the point that looking overall, the
21 creditor acceptance is overwhelming, including as to the
22 governmental units and divisions within the states.

23 Is it possible that within a specific state, if we
24 did a state-by-state analysis my rhetorical point would be
25 lost as to the some of the objectors? Absolutely. I'm not

1 stating it as a fact, I said, on average, because I don't
2 know the answer to the Court's question.

3 THE COURT: Okay. I might as well as this to you.
4 Now, how -- what's the basis for stating that the actual
5 vote here was the largest in Chapter 11 history?

6 MR. HUEBNER: Your Honor, we can provide a chart.
7 Our team looked very, very hard at all of the biggest cases
8 that we know of, and we've been doing this for rather a
9 while. It's possible somebody could say a case you didn't
10 know of it, what -- had more voters. But Lehman Puerto
11 Rico, G.M., PG&E -- we have a very long chart, in which we
12 went through every case we could find to verify the veracity
13 of the statement. I would not be comfortable putting it in
14 a sworn declaration because it's possible I'm wrong, but we
15 looked very, very hard and have a long list of all the mega
16 cases, and believe we have the highest number of voters.

17 THE COURT: Okay. Thanks.

18 MR. HUEBNER: Iridium factor five, Your Honor, the
19 competency and experience of counsel supporting, and the
20 experience and knowledge of the bankruptcy judge reviewing
21 settlement, and seven -- I'm going to combine them, "the
22 extent to which the settlement is the product of arm's
23 length bargaining."

24 Your Honor, we're obviously going down the why on
25 all seven factors, and we think each one is overwhelming.

1 No party has contested or possibly could contest that these
2 agreements, when tensely negotiated, indeed brutally
3 negotiated, over a period of years by sophisticated counsel
4 on all sides, and with over a year -- a year of assistance,
5 from three of the most highly respected mediators in the
6 country, the Honorable Layn Phillips, and Mr. Kenneth
7 Feinberg, the Honorable Shelley Chapman, whose selection was
8 supported by the objectors.

9 These are not someone else's mediators.

10 Mr. Feinberg and Judge Phillips are the mediators
11 we all agreed on and jointly presented to the Court. With
12 respect to negotiations, Your Honor, the testimony is thick
13 and uncontroverted. Mr. Atkinson, Mr. Guard, and Mr. Gotto
14 all testified about the negotiations. We also heard from
15 Mr. Weinberger and Ms. Conroy who have spent over twenty
16 years suing Purdue and the Sacklers.

17 The UCC described all this in their letter
18 facilitated by tens of millions of legal documents conducted
19 in a no-stone-left-untuned investigation into these issues.
20 And, of course, Your Honor, a 4.275-billion-dollar number
21 which came out Phase 2 mediation was the joint proposal of
22 the mediators. It didn't come from the Debtors. It didn't
23 come from the UCC. It didn't come from the AHC, didn't come
24 from the NCSG. It came from the mediators after almost a
25 year of full-time work on these pieces.

1 And, of course, the final number, 4.325 billion
2 dollars with further material concessions came from the
3 third mediator, a sitting federal judge.

4 So let's turn to Factor Six, which is the only one
5 that is left. The nature and breadth of the releases
6 obtained by officers and directors, which in this case, of
7 course, we'll expand to include released parties, not just
8 officers and directors.

9 Your Honor, no one ever would suggest that these
10 releases are not broad. Of course they are broad, but they
11 are the only way these cases can be resolved for many
12 reasons. The objecting states are singularly focused on the
13 fact that the Sacklers will not pay 4.325 billion without
14 the finality that come from broad, binding third-party
15 releases. But this is only one of the very many reasons
16 that the plan must have third-party releases and could never
17 go effective without them because, Your Honor, even if the
18 Sacklers agreed to pay over four billion dollars and still
19 be sued for hundreds of billions of dollars, the plan dies.
20 This has been totally misunderstood by so many parties.
21 It's time to hopefully make it clear.

22 Why would the plan never, ever work, irrespective
23 of the wishes of the Sacklers without third-party releases?

24 One, fundamental fairness and equal treatment.
25 Let us consider arguendo, a world in which the objecting

1 states or other material creditors are allowed to opt out
2 from the third-party releases. The nine objecting states
3 and the District of Columbia have filed proofs of claim
4 alleging under penalty of perjury over 439 billion dollars
5 in damages against Purdue and based on their theory, by
6 extension, against the Sacklers.

7 Let us assume that they recover only 5 percent of
8 the 439 billion dollars they say they are owed and they get
9 judgments for 22 billion dollars. Even if the Sacklers
10 somehow could pay both this 22 billion dollars, which is
11 only 5 percent of the claims they've sworn they have, and
12 also the 4.326 billion for the whole rest of the country,
13 that would mean that only nine states and D.C. get 22
14 billion dollars, while 38 states, 614,000 creditors and
15 every other Ad Hoc Group is supposed to share only 4.325
16 billion dollars. That does not and could not ever work for
17 anyone.

18 But, of course, it's much worse than that because
19 the Sacklers don't have 26.325 billion dollars to pay 22 and
20 then another 4.325.

21 So in this hypothetical opt-out scenario, even if
22 the objecting states only get judgment for five cents of
23 what they claim they are owed, everything will fail and
24 collapse if the Sacklers can't pay the settlement.

25 And to add insult to the extraordinary collective

1 national injury, if any of the objecting states were
2 successful, they might be able to assert judgment liens and
3 prime everybody else. So everyone else in American might
4 literally end up sharing little or nothing, not even 4.325
5 billion, while an opt-out state could get a judgment lien
6 for billions. Of course no one is going to do that deal,
7 which is reason number two, no one will do that deal.

8 No creditor group in these cases, to my knowledge,
9 would or will agree to a resolution of their claim if any
10 material party remains free to pursue direct claims against
11 the Sacklers for tens or hundreds of billions of dollars. A
12 tragedy of the common cannot be solved by only some parties
13 agreeing not to drain a common resource. It can only be
14 solved if everyone is bound to the deal.

15 Mr. Preis and I stopped at six. But between us,
16 we confirmed and I hereby represent that the UCC and the
17 AHC, the NSGE and Adult PIs, the NES Committee and the
18 Hospitals will not support a plan that allows for opt-outs
19 that are material along the lines requested by the objecting
20 states. Even if the Sacklers consented to the carve out,
21 everyone of those six groups would instantly support --
22 withdraw -- excuse me -- would instantly withdraw their
23 support for the plan and fiercely oppose it. And of course
24 they would because they wouldn't ever get paid what they've
25 agreed to.

1 This is precisely why, Your Honor, the objectors
2 should be held to this. The Phase 1 Mediation Agreements
3 agreed to among the publics and the privates with virtually
4 no involvement of the Debtors and no involvement of any
5 kind, of any kind by the Sacklers who were not Phase 1
6 mediation parties are expressed conditioned on Sackler
7 participation in the plan.

8 Number three, Your Honor, 1129(a)(11), there
9 actually is a bankruptcy code that governs what you need to
10 make a plan go effective. 1129(a)(11) requires that a plan
11 be feasible. I cannot and would not ever ask a federal
12 judge to confirm a plan that I did not believe was feasible.
13 If there are no third-party releases and material opt-out
14 parties are allowed to sue the Sacklers for tens or hundreds
15 of billions of dollars, I could not stand here and represent
16 to the stakeholders, with whom I am a sworn fiduciary, or to
17 this Court, to whom I have obligations as an officer, that
18 the plan and its many settlements would or could be
19 successfully consummated.

20 The people who so desperately need it and deserve
21 it would get what they bargained for and what they voted
22 for, including, because the overwhelming creditor support we
23 have built after years of effort, would instantly supernova.
24 The Sacklers have no right to vote on our plan, but our
25 creditors do.

1 Four, without the third-party releases objected to
2 by 1/500th of 1 percent of our creditors, everything
3 collapses and those directly impacted by the opioid crisis
4 would lose the billions in hand under the plan and have to
5 wait for recoveries they may never receive and abatement
6 programs that may never launch.

7 Five -- and this is very, very important to me. I
8 find the professed outrage and shock from the objectors
9 about the number of parties on the Sackler side being
10 released to be some combination of confusing, misguided, or
11 utterly hypocritical. Let me explain why with details.

12 I would venture a guess that every single lawyer
13 listening to this hearing right now has done five or ten or
14 twenty or fifty settlements that have releases in the last
15 several years. And I would further venture a guess that
16 virtually every single one of those settlements with any
17 large company or enterprise expressly releases its present
18 and former officers, directors, affiliates, subsidiaries,
19 attorneys, accountants, and representatives or a substantial
20 subset of those representative category because otherwise,
21 the releases are of gossamer spun and essentially worthless.

22 And now I'm not going to speculate. Now I'm going
23 to tell you facts because I know for a fact that of these
24 exact objecting parties, every one of them, including in the
25 last few months, and including in the opioid states, agreed

1 to releases with parties with whom they settled. This is
2 exactly how they structured them.

3 For example, in the McKinsey settlement, trumpeted
4 by many Attorneys General as critical and a milestone, guess
5 who was released? And I quote: "By execution of this
6 judgment order, the State of California -- there is a model
7 they all used, 47 separate settlements, very complicated,
8 allows you to do the same for all of them -- releases and
9 discharges McKinsey and its past and present officers,
10 directors, partners, employees, representatives, agents,
11 affiliates, parents, subsidiaries, operating companies,
12 predecessors, assigns, and successors, collectively the
13 releasees.

14 I don't know what some of these categories mean. I
15 don't know what an operating company is separate from the
16 affiliate, but I guess everyone else does. Your Honor,
17 that's all true in Insys, and Medtronic, and Career
18 Education, and Johnson & Johnson, and Apple, and Emarsys
19 and, and, and. I have a demonstrative in the end, I'm
20 actually not going to use because it's very dense and its
21 very intent. It does on for (indiscernible) and I'm happy
22 to send it in to the Court and all parties. I was told by
23 the litigators that it is very usable because it was all
24 just quotes from public dockets which shows you how the
25 release language works for case, after case, after case

1 including many cases to which the objectors are party as to
2 categories of released parties: Oregon, Connecticut,
3 Maryland, D.C., New Hampshire, California, Delaware, Rhode
4 Island, Vermont, Washington, West Virginia. There's
5 McKinsey. There's Apple. There's Honda. There's Johnson &
6 Johnson. There's Medtronics. All subsets and I'm not going
7 to read them all. I'll just send it if Your Honor would
8 find it useful -- past and present, directors, officers,
9 employees, representatives, affiliates, parents,
10 subsidiaries, predecessors, assigned, and successors.

11 Your Honor, we would have given you two hundred
12 examples from the public dockets but we stopped at ten
13 including many that included the objecting states of which
14 Your Honor can take judicial notice.

15 It is quite clever actually that the handful of
16 objectors have often repeated the phrase -- I'm so used to
17 seeing it getting used by the media -- that the Sacklers are
18 getting "immunity." That is a gross mischaracterization of
19 what is happening. This is a civil settlement of civil
20 claims. A non-opt-out, civil-only settlement with historic,
21 overwhelming support. While it is nothing less, it is also
22 nothing more.

23 Now I grant you that the drafting may have been a
24 little bit unusual. May I list by name some of the people
25 and entities in this ubiquitous, omnipresent categorical

1 approach to who gets released in a complex situation because
2 the number of releasees in every case like this numbers in
3 the hundreds or thousands or more. Our plan, ironically,
4 provides more information about the identify of the parties
5 being released than the many, many settlements to which
6 everybody, including the objectors, are so frequently a
7 party.

8 And, Your Honor, I'm going to venture a guess that
9 McKinsey, Apple, Honda, Johnson & Johnson had tens and tens
10 of thousands more present and former directors, officers,
11 and employees, representatives, affiliates and subsidiaries
12 than do the Sacklers and the objecting AGs were that
13 categorical approach in all of those cases and dozens or
14 hundreds of others.

15 Your Honor, I'm about a minute from done, so let
16 me wrap up. At bottom, these broad releases are unavoidable
17 and indispensable first because fairness among victims and
18 creditors demands them. Among victims and creditors, not
19 against the Sacklers.

20 Two, because the tragedy of the commons cannot be
21 solved any other way. It is impossible. Believe me, we've
22 all tried for years.

23 Three, because we have no creditor support for the
24 plan without them. It's not just that the Sacklers are
25 insisting on them. It's that the plan doesn't work.

1 And four, because 1129(a)(11) cannot be satisfied
2 without them.

3 Your Honor, the plan is the only way to avoid
4 years or decades of Hobbesian hell and billions of dollars
5 of added costs and lost value. It is for very good reason
6 that very creditor class, every creditor group, and
7 virtually every voting creditor has accepted it not only as
8 the best, but as the only viable outcome. Thirty-five
9 witnesses, over 4,000 pages of sworn declaration and expert
10 reports, TMT Trailer, Iridium, et cetera, et cetera.

11 The plan and it's 14 or 24 or 34 totally
12 interdependent, mutually conditioned settlement is
13 indispensable and is in everyone's best interest and we ask
14 that it be approved.

15 Your Honor, as promised, I will now turn the
16 podium over to Mr. Kaminetzky for the legal factors on the
17 release.

18 THE COURT: Okay.

19 MR. KAMINETZKY: Good morning, Your Honor,
20 Benjamin Kaminetzky of Davis Pope for the Debtors.

21 As the Court has recognized repeatedly and, in
22 fact, as recently has the final pretrial conference, the law
23 governing the availability of third-party releases is well
24 established in this Circuit dating back to the 1980s since
25 the historic mass tort bankruptcy of Johns Manville.

1 In Johns Manville, the court fashioned a Section
2 105(a) injunction to channel asbestos personal injury claims
3 against third-parties to a trust set up to handle asbestos-
4 related claims. And the propriety of that injunction has
5 been upheld on direct appeal and collateral attack for over
6 30 years. Most recently in Metromedia, the Second Circuit
7 reaffirmed that non-consensual third-party releases may be
8 granted in the "unique" or "rare" cases, including non-
9 asbestos cases where such releases are "important to the
10 success of the plan."

11 And this followed the Drexel case in the Second
12 Circuit where the court held "in bankruptcy cases, a court
13 may adjoin a creditor from suing a third-party provided the
14 injunction plays an important part in the Debtor's
15 reorganization plan."

16 The centerpiece of the plan, as we just heard, is
17 the 4.325 billion in cash that the Sacklers will contribute
18 in exchange for these third-party releases. Without the
19 third-party releases, however, any one state, county, tribe,
20 city, town, or other governmental claimant could make the
21 unthinkable value-destructive scenario that Mr. Huebner just
22 vividly described earlier a reality.

23 For all of their pages and words, the objectors
24 have no response to this. They offer no alternative nor any
25 hope for anything other than a meltdown. The objectors

1 merely allege without submitting a shred of factual, expert
2 or any other support, and I quote from Washington's
3 objection at Paragraph 7, they actually say this "Had Purdue
4 Pharma simply reorganized as a business entity, this case
5 would have been a relatively simple one. The structure
6 would have essentially been the same as the current plan
7 with the Sackler settlement excised."

8 There is simply nothing in the evidentiary record
9 that supports this, nothing. The current plan would not be
10 possible without the releases. This is spelled out in black
11 and white in the unrebutted testimony of John Dubel, John
12 Guard, Mike Atkinson. These are precisely the sort of
13 unique and rare circumstances in the words of the Second
14 Circuit, demanding the application of non-consensual third-
15 party releases.

16 Now turning to the objections, to the extent the
17 objections address Metromedia on its own terms at all rather
18 than just arguing that it was wrongly decided, they resort
19 to arguments that many of the paradigmatic circumstances
20 justifying third-party releases discussed in Metromedia are
21 not present here. But the Second Circuit in Metromedia
22 explained that whether third-party releases are appropriate
23 in any particular plan is -- and I quote -- "not a matter of
24 factors and prongs," 416 F.3d at 142.

25 Instead, the point is whether under the particular

1 facts of the case, the third-party releases play "an
2 important part of the Debtor's reorganization plan," same
3 case at 143.

4 And for all the reasons Mr. Huebner discussed,
5 they absolutely do. But even if we just look at the factors
6 and prongs as the objectors would have the Court do, we win
7 because those factors are, indeed, present here.

8 First, the Metromedia court recognized that third-
9 party releases are appropriate in cases where estates
10 receive "substantial consideration." That's at Page 142 of
11 Metromedia. Here, the Sackler families are making a
12 substantial contribution by parting with \$4.325 billion
13 among other terms. This is substantial from any reasonable
14 measure.

15 From a qualitative perspective, it is critical and
16 necessary consideration that enables the value maximizing
17 resolution contained in the plan. In other words, the
18 shareholder contribution ensures that the plan is feasible
19 and that contingent liability creditors receive significant
20 and defined, as opposed to potentially de minimis or
21 actually zero value on account of their claims.

22 We note in our brief at Paragraph 136 that this
23 alone is sufficient to support a finding that the
24 contribution is substantial.

25 Now the shareholder contribution is no less

1 substantial from a quantitative perspective. 4.325 billion
2 is a large sum. It is at least twice the value of the
3 Debtor's business as a going concern, which Mr. Turner
4 testified is roughly 1.6 billion to 2 billion. That's
5 Turner's declaration at Paragraph 22. It is also more than
6 the number in the mediator's proposal made during the Phase
7 2 mediation and is the number that induced the UCC and AHC,
8 the MSGE and 15 of the 25 then non-consenting states to
9 support the shareholder settlement. There is absolutely no
10 support whatsoever for an ability-to-pay standard that the
11 objection seemed to be suggesting. That would be a
12 dangerous precedent.

13 With that said, I think it's relevant and hopeful,
14 Your Honor, to remember that combined net worth of every
15 single Sackler that is an actual defendant in the action,
16 i.e. an alleged wrongdoer, is 400 million on Side A and 700
17 million on Side B. That is 1.1 billion compared to a
18 payment of 4.325 billion. That's less than a quarter. And
19 Your Honor you can find that at JX-0408, which is Martin's
20 report on the Mortimer side of the Sackler family and JX-
21 192, which is the Martin report on the Raymond side.

22 THE COURT: That's ex the trusts, right? This is
23 just their own net worth separate from putting their
24 interests in the trust.

25 MR. KAMINETZKY: Yes.

1 THE COURT: Okay.

2 MR. KAMINETZKY: Second, under Metromedia, third-
3 party releases may be appropriate in cases where the
4 "enjoined claims would indirectly impact the Debtor's
5 reorganization by way of indemnity or contribution." That's
6 on Page 142 of Metromedia.

7 Here, the release claims would have an effect on
8 the Debtor's reorganization. Without the third-party
9 releases as we set out in detail in our brief, released
10 parties or shareholder released parties would certainly
11 deplete shared insurance policies that constitute a
12 significant asset of the estates or assert contribution or
13 indemnification claims against the estate. In fact, many
14 already have submitted proofs of claims asserting such
15 claim.

16 The objectors contest whether these claims would
17 ultimately succeed, but that's not right question. The
18 outcome of those claims is uncertain and the fact that they
19 could have an impact on the value of the estates further
20 supports a finding that third-party releases here are
21 appropriate and necessary.

22 Third, Metromedia recognized that third-party
23 releases are appropriate in cases where the "enjoined claims
24 were channeled to a settlement fund rather than
25 extinguished."

1 Here, the domestic opioid litigation claims are to
2 be channeled to the trust created by the plan rather than
3 extinguished, a fact, that at least one of the objectors has
4 not acknowledged, Washington objection at Paragraph 59,
5 under Metromedia, the circumstances to illustrate that the
6 third-party releases are appropriate.

7 Fourth, and last, but certainly not least, some
8 cases have looked at and considered the level of support for
9 a plan as relevant and here the plan has overwhelming
10 support. As you've heard, Your Honor, over 95 percent of
11 voting creditors have voted to accept the plan. More
12 specifically, over 96 percent of domestic government
13 entities that voted have voted to accept the plan. The fact
14 that roughly 80 percent of the States support the plan would
15 be more than sufficient level of support even in an
16 analogous context of an asbestos-related channeling
17 injunction where channel classes must vote in favor of a
18 plan by least 75 percent.

19 This takes me to the remainder of the arguments
20 raised by the objecting states, the U.S. Trustee, and the
21 DOJ, all of which boil down to nothing more than an attack
22 on well-established Second Circuit law. Their arguments
23 basically fall into four buckets.

24 First, third-party releases should not be
25 permitted under the bankruptcy code.

1 Second, even if third-party releases are
2 authorized by law, this Court should craft a new exception
3 to Metromedia for the so-called police power actions.

4 Third, they argue that third-party releases cannot
5 be imposed because they violate due process, which, as Your
6 Honor will see, is really just their first argument recast
7 as a constitutional argument.

8 And finally, they argue this Court lacks
9 jurisdiction or power to confirm the plan containing these
10 releases.

11 Now each of these arguments are meritless. Let me
12 begin with the first bucket of arguments which are just an
13 attack on Metromedia itself, and I'll be brief.

14 Along these lines, the DOJ and U.S. Trustee, for
15 example, claim that a third-party release should not be
16 allowed in any case other than asbestos case because the
17 only provision under the code expressly and specifically
18 authorizing the injunction of third-party claims, Section
19 524(g), is limited to asbestos cases. Note that there is no
20 limiting principle. They say it is categorically
21 unavailable. Any single objector, according to them, the
22 law mandates if there is a single objector according to the
23 DOJ and the U.S. Trustee, the law mandates utter
24 destruction. This is despite the unbelievably collaborative
25 work we have done with the DOJ to craft an abatement plan, a

1 public benefit corporation, and public health initiatives
2 that the DOJ fully supports, but would disappear, simply
3 disappear if the objection is sustained.

4 The objectors also claim that third-party releases
5 should be categorically prohibited as they operate as a
6 broader discharge than would be available to a Debtor.
7 Suffice to say though that the Second Circuit indisputably
8 permits non-consensual third-party releases under
9 appropriate circumstances, as do the majority of Circuits.
10 And the Second Circuit on Page 142 of Metromedia actually
11 addresses both of these arguments, the 524(g) argument and
12 the discharge argument and nonetheless concludes that third-
13 party releases are permissible.

14 So I will not spend more time on these particular
15 arguments unless the Court has any questions because the
16 Court of Appeals has already decided this issue.

17 Now, the second argument raised by the objecting
18 states is that even if Metromedia is good law, this Court
19 should essentially craft an exception to it for the
20 objecting states so-called police power claims, the
21 automatic stay police power exception in 362(d)(4) for
22 governmental units.

23 Now, let's be clear what about the objecting
24 states are asking for when they seek the creation of a carve
25 out from Metromedia for their claims. They are seeking a

1 veto power that would effectively allow them or any one of
2 them to decide whether the plan may be confirmed even though
3 a super-majority of the states and over 95 percent of voting
4 creditors have said that it should.

5 And to be clear, this requested police power veto
6 would not be limited just to states. The Objecting States
7 make much of their supposedly unique sovereign status, but
8 the Bankruptcy Code makes no categorical distinction between
9 them and their political subdivisions.

10 The definition of governmental unit under the Code
11 also includes any "district, territory, municipality,
12 foreign state, or any department, agency or instrumentality
13 of the state." So if there was an exception for so-called
14 police power claims brought by governmental units, each and
15 every one of these entities would also have a unilateral
16 power to impede in otherwise consensual and value-maximizing
17 resolution, even if, say, every single state in the country
18 was onboard. And Your Honor, you don't have to look too far
19 to see how absolutely absurd this would be.

20 In this case, the State of Washington objects to
21 the plan. And the City of Seattle joins that objection.
22 But King County or Washington County, in which Seattle is
23 located, is a member of the AHC, and whose lawyer, Mr.
24 Donado, testified in favor of the plan in this case. Any
25 one of these parties would have a veto over the others in

1 the Objecting States world.

2 It is therefore unsurprising that the objectors
3 cannot cite a single authority, not one, remotely suggesting
4 that there is or should be an exception to Metromedia for
5 police powers.

6 Now, the Objecting States say that their consumer
7 protection claims or public nuisance claims cannot be
8 released because enforcement of their laws is
9 "constitutionally protected function", or because states are
10 "independent sovereigns in the Federal system or because
11 their actions are parens patriae actions that seek to
12 enforce non-monetary interests." But none of the
13 authorities on which they rely come close to establishing
14 that their claims should be treated any differently from
15 others.

16 Let me just address a few examples, beginning with
17 their purported statutory authorities. The Objecting States
18 first point to the police and regulatory power exception to
19 the automatic stay under 362(b)(4). But the provision
20 provides no support for their carveout. For one, the
21 exception to the automatic stay is just that. It just means
22 that stays don't apply automatically, nothing more.

23 As this Court already ruled in the preliminary
24 injunction context, and Judge McMahon affirmed on appeal,
25 this Court has the power to enjoin police power actions

1 under 105(a), notwithstanding 362's exception. And the
2 Objecting States, of course, do not dispute that Section 362
3 does not apply to the confirmation context at all.

4 Let's also be clear about something. Section
5 362(b)(4) creates an exception to the automatic stay for
6 governmental units' enforcement of police and regulatory
7 power, but not to the collection of money judgments. Here,
8 make no mistake, the Objecting States are seeking not only
9 to enforce their laws, but also to collect on any judgment
10 they may ultimately obtain outside of bankruptcy, in real
11 dollars, not in bankruptcy dollars.

12 Your Honor, I have never heard and of the
13 Objecting States once say that they would share their
14 resulting recoveries with any other states. Nor have they
15 agreed to provide the recoveries to NOAT to be distributed
16 for abatement purposes, or to only those deposit recoveries
17 into their treasuries once the privates are paid off per
18 Phase 1 mediation.

19 In reality, the carveout they seek is instead just
20 another attempt in a long succession of attempts to jump the
21 line to pursue their billion dollar money damages claims for
22 their own state treasuries at the cost of causing the entire
23 abatement-centric enterprise, the entire value-maximizing
24 plan, to collapse.

25 Now, next, the Objecting States state in Paragraph

1 37 of Washington's objection that 524(g) of the Code, which
2 covers injunctions of third-party claims in asbestos cases,
3 does not clearly apply to governmental units, which they say
4 indicates a Congressional intent not to allow third-party
5 releases of claims by government units. But this is just
6 plain wrong.

7 Section 524(g) does clearly authorize courts to
8 enjoin is asbestos claims held by government units. It
9 applies to "entities", which is defined under Section 101,
10 to include governmental units.

11 They also cite 28 U.S.C. 1452(a), which governs
12 the removal of police power actions to federal court. But
13 that is irrelevant. The issue here is not whether this
14 Court may remove and hear the state's claim, but enjoin the
15 pursuit of those claims under 105(a) as part of a plan of
16 reorganization. It's a different issue.

17 The Objecting States also say an exception to
18 Metromedia should be gleaned or implied from 523(a)(7),
19 which makes claims for fines, penalties or forfeiture
20 against individuals nondischargeable. But as I noted
21 earlier, Metromedia considered this general concern and
22 rejected it as a basis to bar third-party releases
23 categorically.

24 Indeed, Johns Manville case considered and
25 rejected this argument back in 1988 at 837 F.2d at 91. And

1 I'm going to quote, and just substitute names of our
2 parties. And I'm quoting now Johns Manville. The flaw in
3 the objector's reasoning is that injunction orders do not
4 offer umbrella protection of a discharge in bankruptcy.
5 Rather, they preclude only those suits against the Sacklers
6 that arise out of or relate to Purdue. And again, 837 F.2d
7 91.

8 The Objecting States' case law citations cited
9 more for sound bites than applicable law are even further
10 appealed. For example, many of the cases cited by the
11 Objecting States are invoked for the vague notion that a
12 state's ability to enforce its own regulatory laws is an
13 essential function of its sovereignty. But these cases
14 stand only for the narrow and irrelevant proposition that a
15 parens patriae action does not fall within the statutory
16 definition of class action under the Class Action Fairness
17 Act, and thus cannot be removed to federal court under that
18 statute.

19 This Court's power in no way depends on that
20 statute here, of course, in those cases say nothing about
21 it Bankruptcy Court's ability to enjoin parens patriae
22 actions in the context of confirming a plan.

23 The states also cite a pair of Supreme Court
24 cases, White and Medtronic, to assert that public health
25 regulation is an important function of state government.

1 That's Washington Objection at Paragraph 34.

2 These cases, however, address the extent to which
3 federal regulatory approval of drugs or medical devices
4 preempts state law liability in suits by private plaintiffs.
5 They do not support any special treatment for enforcement of
6 actions brought by state governments during the plan
7 confirmation process.

8 Now, the Objecting States rely most heavily on a
9 single out-of-circuit case. It's called In Re First
10 Alliance Mortgage Company, where a district court reversed a
11 preliminary injunction against a governmental unit pursuing
12 certain claims arising from subprime lending. In the
13 state's view, this case somehow supports a categorical
14 carveout in a plan confirmation context. It simply does
15 not.

16 Putting aside that this case is factually
17 inapposite, I actually love this case because it fully
18 exposes what's going on here. The First Alliance Court
19 found in balancing the risk of harm to the parties in the
20 preliminary injunction context, that there was, "no risk of
21 unequal treatment of creditors because, as the governmental
22 unit agreed, while they are allowed by the regulatory and
23 police power exception to proceed to judgment against the
24 Debtor in other forums, they are not allowed to enforce any
25 money judgments against the Debtor in any proceeding other

1 than the bankruptcy proceeding." 264 BR 658.

2 That could not be further from the case here,
3 where the Objecting States seek not only to enforce their
4 claims, but to collect on them outside of bankruptcy. To
5 jump the line and to gather funds for themselves in front of
6 everybody else.

7 Now, Your Honor, taking a step back, if there were
8 any case where the Court should feel compelled to create a
9 Metromedia police power exception from whole cloth, this is
10 certainly not it. The Objecting States, for example,
11 suggest that third-party releases "block the Attorneys
12 General in their efforts to exercise the states' police
13 powers to protect their vulnerable population from the
14 massive ongoing scourge of the opioid epidemic. Washington
15 Objection, at Paragraphs 1 and 4.

16 The plan of the third-party releases here,
17 however, no such thing. As this Court has recognized again
18 and again, these Chapter 11 cases are about money. And now,
19 after nearly two years and these Chapter 11 cases and
20 numerous days of testimony at the confirmation hearing, I
21 think the record is clear on this point.

22 The Debtor stopped marketing opioids almost four
23 years ago. They have been subject to an involuntary
24 injunction overseen by this Court and two preeminent
25 monitors for almost two years. Purdue will be dissolved

1 under the plan. NewCo will be required to operate under
2 numerous, onerous injunctions and covenants ensuring it acts
3 in the public interest. And pursuant to the shareholders'
4 settlement, the Sackler Family will have no involvement with
5 the post-emergent Debtors or the opioid business worldwide
6 after the sale of the IACs under the plan.

7 The Objecting States' only response is that their
8 claims cannot be released because they also serve "non-
9 monetary interests", as Washington says in Paragraph 34 of
10 its objection, or because, "bringing the Sacklers to justice
11 through the adversarial process, however that might turn
12 out, is a legitimate consideration," as Mr. Goldman
13 suggested in his cross-examination on August 12, on Page 187
14 of the hearing transcript. But that, frankly, does not
15 withstand scrutiny either.

16 The overwhelming majority of states and all but
17 one municipality out of thousands, as well as hundreds of
18 thousands of other creditors, have manifested the public
19 interest in their votes in favor of the plan. In the face
20 of the near universal support for the plan, the onus must be
21 on the objectors to explain to this Court how these so-
22 called nonmonetary interests, whatever those might be, under
23 the facts of this case could possibly justify the massive
24 destruction to a plan that will provide literally --
25 literally -- billions of dollars to communities and

1 individuals in need, including their own constituents. They
2 have not and they cannot.

3 The Objecting States next supposed justification
4 for a carveout is that their claims cannot be released
5 because -- and I quote again from Washington's pleading --
6 "that a process has been shielded from public view and
7 scrutiny." Then that's Washington's Objection at Paragraph
8 5.

9 This assertion is not only false but is also
10 belied by the very public trial this Court is currently
11 presiding over, which included the cross-examination of
12 multiple Sacklers, as well as the enormous amount of
13 disclosure and information that has been produced by the
14 Debtors, the Sacklers, the IACs, and their financial
15 institution.

16 As this Court observed, "More information has been
17 provided with respect to this plan, and more specifically
18 with respect to the elements of a settlement with the
19 Sacklers, than the Court has ever seen, and perhaps has ever
20 been provided in any Chapter 11." And I'm quoting Your
21 Honor from the March 24th hearing.

22 To recap just briefly what the Court well knows,
23 discovery included the production of over 100 million pages
24 of material from dozens of custodians, going back decades.
25 Publication on the docket of hundreds of pages of forensic

1 reports. That's the 1A and 1B Report detailing all
2 transfers of value to the Sacklers, both cash -- announced
3 cash -- or for their benefit. Production of millions of
4 pages of materials by the Sackler Families. The UCC and the
5 non-consenting states also took the deposition of over a
6 dozen Sackler Family members and current and former Board
7 members and others.

8 The extensive disclosure of the Sackler wealth,
9 extensive disclosures from the Sacklers law firm, Norton
10 Rose. Extensive disclosure by foreign entities, which would
11 likely never happen in a context of normal litigation.

12 And as Mr. Huebner noted, the plan will result in
13 the creation of a public document repository that will
14 include all material produced in these cases, and tens of
15 millions of additional documents and privileged documents,
16 which a number of witnesses touted as an important essential
17 element of the plan.

18 Finally, the Objecting States claim at Paragraph 5
19 of Washington's objection that the principal parties making
20 the critical determination are not public health officials,
21 but rather bankruptcy professionals. That is false.

22 As the Objecting States must surely know, the
23 decision to support the plan was made by thousands of
24 elected officials, including the Attorney General of the
25 death majority of states, and representatives of thousands

1 of personal injury claimants, including lawyers, who have
2 pursued Purdue and the Sacklers for decades.

3 At bottom, Your Honor, the Objecting States'
4 claims are trying to collect money from the Debtors and
5 their related parties. There is no basis in law or in fact
6 the craft and exception to Metromedia previously
7 unrecognized in the case law.

8 Moreover, the objectors articulate no limiting
9 principles that they espouse. One Objecting State is
10 enough. One objecting County. For any reason, financial or
11 political or otherwise, according to them, this exception
12 would doom any plan by one no vote by any governmental unit.
13 There is no basis to grant the objectors, actually each
14 objector, an effective veto over historic, almost entirely
15 consensual, value-maximizing reorganization, that in inures
16 fully to the benefit of the American public.

17 Your Honor, the third set of objections raised by
18 the U.S. Trustee and the DOJ is that third-party releases
19 somehow contravene the due process clause. When attacked,
20 however, it becomes apparent that this argument is really
21 just an attack on Metromedia by another name.

22 The first due process argument clearly illustrates
23 that point. The DOJ and U.S. Trustee assert that in order
24 to satisfy due process, a holder of the claim must receive
25 an opportunity to either litigate the final judgment or

1 settle on their own accord. But if the holders of release
2 claims must still be able to litigate those claims, as the
3 DOJ and U.S. Trustee argue, then bankruptcy courts have no
4 power whatsoever to impose nonconsensual releases of such
5 claims, despite finding Second Circuit law to the contrary.

6 It is, therefore, hardly surprising that the DOJ
7 and U.S. Trustee cannot cite a single case, not a single
8 case, concluding that third-party releases violate due
9 process because they do not provide an opportunity to be
10 heard. Holders of claims do in fact have an opportunity to
11 be heard on the propriety of third-party releases. Many
12 have filed objections in this very case on this very issue.
13 This very hearing is indeed proof positive of the
14 opportunity to be heard.

15 So the DOJ and U.S. Trustee then quickly pivot to
16 claiming that the notice of third-party releases in this
17 case was not constitutionally sufficient. As an initial
18 matter, Your Honor, this Court's June 3rd order approving
19 the disclosure statement, so as to (indiscernible)
20 procedures and voting procedures at Docket Number 2988,
21 Paragraph 17, expressly provides -- and I quote -- "that the
22 Confirmation Hearing Notice, Publication Notice, and plain
23 language summary of the Confirmation Notice each, if
24 properly delivered or published, provides sufficient notice
25 of the releases and injunctions to any holder of a Channeled

1 Claim or Shareholder Release Claim."

2 In other words, the Court already found that the
3 notice provided of this confirmation hearing was sufficient
4 and constitutionally adequate. And the U.S. Trustee and DOJ
5 certainly did not raise any alleged notice deficiency back
6 in May. So the government's belated attempt to litigate
7 that issue as a basis to deny confirmation should be
8 rejected as out of hand.

9 In any event, the record in this confirmation
10 hearing is clear that the notice provided in these
11 proceedings, including on third-party releases, has been one
12 of the most extensive, expensive, and effective noticing
13 programs in Chapter 11 history. And although the third-
14 party release terms are complex, the notice was simple,
15 clear and unmistakable.

16 The confirmation hearing notice, which was mailed
17 to all known holders of claims in these cases, sets out the
18 release expressly. I'm looking JX-0937.

19 The Debtors also undertook an extensive
20 supplemental publication notice campaign. A key component
21 of the supplemental publication hearing notice plan was a
22 plain English noticing of the potential for third-party
23 releases that made clear in no uncertain terms that the plan
24 could potentially release all claims and causes of action
25 against the Sackler Families.

1 Take, for example, Your Honor, the Debtors'
2 publication notice, which I'm putting up now, which was
3 published in "The Wall Street Journal", "New York Times",
4 "U.S.A. Today", "Financial Times", and "International Herald
5 Tribune", that appears at JX-0939.

6 1:50:36 And if we could just blow it up here, it
7 says very clearly, the plan contemplates the shareholders
8 that have been fighting among the Debtors, the master
9 distribution trust, and certain of the shareholders'
10 released parties, including members of the Sackler Family,
11 and certain other individual (indiscernible).
12 (indiscernible) for that release of any actual or potential
13 claims or causes of actions against the shareholder lien
14 parties relating to the Debtors, including claims in
15 connection with opioid related activities.

16 The Debtors also broadly distributed a shorter,
17 plain-language version of the confirmation hearing notice in
18 the form of fliers, magazine ads and newspaper ads, and
19 bought online advertisements across the U.S., Canada and 39
20 countries.

21 Here is an example of a magazine ad. Did you file
22 a claim against Purdue Pharma as part of its bankruptcy
23 proceeding? Do you have a claim against Purdue Pharma's
24 owners? And it goes on to say, releases of any actual
25 counterclaims against Sacklers Family members and certain

1 other individuals and related entities.

2 Now, one more, Your Honor. And now here is what
3 you would find on an online display ad. These are the
4 various online ads that we had. And again, let's just blow
5 one up. Could not be clearer. Did you file a claim against
6 Purdue Pharma? Did you have a claim against the Sacklers or
7 any of Purdue Pharma's owners?

8 Now, in the cross-examination of Ms. Finegan,
9 counsel for the U.S. Trustee seemed to make much of the fact
10 that neither the publication version nor the plain-language
11 version of the confirmation hearing notice contained the
12 full text of the releases or the full list of shareholder-
13 released parties. But for all the supposed complexity and
14 length of the shareholder releases in the plan, the plain
15 English descriptions in the notices could not have been any
16 more clear or simple.

17 As Your Honor just saw, the releases reach any
18 actual potential claims against members of the Sackler
19 Families. It said it loud and clear. It's not clear to me
20 what else could be done to make this point more plain.
21 Indeed, I would respectfully submit that if the Debtors were
22 to have included the full text of the releases and full list
23 of shareholder release parties, that notice would not have
24 been nearly as effective, or easily understood, and I'm sure
25 the Court would agree.

1 The record is also crystal clear that the reach of
2 the -- crystal clear as to the reach of the supplemental
3 confirmation hearing notice plan and how effective it was.
4 It was conducted in 27 different languages, served over 3.6
5 billion online and social media impressions, and resulted in
6 over 3,700 news stories across the U.S. and Canada. And
7 Your Honor, this was all in addition to the extensive bar
8 date notice and plans.

9 On this truly extraordinary record, set out in
10 even more detail in our papers, and in the absence of any
11 evidence to the contrary, there can be no doubt that the
12 holders of release claims received adequate notice, both of
13 these bankruptcy proceedings and the general bar date, and
14 that there claims against the Sackler Families and related
15 entities would be released under the plan.

16 Finally, Your Honor, just a minute on this,
17 because Your Honor know this better than anybody. Several
18 objectors, including the Objecting States, the U.S. Trustee
19 and the DOJ, claim that this Court lacks even the power to
20 enter an order approving the plan or the third-party
21 releases, including because the Court lacks jurisdiction
22 under Section 1334, statutory authority under Section 157,
23 or constitutional authority under *Stern v. Marshall*. Now,
24 each of these arguments is meritless and this is just going
25 over well-tread case law.

1 Let me begin with the Court's subject matter
2 jurisdiction, because it frankly is not controversial in the
3 least, that this Court has jurisdiction to approve the
4 third-party releases. Congress granted comprehensive
5 jurisdiction over all civil proceedings that are arising
6 under or arising in cases under Title 11 U.S.C. 1334(b).

7 Confirmation of a plan of reorganization is
8 without a doubt a proceeding that arises under or arises in
9 a case under Title 11. And as Judge McMahon explained in
10 the Tier 1 case, this does not change merely because a plan
11 would contain third-party releases. As Judge McMahon
12 explained, and I quote, "A confirmed reorganization plan
13 that includes such releases does not address the merits of
14 the claims being released. . . rather, it effectively
15 cancels those claims so as to permit a total reorganization
16 of the Debtors' total affairs in a manner available only in
17 bankruptcy."

18 She continues, "That a bankruptcy court's decision
19 may have a preclusive incidental effect on claims beyond the
20 scope of the immediate bankruptcy proceeding does not render
21 the bankruptcy court jurisdiction non-core, i.e., outside
22 the arising under grant of jurisdiction."

23 Now, the Objecting States' only response is that
24 Kerwin did not address a release of so-called police power
25 claims. But that, of course, is analytically irrelevant.

1 There is no please power exception to Metromedia. And in
2 any case, whether the Court has subject matter jurisdiction,
3 and whether there are substantive limits on how it should
4 exercise that power are entirely separate. And even if the
5 Court did not have arising under or arising in jurisdiction
6 related to jurisdiction also provides a separate basis for
7 approving the third-party releases as part of a plan.

8 As set out at length in our papers, Your Honor,
9 the release claims and shareholder claims without a doubt
10 have an all you need -- "a conceivable effect on the
11 estates, either because such claims will result in a
12 diminution of the Debtors' insurance policies, or would
13 result in an indemnification or contribution claims, or
14 would potentially prejudice the rights of the MPT and future
15 Snap Act litigation.

16 That brings us to the last set of arguments raised
17 only by the U.S. Trustee and the DOJ, that subject matter
18 jurisdiction aside, this Court lacks either the statutory or
19 constitutional authority to enter a final order confirming
20 the plan, including -- that includes third-party releases.
21 Those suggestions are meritless. Confirmation of the plan
22 is clearly a core proceeding under Section 157(b) (2) (1).

23 Numerous courts, including the Kerwin court and
24 this one, have held that where, as here, a Bankruptcy Court
25 considers nonconsensual third-party releases in connection

1 with plan confirmation, it acts pursuant to its core
2 statutory authority, and thus has the statutory power to
3 enter a final order. That's Kerwin case, 592 BR at 504.

4 Similarly, there can be no doubt that the Court
5 also has constitutional authority to enter a final order
6 confirming a plan with third-party releases. The Third
7 Circuit, in Millenium Labs Holding, and the District Court
8 in Kerwin, both held these are both recent decisions that
9 are directly on point, a Bankruptcy Court has constitutional
10 authority to confirm a plan containing third-party releases,
11 so long as the injunction is integral to the plan. And
12 that's Millenium Labs at 945 F.3d 137-140, and In Re Kerwin,
13 592 BR 509-512. And Your Honor made your views very clear
14 in the In Re N

15 PN Silicon case.

16 So, for the reasons that we have just discussed,
17 third-party releases are integral to Debtors' plan and
18 therefore pass constitutional muster.

19 In sum, Your Honor, the third-party releases are
20 the bedrock of the plan. They are also lawful, well-
21 established law in this and the majority of the Circuit. In
22 a way, it all comes down to one test. All of these issues
23 all combine into one question. Are these releases integral,
24 important, necessary, indispensable? Use any word you like,
25 and we still win, because if they are, Metromedia is

1 satisfied, subject matter jurisdiction under 1334 is
2 satisfied. It is a core proceeding under 157, and the
3 constitutional Stern V. Marshall test is satisfied. And
4 there is not a shred of evidence offered by the other side
5 that these releases are not integral, important, necessary
6 and indispensable.

7 Thank you, Your Honor. I believe I'm going to
8 turn the podium now to Arik Preis, from the UCC.

9 MR. PREIS: Actually, Your Honor --

10 THE COURT: I think the AHC, one of you, are ahead
11 of --

12 MR. KAMINETZKY: I apologize. That was my
13 mistake.

14 MR. ECKSTEIN: That's fine, Your Honor. Good
15 morning, Your Honor.

16 WOMAN: Wait.

17 MR. ECKSTEIN: We'll try to adjust our cameras so
18 that I zoom in a bit. Your Honor, I guess it's good
19 afternoon. Is this close enough to me?

20 THE COURT: Yes. I can see and hear you fine.

21 MR. ECKSTEIN: Thank you, Your Honor. Your Honor,
22 good afternoon. Kenneth Eckstein, of Kramer Levin, on
23 behalf of the Ad Hoc Committee of Consenting States and
24 Local Governments.

25 Your Honor, before I begin my remarks, I want to

1 acknowledge the law firm of Brown, Rudnick & Otterbourg, our
2 co-counsel in this case, who have worked side-by-side with
3 Kramer Levin on all aspects of the Chapter 11 case and join
4 in their remarks.

5 Your Honor, thank you for the opportunity to
6 address the Court at this momentous time. And I would like
7 to supplement the very substantial, effective and
8 comprehensive presentations made by Mr. Huebner and Mr.
9 Kaminetzky.

10 Your Honor, I think as you have heard from all of
11 the presenters, this case is truly unprecedented. Rarely,
12 if ever, has the Bankruptcy Court been called upon to
13 address matters of such public importance, both to the
14 states, municipalities, tribes and other non-federal
15 governmental creditors represented in this case by the Ad
16 Hoc Committee and to the public at large.

17 Your Honor, the opioid crisis is a horrible and
18 intractable public health emergency, one that the members of
19 the Ad Hoc Committee have been working arduously to address
20 for many years, together with many other constituents who
21 have been active in this Chapter 11 case.

22 This plan is a concrete step towards a resolution,
23 a vehicle to attempt to address this national health crisis
24 in an extremely creative and constructive manner. The
25 centerpiece of the plan is a voluntary agreement by the

1 Sackler Family to turn over the Purdue business, including
2 all of its insurance policies, as well as contribute an
3 additional \$4.325 billion to their creditors, and the
4 related agreements by the public and private creditors to
5 devote substantially all of the plan proceeds to abate the
6 opioid crisis.

7 There is no precedent for such a Chapter 11 plan.
8 And the fact that the parties have agreed to this
9 arrangement, with overwhelming consensus, in and of itself
10 is a remarkable achievement.

11 The plan, importantly, is a global settlement of
12 many disparate issues and it required multiple integrated
13 agreements to get there. There is, as just mentioned, the
14 financial settlement with the Sackler Family and the
15 agreement by creditors to contribute essentially all of the
16 settlement monies to abatement.

17 But there are also other crucial component parts
18 of the settlement, including the detailed agreement among
19 the States and Local Governments and Tribes as to how the
20 funds will be distributed and employed within states to
21 abate the crisis.

22 There is the allocation among the states, which
23 will be addressed in more detail by my partner, Mr. Wagner,
24 in a later segment of oral argument. There is a settlement
25 between public and private creditors, which spared the

1 parties years of debilitating litigation and was resolved in
2 Phase 1 of the mediation in this case.

3 There is the DOJ settlement, which like the
4 Sackler settlement helped enable the public-private
5 allocations and permitted the parties to focus their efforts
6 on an abatement plan. And there is the attorneys fee
7 resolution set forth in Section 5.8 of the plan, which will
8 also be discussed in more detail at a later stage of the
9 argument.

10 As the undisputed evidence shows, and as I will
11 highlight, each of these settlements are interrelated and
12 the removal of any piece would jeopardize the plan and the
13 important abatement objectives it serves.

14 Since Mr. Huebner and Mr. Kaminetzky have
15 thoroughly addressed the factual and legal underpinnings of
16 both the settlement and the releases, I will focus on three
17 specific points.

18 First, the dissenting states and others have
19 focused much attention on what the plan arguably takes away
20 from them, including the argument that they are being
21 deprived of the opportunity to have a public airing of their
22 claim against the Sackler Family. But what is lost in their
23 objections is what the plan confers on the states and all
24 creditors. Not just by way of monetary compensation and the
25 opportunity to begin abating the opioid crisis, which are

1 extremely important on their own, but also in terms of how
2 the plan helps to facilitate the very goals that the
3 dissenting states highlight in their objections.

4 The plan does not, as an initial matter, provide
5 criminal (indiscernible). This is not a criminal trial.
6 This is a Chapter 11 bankruptcy case. The plan represents a
7 substantial financial settlement that dedicates more than \$6
8 billion over the life of the settlement to abate the opioid
9 crisis.

10 The plan also provides for an unprecedented public
11 presentation of the history of Purdue's and the Sacklers'
12 involvement in the opioid crisis. The document repository
13 is the centerpiece of that presentation.

14 I would point Your Honor to the testimony of Jayne
15 Conroy, who spoke eloquently of the importance of the
16 document repository. That testimony can be found at the
17 August 16th hearing transcript at Pages 83-84. According to
18 Ms. Conroy, who has been litigating against Purdue for
19 longer than almost anyone, "In addition to any monetary
20 settlement, it could be that the document repository is
21 actually the most valuable piece of this settlement."

22 This is on top of the testimony elicited through
23 the confirmation hearing from three members of the Sackler
24 Family and their advisors. Even if the Court were to allow
25 parties to go to trial outside of the bankruptcy, it is

1 inconceivable that the volume of documents that Purdue is
2 committed to disclose through the repository, including
3 documents that are privileged and confidential, would ever
4 become public through a non-bankruptcy proceeding.

5 So at the end of the day, while individual
6 creditors will not have an actual trial on the Purdue or
7 Sackler civil liability, the benefits of the trial are
8 largely achieved in terms of substantial monetary
9 compensation, through the public airing of the facts of the
10 case, and through the injunctive relief that will shut off
11 the dangerous prepetition marketing practices and prevent
12 the Sackler Family from having any continued role in Purdue,
13 and ultimately, the opioid industry.

14 Second, Your Honor, I want to highlight the
15 importance of the third-party release to this case and to
16 the non-governmental creditors who are supporting the plan.
17 Simply put, without a comprehensive release that is binding
18 on all of the states and other public creditors, there
19 simply cannot be a deal that will hold this case.

20 The public creditors that have agreed to the deal
21 have agreed to accept a nine-year payment schedule, with
22 substantial amounts due to the public creditors in years 5-
23 9. Those settling creditors would never agree to a
24 structure under which their own recoveries were delayed and
25 in fact exposed to the threat of complete dissipation if

1 other similarly situated creditors asserting claims in the
2 billions of dollars were allowed to pursue their claims to
3 judgment now against the Sacklers.

4 So putting aside what the Sackers themselves would
5 do, and the testimony is clear that they will not agree to a
6 partial settlement and release, the states and other public
7 creditors would not agree to such a structure either.

8 Third, I want to spend a short amount of time
9 highlighting some of the critical pieces of evidence put
10 into the record by the Ad Hoc Committee witnesses. This
11 uncontroverted testimony establishes that each of the prongs
12 of the global settlement, and indeed the entire abatement
13 plan, could not survive if any leg of the stool was removed.

14 For instance, as to the interrelated nature of the
15 Sackler settlement and the public-private settlement, Mr.
16 John Guard testified, "Without the availability of the
17 Sackler assets, compromise between the non-federal public
18 claimants and the private claimants would not have been
19 possible, in my opinion. Absent the large pool of assets to
20 divide that the Sackler contribution gives, it is my opinion
21 that each side would have likely been at an impasse and
22 asserted its various defenses to allowance of the other's
23 claims, and there would've been a lengthy set of estimation
24 hearings in this bankruptcy matter, further dissipating this
25 estate." That's the Guard declaration at Paragraph 67.

1 As to the importance of the DOJ settlement, Mr.
2 Guard testified, "The DOJ settlement itself likely would not
3 have been possible absent the Sackler contribution. Had
4 those funds not been available and the federal government
5 not as interested in monies going to abatement through the
6 states, the states would've had no choice but to fight the
7 allowance of federal government claims to the extent they
8 reduce or eliminate assets available for abatement." That's
9 the Guard declaration at Paragraph 68.

10 As to the critical issue of whether any states or
11 other parties could "opt out" of the plan without upsetting
12 its delicate balance, Mr. Guard testified, "The Sackler
13 settlement is predicated on the understanding that no state
14 will retain its claims against the Sacklers, and outcome
15 that could cause all other states to revisit allocation and
16 settlement." That's the Guard declaration at Paragraph 71.

17 The testimony of Jayne Conroy at the August 16th
18 hearing also makes clear that no opt-outs were contemplated,
19 and that the "peace premium" included in the Sackler
20 settlement would not have been available with the prospect
21 of opt-outs. That's the August 16th hearing transcript at
22 Page 76-77, and at Page 87.

23 As to the role of the attorneys fee resolution in
24 facilitating an abatement plan, Mr. Guard testified, "Absent
25 some sort of attorney fee fund, there would have been no way

1 to set up an abatement fund because governmental creditors,
2 needing to pay their counsel, could not have relinquished
3 control over monies distributed on account of their claims,
4 and attorneys would not have been comfortable waiving the
5 contractual fees owed to them." That's the Guard
6 declaration at Paragraph 75.

7 The testimony of Mr. Gary Gotto and Peter
8 Weinberger is also supportive of this point. See the Gotto
9 declaration at Paragraph 25(g) and the Weinberger
10 declaration at Paragraph 49 and Paragraph 59-60.

11 In sum, Your Honor, the plan reflects a global
12 resolution to this Chapter 11 case, with a substantial
13 financial settlement dedicating funds to opioid abatement
14 and a public presentation of the record, unlikely to be
15 obtained by going to trial. But the plan reflects a
16 resolution of many disparate issues and is an important step
17 toward healing the nation from the devastating impacts of
18 the opioid crisis.

19 On these bases, the Ad Hoc Committee supports
20 confirmation of the plan. Unless Your Honor has any further
21 questions, I thank Your Honor for the time.

22 MR. PREIS: Good morning, Your Honor. Can you
23 hear me?

24 THE COURT: Yes. I can hear you and see you fine.

25 MR. PREIS: Okay. Good morning. For the record,

1 Your Honor, Arik Preis from Akin Gump Strauss Hauer & Feld,
2 on behalf of the Official Committee of Unsecured Creditors.
3 I will try very hard not to repeat anything that the Debtor
4 said or that Mr. Eckstein said, although I will touch on
5 some of the issues that they mentioned in the UCC
6 (indiscernible). Also, while I will briefly discuss certain
7 issues related to the third party releases, I will not be
8 discussing any of the underlying law of such releases. Mr.
9 Kaminetzky handled that, and I'll be handling that on
10 rebuttal.

11 I'll divide my comments (indiscernible). First,
12 I'll make a few preliminary remarks about the settlements of
13 the objections (indiscernible). Second, I'll address three
14 items regarding the objections of the states and the
15 pleadings of the federal governmental entities. Third, I
16 will conclude with three remarks about the settlement, the
17 public good and the personal injury victim.

18 As I mentioned the first time we were before Your
19 Honor, then repeated a number of times since. The case is
20 fundamentally about three issues: First locating valuable
21 opioid (indiscernible). Second, maximizing that value.
22 And, third, utilizing that value and utilizing these cases
23 for the public good.

24 Today, we're using the Court to confirm a plan
25 that addresses these three issues in a manner that, as Mr.

1 Huebner pointedly started with, is not perfect but it's the
2 most viable path. It's important to emphasize, as Mr.
3 Huebner did, that the plan has the support not only of the
4 UCC but the numerous ad hoc groups, and it's not objected to
5 by 15 of the previously nonconsenting states. Then Mr.
6 Huebner went through the vote. No need to repeat that.

7 Despite this overwhelming support and putting
8 aside the prosaic (indiscernible) there are a few
9 objectives. In light of the unique facts of the cases and
10 the fact that this plan is the only agreed upon way to get
11 what could be more than 7 billion in values to communities
12 to abate the opioid crisis and victims to compensate them
13 for their loss, it's difficult to understand the position of
14 the objectives. Why are they objecting? What happens if
15 they (indiscernible)? Do they not understand that they
16 cannot demand (indiscernible) for one of the claim without
17 the balance of crumbling?

18 As Mr. Huebner and Mr. Eckstein pointed out, the
19 plan is a path (indiscernible) we count 30 (indiscernible)
20 settled that have been reached on various far-reaching
21 (indiscernible). This case is the prototype of a case that
22 hangs by a thread with the Sackler dollars as a foundation.
23 As obvious as that it is for those of us who have lived the
24 case for the last two years, the objectors missed it or
25 willfully ignore this fundamental fact.

1 They seem to think if you make just one change
2 here with allowing a class of incarcerated (indiscernible)
3 to have a class, or to change the states' allocation so that
4 West Virginia gets more, or to give an opt-out to certain
5 states so that they can imperil the distribution to everyone
6 else, the rest of the plan will simply hang together. Not
7 true.

8 Even more frustrating is that certain of the
9 objectors, mainly the states, are merely trying to create a
10 record because they fully intend on appealing any order of
11 this Court, if the Court confirms the plan, all the way
12 perhaps to the Supreme Court, as they say, regardless of the
13 impact that such a lengthy and complex appeal might have on
14 the Debtor's ability to get the (indiscernible) to the
15 creditors. A long messy appeal does not help the still
16 struggling people, nor does it help rebuild communities
17 devastated by the crisis. It will have the opposite effect,
18 by delaying recoveries for those who gave them the most.

19 Next, I will address three points of the objecting
20 states of the federal government. First, the inter-
21 (indiscernible) allocation. A lot has been said by Mr.
22 Huebner and Mr. Huebner and Mr. Kaminetzky and Ms.
23 (indiscernible) about mediation Phase 1 and informal Phase 3
24 that resulted in numerous settlements, including the
25 allocation deals. It's impossible for those who

1 (indiscernible) this case to fully understand how difficult
2 and hard-fought the mediation was, as Mr. Guard testified
3 to.

4 I think it's safe to say that there were many
5 times it was unclear that any settlement was reached, or
6 that if settlements were reached, certain groups would be
7 left out and subject to the -- object to the plan. The fact
8 that it took six months to reach four or five two-page term-
9 sheets and another nine months to close out the
10 (indiscernible) tells you all you need to know.

11 To be clear, the UCC does not believe the
12 allocations are perfect, and every party, as Mr. Huebner
13 pointed out, would undoubtedly say it's begotten more. If
14 every supporting party is willing to live with those
15 settlements, because not only would doing so result in
16 claimant versus claimant litigation, which is not only
17 costly and time consuming, but, as many people forget, would
18 result in a lot of unhelpful dialogue about alleged
19 weaknesses in each other's claims. They also understand
20 that we need to focus on moving forward, abating the crisis
21 and compensating victims.

22 The objecting states and the District of Columbia
23 were part of those negotiations. They know exactly how hard
24 they were, and they agreed to those (indiscernible) and now
25 they want to throw them away. In fact, as Mr. Atkinson

1 stated in his declaration and Mr. Kaminetzky alluded to, the
2 states refuse to agree that the private public negotiated
3 (indiscernible) which would be honored if there was no
4 settlement with the Sacklers.

5 In other words, the objectors now know full well
6 that if the Sackler contribution is removed, the allocation
7 settlements go away, and we would be back in claimant versus
8 claimant litigation where the states who are far along in
9 their prepetition litigation would think they have a leg up.
10 And as importantly, but something not one of these attorney
11 generals has publicly admitted to their citizens, they will
12 have reneged on the negotiated resolution with public or
13 private citizens.

14 Second, some facts about the (indiscernible) and
15 use of the Sackler fund. The objecting states have stressed
16 that Purdue distributed more than \$10 billion in cash -- the
17 Sacker could've made more than \$1 billion in non-cash
18 transfers for a decade. As you know, we have strong views
19 about whether these were intentional or constructive
20 thoughts on (indiscernible). But the objecting states like
21 to gloss over the fact that because the transferees of more
22 than 4 billion of the 10.4 billion in cash for the state and
23 the federal government through various tax statements made
24 by the Sacklers and their affiliates on their behalf.

25 In other words, they're putting aside a

1 substantial amount for prejudgment interest, a total value
2 to non-cash transfers. About 40 percent of the cash
3 transfers went to the very political bodies they're
4 objecting to. Ironically, the objecting states and the
5 federal government are filing a (indiscernible) that would
6 prevent their citizens and others from receiving the
7 settlements that (indiscernible) negotiated. And yet, at no
8 point has any objecting party, one, offered to give back
9 their ill-gotten value into the estate for equitable
10 distribution among creditors. Two, agreed to a full
11 deduction on their distribution on account of the fact the
12 party receives (indiscernible) value. Or, three, earmarked
13 any of the they received in the last decade during the
14 Sackler (indiscernible).

15 And, in addition, the federal government, one, had
16 already taken another \$225 million from the Sacklers while
17 every other party in the case is still waiting for its
18 distribution. And, two, is looking to stop a plan that will
19 permit distribution.

20 You'll recall, Your Honor, that at the beginning
21 of the case, we pushed for an ERF that was for less than
22 (indiscernible) million, and recall when the federal
23 government sought approval of a settlement with the
24 Sacklers, we urged them to use the 225 million for
25 abatement, to give to victims, or for an ERF, and they

1 refused. It's almost tragic that now, as we stand on the
2 precipice of potentially getting more than \$7 billion to use
3 for abatement and compensate victims, the objectors, who
4 have received more than 4 billion from the Sacklers and
5 Purdue since 2008, want to stand in the way.

6 Third, the DOJ and the US Trustee. Throughout
7 these cases, the DOJ has taken some confusing
8 (indiscernible). For instance, during mediation, they chose
9 to be -- not to be in mediation but to be an observer and to
10 maintain their right to reopen the settlements, once
11 reached. And once the settlements were reached, the DOJ did
12 exactly that. This included, most dishearteningly, reaching
13 into the distribution that was supposed to go the PI plan
14 and negotiating with them, which resulted in almost 4
15 percent of the guaranteed PI (indiscernible) to go into the
16 DOJ. And now as we get to confirmation, the DOJ has not
17 filed an objection, has not voted against the plan, under
18 the plan will get \$225 million, plus 50 million for their
19 unsecured claim, plus 26 million they've taken for the
20 (indiscernible). They've already taken from the Sacklers an
21 additional 225 million in addition to 4 billion of tax
22 revenue, and yet filed a scathing statement about the non-
23 consent (indiscernible) releases. And the U.S. Trustee, an
24 arm and a component of the DOJ, has filed a scathing
25 objection to releases.

1 Your Honor, the DOJ failed to vote, did not file
2 an objection and made its settlement with Purdue and the
3 Sacklers. The DOJ's statement should be ignored, and the
4 U.S. Trustee's objection should be viewed (indiscernible).

5 I want to conclude, Your Honor, by addressing the
6 Sackler agreement and the releases, the public good, and the
7 PIs. First, let's talk about the Sackler settlement and the
8 releases. During the evidentiary portion of the trial, we
9 were silenced because of the no prejudice stipulations, but,
10 unfortunately, there were a number of communications during
11 the trial that could leave people with quite a few
12 misunderstandings. We want to create -- we want to somewhat
13 fix the record and give you the example.

14 First, a lot has been said about the so-called
15 opioid business (indiscernible) whereby certain individuals
16 have agreed in general terms to no longer (indiscernible)
17 opioid business. It's actually contained in 80901 separate
18 (indiscernible) agreement. To be clear, there are three
19 tiers of individuals who it applies to. The first tier
20 being the ICSBs, the second being all the living Sacklers
21 over the age of 18, other than certain specified individuals
22 in one of the (indiscernible), and the third tier being
23 every other living Sackler Family member.

24 The first tier has the most stringent restrictions
25 and the longest period for the (indiscernible). That's the

1 ICS tier. The second tier has looser restrictions, and the
2 covenant's only applicable so long as the settlement
3 payments have not been paid in full. In other words, when
4 the settlements are paid, the second tier no longer is bound
5 by (indiscernible). And the third tier has no requirements
6 whatsoever.

7 A second example is the IACs and the use of the
8 sale proceed for the IACs to pay down the Sackler
9 obligation. It's true, the Sacklers are required to take
10 (indiscernible) sell their interest in the IACs when they're
11 out of their ownership of the IACs for seven years. But the
12 proceeds from such sales are not, as has been implied, used
13 to pay for the settlement. Rather, the settlement agreement
14 requires (indiscernible) to make yearly (indiscernible) to
15 the NBT regardless of the sale of the IACs.

16 Further, to the extent that an IAC is
17 (indiscernible) the proceeds from such sale will be used to
18 pay transaction cost and taxes from the sale and then to
19 repay the Sacklers for any amounts they previously paid to
20 the (indiscernible). Only if there are proceeds left over,
21 after both of those, will the proceeds be used to prepay
22 upcoming payment due for the Sacklers.

23 Third, with regard to the nonconsensual
24 (indiscernible) -- in a vacuum, of course the UCC did not
25 want to agree to the breadth of relief, but were prepared to

1 live with it in order to see the (indiscernible). A lot has
2 been made about the fact that a lot of parties are getting
3 releases and not providing any financial contribution. This
4 is (indiscernible). It was a condition to the deal. But
5 because our focus had always been (indiscernible) transfer,
6 we were not concerned about getting releases (indiscernible)
7 solely in their capacity business. And as you heard earlier
8 from Mr. Vonnegut, even those releases have been
9 (indiscernible).

10 That being said, and to provide some people's --
11 people some comfort, if one pod defaults, every entity and
12 person within the pod loses its relief if the NDT chooses to
13 step back. For people not within a specific pod, for
14 instance, there's in (indiscernible) etc., who don't fall
15 into a pod, we negotiated for something called
16 (indiscernible) parties. These are people who lose their
17 (indiscernible) and the NDT determines to step back. From
18 our perspective, these are also some of the people we
19 believe know the most about what the Sacklers did, and would
20 be the most dangerous if they were concerned about their own
21 liability.

22 Second, the public good aspect of these cases. I
23 just want to highlight some of the aspects of the plan
24 settlement that relate to the public good, which both Mr.
25 Huebner and Mr. Eckstein alluded to, but I want to make a

1 few notes about them.

2 First, the use of the money for abatement. Is
3 this the better off principle of the plan? And while
4 there's no specific language that prevents supplanting of
5 funds, we sincerely hope that the state and other parties
6 will work to ensure that the funds distributed through this
7 plan, if confirmed, supplement and do not supplant
8 preexisting funds designated to abate the opioid epidemic.
9 We believe they will and we've had conversations with them.

10 Second, the breadth and scope of the document
11 repository. A lot has been said about this. I'm not going
12 to repeat it.

13 Third, the continuation of the voluntary business
14 development and, importantly, the fact that any buyer of the
15 business has to continue (indiscernible). Fourth, the
16 continuance of the job of the monitor who oversees the
17 voluntary business injunctions. And, fifth, the
18 establishment of Newco as a PBC and the use of funds by
19 Newco for potential public (indiscernible).

20 Third, and finally, Your Honor, I want to touch on
21 the personal injury victim, the (indiscernible). As you may
22 know, (indiscernible) is a member of the UCC. He was
23 selected to be on the UCC on the basis of a claim that she
24 filed on one of her three sons, Cory, who died of an opioid
25 overdose in 2011 at the age of 23 after starting to take

1 opioids at the age 15, when he was given them by his doctor
2 after hernia surgery. When he died, he had a four and a
3 half month old child.

4 Unfortunately, while this is very sad and traffic,
5 (indiscernible) grew up without a biological father -- it's
6 not terribly unique, but the story didn't end there.

7 (indiscernible) dutifully served on the UCC for almost two
8 years. In June, two months ago, her middle son, Sean, also
9 died of an opioid overdose on June 25th. Sean had actually
10 turned his life around and was working to help other people
11 with OUD when he relapsed and ultimately died alone. He too
12 left a daughter and a son. One family, two opioid overdose
13 deaths, three children being raised without their father
14 (indiscernible).

15 I raise this story not because I want to make
16 people angry or grandstand about the plight of victims, or
17 highlight Cheryl's story. This is more important than the
18 audio. I raise this because, like Your Honor, we're all
19 very touched and personally (indiscernible). Like Your
20 Honor said, we need to remember the (indiscernible) but
21 most poignantly, I raise this because one would think that
22 people like Cheryl may want to keep pursuing this
23 (indiscernible) like the states do.

24 After all, it's the human tendency -- reactions of
25 revenge. But Cheryl, like the other fiduciary members of

1 the UCC, agrees that it's time to move on. Time to stop
2 chasing and start abating the epidemic, start combating the
3 crisis, start compensating the victims and their families so
4 that less people die, less people become victims to OUD,
5 more people can get recovery support, more people can get to
6 community organizations and more victims and families of
7 victims can get the support they need.

8 We wish the objecting politicians agreed. Thank
9 you, Your Honor.

10 THE COURT: Okay, thank you. Mr. Shore, I think
11 you're next in line.

12 MR. SHORE: I think I am, Your Honor. Good
13 afternoon. (indiscernible)

14 THE COURT: Mr. Shore, can you get a little closer
15 to the microphone? You're fading out some.

16 MR. SHORE: Sure. Let me turn (indiscernible).
17 All right. Perhaps the Court has noticed that during this
18 confirmation hearing we've been very quiet, and I intend to
19 remain quiet. I'll just addressing three points. I'm going
20 to touch on the releases now and how they affect the
21 personal injury victims. I'm going to address the provision
22 in the TDP allowing for payment of the ad hoc group fees.
23 And I'm around to address -- and maybe I will, in any event,
24 address any issues that the Court has or any questions the
25 Court has with respect to the PIT (indiscernible).

1 On the releases, I'm not going to address the U.S.
2 Trustee's objection, other than to say this: As bankruptcy
3 professionals, we can all understand the need for the UST to
4 make its policy points and the importance of the protection
5 of the law without regard to any economic interest in the
6 outcome of the case. We just hope that, given the
7 extraordinary nature of this case, the U.S. Trustee would
8 have, as it has in many other cases, let this case proceed
9 without creating more risk around the releases.

10 Hopefully, in light of the material revisions, the
11 release provisions noted by Mr. Vonnegut, the U.S. Trustee
12 can see its way to avoid pressing objections which
13 ultimately are not legally supported, and let the actual
14 victims get the closure.

15 With respect to the state, there's already been a
16 good deal of talk regarding the victims by people other than
17 the victims throughout the case in the hearing today. I'm
18 not going to do that. I don't feel eloquent enough to try
19 to (indiscernible). What I do want to do is focus on what
20 the actual victims had said for themselves in the
21 evidentiary record.

22 If the Court looks at the final declaration of
23 Christine Pullo of Prime Clerk -- it's ECF3372 -- it
24 establishes three key uncontested facts. Fact one. After
25 having received a detailed disclosure statement explaining

1 the case, total yes votes on the plan were 114,307. Fact
2 two. If the Court combines Classes N, A and B -- that's the
3 (indiscernible) claimants and the adult PI claimants, 62,433
4 of them voted in favor of the plan.

5 And let me pause here. The record establishes
6 that if 5 percent of all yes votes in number and amount, in
7 this case -- and everybody voted with \$1 claim -- are from
8 personal injury victims. The personal injury victims are,
9 in fact, the largest supporting voice in this case for this
10 plan.

11 Point three. Classes 10A and B accepted a
12 (indiscernible) rate of approximately 97 percent in number
13 and amount. We pause again. The notion that you could get
14 97 percent of a cross section of individuals in America to
15 agree on anything, much less the (indiscernible) of such
16 passion and personal import is to whether the Sacklers
17 should ever receive closure is astonishing. But for those
18 who are not familiar with bankruptcy cases, we hardly ever
19 see a class of this size of individuals accept at such a
20 high rate, unless the commercial deal is so overwhelmingly
21 compelling to the class (indiscernible).

22 The evidence shows that whatever pundits may say
23 about this plan, it represents the best available commercial
24 deal for the victims in every state. We pause for a moment
25 on the point raised by Mr. Huebner and Mr. (indiscernible).

1 This is a bankruptcy case. Bankruptcy cases and courts and
2 professionals cannot fix everything. All we can do is apply
3 the law to the facts to reach a commercial resolution of
4 (indiscernible) issues consistent with the law.

5 This is not a criminal case or a regulatory
6 investigation, as Your Honor has repeatedly pointed out.
7 Each state reserves all of its police powers consistent with
8 the Code and the law. But with respect to the commercial
9 people, it's a completely mystery why any state would refuse
10 money on the table and choose uncertain chaos when so many
11 of their own citizens support.

12 Your Honor raised the question of whether you
13 could break down the claims data state by state. You can't
14 because the individuals' addresses have been redacted. I'd
15 certainly like to see who my own state of Connecticut is
16 purporting to represent in objecting to this deal. But the
17 Court just has to look at the total no votes.

18 (indiscernible) declaration in evidence. Only 2,600
19 individuals in classes NA and B voted no.

20 To be clear, there's absolutely nothing wrong with
21 any individual exercising their right to say no, for good
22 reasons or no reason at all. It's a terribly emotional
23 issue for all of us. But it seems unimaginable that eight
24 states are spending millions of dollars of their own money
25 and causing other people to spend millions of dollars of

1 their own money, vindicating the rights of 2,600 people --
2 particularly given the state's historical (indiscernible)
3 towards their opioid victim citizens and the tens of
4 thousands of citizens who have voted yes for
5 (indiscernible).

6 But let's give Connecticut and the other states
7 the benefit of the doubt, that this is a matter of
8 principle. It's not as if the rhetorical objection is
9 without effect if their objections are sustained. Under
10 this plan, the actual victims have set aside \$750 million
11 for payment of injury. That is an unprecedented and
12 monumental achievement only made possible by this Court, the
13 mediators, the professionals, and the process participated
14 in in good faith by all the claimants in the case.

15 In the absence of this deal, it is hard to see how
16 there will ever be money set aside for victims. Remember,
17 the prepetition deal that was cut set aside zero for
18 personal injury victims. Maybe the objecting
19 (indiscernible) have the wherewithal and patience to chase
20 the Sacklers into eternity. The victims didn't before and
21 they don't now. For that reason, the ad hoc group supports
22 confirmation of the plan, even if it means that Purdue will
23 continue on as a business. Factors (indiscernible) own form
24 of closure and release it.

25 Given the balancing of the risks and the rewards,

1 97 percent of actual people who were harmed by the conduct
2 of the Sacklers and Purdue want this deal done.

3 THE COURT: Okay.

4 MR. SHORE: And other than -- if Your Honor
5 doesn't have any questions, I'll just respond later in the
6 hearing...

7 THE COURT: All right, fine. Thank you. I don't
8 at this point. So, the Multistate Governmental Entities
9 Group, I believe, is next?

10 MR. MACLAY: Thank you, Your Honor. Kevin MacLay
11 for the Multistate Governmental Entities Group. And, of
12 course, we've just heard a lot of argument and I will do my
13 best, Your Honor, not to repeat any of it but to hit on a
14 couple of points that are important to my group and I think
15 to the case.

16 As Your Honor knows, I represent the Multistate
17 Governmental Entities Group, a group of approximately 1,300
18 local governmental entities and tribes across 38 states and
19 territories. And, Your Honor, one thing that I would like
20 to highlight in my comments here today is the difficulty of
21 getting to the resolutions reached. As Your Honor knows, it
22 took many months of extensive negotiations involving the
23 services of two of the most highly qualified mediators in
24 the country in former Judge Lane Phillips and in Ken
25 Feinberg, to get to the deal we have today.

1 As the mediators reported on September 23rd to
2 Your Honor, that mediation resulted in Phase 1, in the
3 agreement that all value received by the state and local
4 governments would be exclusively dedicated to programs
5 designed to abate the opioid crisis, and that such value
6 cannot be used for any other purpose other than an amount
7 (indiscernible) administration of the (indiscernible)
8 themselves and to pay legal fees and costs.

9 And that was followed, Your Honor, by Phase 2o of
10 the mediation by those same two esteemed mediators, which
11 resulted, as of March 23, 2021, in a report noting a
12 consensual agreement as to the allocation percentage between
13 and among the public and private creditor groups engaged in
14 the mediation. As that same mediator's report also noted,
15 Your Honor, it also achieved an allocation inter se among
16 the public and private creditor groups, among the
17 overwhelming number of mediation participants. Of course,
18 it resulted in a contribution of over \$4 billion from the
19 Sackler Family and associated entity, as also noted by that
20 same mediator's report.

21 And that was followed, Your Honor, by the able
22 assistance of a sitting a sitting court judge, Judge
23 Chapman, who successfully concluded Phase 3 of the
24 mediation, which resulted in additional funds and additional
25 terms that were favorable to both state and local government

1 and all private entities.

2 And so, as a result of those very difficult and
3 time-consuming negotiations overseen by extremely able and
4 experienced advisors, the global settlement was reached.
5 Each aspect of that global settlement is a crucial component
6 of the basis of this plan, and all of them are
7 interconnected (indiscernible) a couple of other people
8 speaking here today.

9 So, just to make it completely clear, Your Honor,
10 the releases are necessary as part of that global
11 settlement, as part of that global deal for the public
12 creditors and the private creditors to receive the funds
13 they have been allocated under the plan, to put towards
14 abatement of the opioid crisis. (indiscernible) releases
15 could be (indiscernible) class of this carefully negotiated
16 and very difficult to achieve settlement. It would allow
17 other creditors to potentially cut in line and obtain funds
18 that would otherwise go towards abatement by the states and
19 local governments.

20 And that, Your Honor, is why the MSG group
21 believes strongly that this plan should be approved. And
22 that's what I have to say about that, Your Honor.

23 THE COURT: Okay, thank you.

24 MR. MACLAY: Thank you.

25 (Recess)

1 CLERK: Good afternoon, everyone. If everyone
2 could just turn on their video feeds, just to make sure that
3 everyone is able to connect. And at this time, can everyone
4 just give me a thumb's up if they could hear me clearly?

5 MAN 1: Yes.

6 CLERK: That sounds fantastic. Okay, so we're
7 just going to go through a few house rules just to set the
8 expectations for today's hearing -- afternoon hearing
9 continuation. Please keep in mind to have your mics on mute
10 when not speaking, to avoid any background noise. Also,
11 make sure to unmute yourself when you do need to speak so
12 that the judge, all the parties and the court reporter could
13 keep track of who's speaking at the time.

14 Also, when you're not part of the -- part of the
15 hearing and you're also -- let's see, when you're not part
16 of the hearing or part of that portion of the hearing, can
17 you please turn off your video feed so that way you're able
18 to continue if you need to multitask in the background and
19 it's not a disruption for the other parties?

20 Also, although this is a -- this is a video
21 hearing, also make sure that you remind yourself that only
22 the audio is being recorded, so please state your name again
23 every time you speak. And although it's being conducted
24 through Zoom, the hearing constitutes the court proceeding,
25 and any recording other than the official court version is

1 prohibited. No party may record images, sounds from any
2 location. The formalities of the courtroom must be
3 observed.

4 And with all that said, also, please make sure
5 that you could also use the AT&T telephonic listening line
6 only, the dial conference bridge. The phone number is 844-
7 867-6163. Again, the number is 844-867-6163. And we
8 encourage everyone that, if you're not going to be taking
9 part in the hearing and you just want to listen, to please
10 utilize that system. And the access code is 9263332-pound.
11 Again, the access code is 9263332-pound.

12 Finally, make sure that -- make sure that all --
13 all of you guys have your full name displayed on the screen
14 so that we could make sure and keep track of the person
15 who's speaking and the judge also could know who he's
16 speaking to. And also, you could rename yourself under the
17 participant part of the Zoom or the app. If you guys have
18 any questions, you may ask now. If not, we're going to
19 start soon. The judge should be joining us shortly. Thank
20 you for your cooperation.

21 THE COURT: Okay, good afternoon. This is Judge
22 Drain and we're back on the record in In Re Purdue Pharma
23 L.P., et al. with resumed oral argument now by the objectors
24 to the plan, as to the issues that were addressed in the
25 oral argument this morning by the parties who support the

1 plan, namely, the plan's Rule 9019 settlements and the issue
2 of third party releases and injunctions.

3 I have a statement of allocation by those parties
4 that has the United States Trustee being the first person or
5 the first objector to speak. And I see Mr. Schwartzberg
6 there for the U.S. Trustee, so you can go ahead, Mr.
7 Schwartzberg.

8 MR. SCHWARTZBERG: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MR. SCHWARTZBERG: Your Honor, as you know, the
11 U.S. Trustee has objected to the confirmation of the Purdue
12 Pharma plan on statutory, constitutional and prevailing
13 circuit law grounds.

14 THE COURT: I'm sorry, you're going to have --
15 we're having a hard time hearing you, Mr. Schwartzberg.

16 MR. SCHWARTZBERG: I'll talk up, Your Honor, and
17 if that doesn't work, I'll put on -- I'll put on some
18 earphones.

19 THE COURT: Okay.

20 MR. SCHWARTZBERG: And I'm going to adjust my
21 volume as well.

22 THE COURT: All right.

23 MR. SCHWARTZBERG: But, Your Honor, as you well
24 know, the United States Trustee has objected to confirmation
25 of the Purdue Plan on statutory, constitutional and

1 prevailing circuit law grounds. Testimony -- testimony
2 (indiscernible) over the past several days -- over the past
3 several days only reinforces our argument. The Debtors
4 assert that third party releases may be granted in rare and
5 extraordinary cases. We do not concede that that is a valid
6 legal justification, but we do concede that this case is
7 rare and exceptional, which were the reasons the Debtors do
8 not profess.

9 The plan is breathtaking, Your Honor, and probably
10 unprecedented in releasing the claims of a countless number
11 of victims who hold direct claims against the Sackler Family
12 members and related entities, many of whose members are not
13 named and who may number on the thousands. The plan is also
14 extraordinary in granting a discharge of liabilities in
15 favor of the Sackler Family that far exceeds any discharge
16 that would be available to individuals who, like the Sackler
17 Family members, actually filed bankruptcy (indiscernible).

18 By the terms of the plan and testimony of the
19 witnesses, the Sacklers are to be discharged from the
20 consequences of opioid-related fraud that may -- that they
21 may have committed and for any future harm that grows out of
22 that fraud. By evading the obligations currently posed on
23 every bankruptcy Debtor while also seeking the benefits of a
24 court-ordered discharge, the Sackler Family members attempt
25 to purchase for themselves a bespoke bankruptcy

1 (indiscernible), an extra statutory tailor-made scheme to
2 preserve their wealth and avoid a public reckoning. While
3 those who hold direct claims against the Sacklers get
4 nothing for those claims, some of them will receive \$3,500
5 for the claims against Purdue. The direct claims of the
6 Sacklers -- the direct claimants of the Sacklers receive no
7 adequate notice that they may lose their day in court, and
8 the Sacklers and they -- against the Sacklers, and that they
9 will receive no compensation for their claim against the
10 Sacklers.

11 Your Honor, why are we in this situation? Because
12 the Sacklers say so. There's plentiful testimony, including
13 from David Sackler himself, (indiscernible) the Sackler
14 Family adamantly refuse to pay a penny unless they received
15 an extraordinary release. Interestingly, they gave no
16 reason except they bare no legal responsibility for the
17 opioids crisis. And the Sackler Family promises that,
18 unless they receive this extraordinary release, they will
19 fight tooth and nail against anyone who sues them from the
20 District of Connecticut to the isles of Jersey.

21 They even say they're untouchable because their
22 trust was put together so intricately that the money is
23 beyond the reach of the victim. In contrast, the victims,
24 who have no adequate notice of the release provision of the
25 plan, are losing their right to sue the Sackler Family. In

1 effect, Your Honor, the Sackler Family and Purdue Pharma say
2 to the victims they're within the jurisdiction of this court
3 and thereby within the reach of the Sackler Family, but the
4 Sacklers are beyond your reach.

5 Your Honor, that cannot be so under the Bankruptcy
6 Code, the Constitution, (indiscernible) and valid case law.
7 As the Court is aware, the United States Trustee objects to
8 the third party releases of the Sackler Family on all three
9 grounds. Your Honor, first I will (indiscernible) the Code.

10 As we state in our objection, Your Honor,
11 nonconsensual releases of claims held by non-debtors against
12 other non-debtors are not allowed under the Bankruptcy Code.
13 Section 524(a) of the Code describes the discharge of non-
14 debtors, and Section 1129(a)(1) prohibits confirmation of a
15 plan that does not comply with the applicable provisions of
16 the Bankruptcy Code.

17 Section 1141(d) specifies the scope of discharge
18 upon confirmation and does not include non-debtor parties
19 within its scope. And, Your Honor, Law v. Siegel bars the
20 equitable powers of Section 105 and being used -- used to
21 allow that Section 524 and Section 1141(d)(2) neither
22 authorized or (indiscernible).

23 Simply put, Your Honor, these charges are for
24 debtors. The Bankruptcy Code says so. And as the Debtors
25 (indiscernible) full stop, end of discussion. Metromedia,

1 the sole authority on which the Debtors rely as legal
2 justification for the (indiscernible) releases, the Second
3 Circuit itself recognizes that there's no authorization in
4 the Code for approval of involuntary releases. And if the
5 individual members --

6 THE COURT: That's your reading of Metromedia?

7 MR. SCHWARTZBERG: I'm sorry, Your Honor?

8 THE COURT: That's your reading of Metromedia?

9 MR. SCHWARTZBERG: Your Honor, Metromedia -- a few
10 things indicated that if there's a blanket of releases that
11 could potentially be abusive, then --

12 THE COURT: That's different than what you said.
13 I understand your point now.

14 MR. SCHWARTZBERG: Oh. Also, Your Honor, there is
15 no code section in the Bankruptcy Code that authorizes non-
16 debtor limits.

17 THE COURT: Well, there wasn't one in the Mandel
18 case either, as 524(h) and the legislative history to 524(g)
19 recognize.

20 MR. SCHWARTZBERG: Yes, Your Honor. Because
21 there's no exclusive authorization in the code, we believe
22 if Congress wanted to allow the debtors -- non-debtors
23 discharges, what we believe is an extraordinary
24 (indiscernible) due process, they would have done so
25 explicitly, as they did with 524 (indiscernible).

1 THE COURT: Well, except -- except in 524(h), they
2 make it clear that the enactment of 524(g) does not undo any
3 such release that was entered before the enactment of
4 524(g). And the legislative history makes clear that
5 Congress very clearly wanted the law to develop in that
6 area, and was not limiting it just to the asbestos trusts in
7 524(g).

8 MR. SCHWARTZBERG: Your Honor, if you're talking
9 about the legislative history, I read that as dealing just
10 with normal plan injunctions, such as assets transferred
11 from one -- from the Debtor to a third party and the
12 injunction --

13 THE COURT: Really? Well, maybe you weren't in
14 the room when it was being drafted.

15 MR. SCHWARTZBERG: I was not, Your Honor.

16 THE COURT: Or representing the companies that
17 needed the protection, and had already gotten the
18 injunctions before 524(g).

19 MR. SCHWARTZBERG: I do point out, Your Honor, the
20 Mandel injunction is based on enjoining claims that are
21 derivative of the debtor, whereas the injunction here that
22 the parties received more of a direct (indiscernible)...

23 THE COURT: Okay.

24 MR. SCHWARTZBERG: Your Honor, if individual
25 members of the Sackler Family have filed their own Chapter

1 11, they did not obtain the (indiscernible) the third party
2 releases being given here, which absolves them from fraud
3 claims, the result of (indiscernible) by growing individual
4 and hypothetical bankruptcy cases. Moreover, if the Sackler
5 Family plan (indiscernible) in exchange for the broadest
6 brief possible, and actually propose individual bankruptcies
7 to the Sackler Family, it would almost certainly not be
8 confirmed under the best interest test of creditors, the
9 text that requires creditors to be treated (indiscernible)
10 Chapter 11, they would in a Chapter 7 liquidation. In other
11 words, virtually all the Debtor's assets must be liquidated
12 and paid to creditors.

13 Why? Because all available information suggested
14 the collective assets of the Sackler -- of the
15 (indiscernible) Sackler Family exceed \$10-11 billion.

16 THE COURT: Can we stop there? What information
17 are you referring to? What evidence are you referring to?
18 You heard the testimony and you read the declarations where
19 there was no cross as to the Sackler Family's assets. So,
20 which evidence are you referring to?

21 MR. SCHWARTZBERG: Your Honor, I'm referring to
22 the Debtor's disclosure statement.

23 THE COURT: You're not referring to the -- to the
24 declarations as to the Sacklers' assets that were admitted
25 without cross-examination in this hearing?

1 MR. SCHWARTZBERG: Your Honor, in the Debtor's
2 disclosure statement, they indicated that it was estimated
3 that the value --

4 THE COURT: So, the answer's no. You're not --
5 you're not citing any of the evidence in this hearing?

6 MR. SCHWARTZBERG: I'm citing the disclosure
7 statement, Your Honor.

8 THE COURT: All right. Fine. Can I ask you one
9 more question, Mr. Schwartzberg?

10 MR. SCHWARTZBERG: Absolutely.

11 THE COURT: You've couched this so far as the
12 Sacklers' plan. Now, you've heard the oral argument today,
13 including the remarks by counsel for the Official Creditors
14 Committee and the Multistate Governmental Entities Ad Hoc
15 Committee, the lawyer for the Personal Injury Ad Hoc
16 Committee and the AHC, the committee of setting governmental
17 entities. None of them referred to this as the Sacklers'
18 plan or the Sacklers' deal. None of them referred to the
19 condition that the Sacklers were placing on it. They said
20 that if there was no such release, they would not be
21 supporting the plan because they believe that the plan was
22 necessarily as a whole for their recovery. What is your
23 response to that argument?

24 MR. SCHWARTZBERG: Your Honor, in most cases or in
25 a lot of cases that we see where an entity files for

1 bankruptcy and there are individuals who own that entity who
2 also have liabilities in connection with it -- those
3 individuals themselves file bankruptcy and they get a
4 discharge. We believe here the Sackler Family, or the
5 members who are seeking releases, are seeking the discharge
6 for things they just thought that should not be permitted,
7 especially since that, in some instances, victims are only
8 getting \$4,500.

9 Whereas I was discussing, Your Honor, if the
10 Sacklers as a whole filed bankruptcy, there would
11 potentially be significantly more money than --
12 (indiscernible) put on the table for that.

13 THE COURT: So, essentially, you're ignoring the
14 statements by the representatives of all of the people that
15 spoke today that speak for the roughly 95 percent of the
16 people that voted in favor of the plan?

17 MR. SCHWARTZBERG: Your Honor, we don't believe
18 the plan complies with the Constitution. And we believe
19 that Your Honor is only authorized to do what is authorized
20 under the Bankruptcy Code, and that therefore the plan could
21 not be (indiscernible).

22 THE COURT: Okay. So, it's your principle against
23 their vote?

24 MR. SCHWARTZBERG: Your Honor, I believe it's the
25 Constitution and the Bankruptcy Code against their vote.

1 THE COURT: Okay. I was just curious about the --
2 who you were speaking for. I understand now.

3 MR. SCHWARTZBERG: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. SCHWARTZBERG: As I was indicating, Your
6 Honor, the 4 billion being put into this case may be a huge
7 amount of money but it is less than the -- what we believe
8 is the 10 billion that would be considered in the best
9 interest of the nation test.

10 THE COURT: So, you think all of that would come
11 in? All of that \$11 billion would come in in a bankruptcy -
12 - in a liquidation?

13 MR. SCHWARTZBERG: You know, it's hard to say,
14 Your Honor, because unlike the Debtor, the Sacklers have not
15 provided -- the Sackler Family has not provided a fulsome
16 set of financial information.

17 THE COURT: Well, you didn't cross-examine the
18 expert who provided the liquidation analysis.

19 MR. SCHWARTZBERG: We did not, Your Honor.

20 THE COURT: And you didn't cross-examine the
21 expert who provided the analysis of the Sacklers' wealth and
22 where it lies, right?

23 MR. SCHWARTZBERG: We did not, Your Honor.

24 THE COURT: And so you're just, therefore,
25 assuming that money would be available? Those transfers

1 would be avoidable and recoverable?

2 MR. SCHWARTZBERG: My argument, Your Honor, is we
3 don't know because there has not been a fulsome disclosure
4 of the Sackler Family (indiscernible) which would be --

5 THE COURT: Well, there was a declaration.
6 Actually, there were two declarations. So, I -- I should
7 rely on that, right? No one cross-examined, no one
8 questioned the declarations -- the declarants.

9 MR. SCHWARTZBERG: I believe there was one,
10 although I don't know what Your Honor's final decision on it
11 was -- indicated after the period of ten years, the Sackler
12 Family wealth would be in excess of 15 --

13 THE COURT: No, that's wealth. We're talking
14 about recovery in a liquidation.

15 MR. SCHWARTZBERG: Your Honor, we do concede that
16 there are -- there is money that's in a trust, and that
17 would have to be a (indiscernible) asset.

18 THE COURT: And your -- obviously, your office
19 isn't able to do that, right?

20 MR. SCHWARTZBERG: Your Honor, I believe there are
21 un-consenting -- or nonconsenting, excuse me, states that
22 could pursue that as well as -- if the plan (indiscernible)
23 perhaps the Committee could pursue that.

24 THE COURT: Okay. The Committee that has
25 supported the plan?

1 MR. SCHWARTZBERG: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. SCHWARTZBERG: As I was saying, Your Honor,
4 because the Sackler Family members are not debtors, they've
5 not been subject to the comprehensive disclosure obligations
6 required of (indiscernible). The testimony does show that
7 certain of the Sackler Family trust went to Royal Court in
8 (indiscernible) Jersey where secret proceedings
9 (indiscernible) no parties in this case other than perhaps
10 the Sackler Family could obtain a court order preventing the
11 sale of the (indiscernible) unless the Sackler Family
12 receives a release of fraud and other conduct.

13 Does this court enjoin the hundreds of pending
14 lawsuits against the Sackler Family when the Debtor for
15 Chapter 11 -- no lawsuits (indiscernible) judgment
16 (indiscernible) have been liquidated. The trial testimony
17 establishes that, despite effectively discharging the
18 Sackler Family in this -- excuse me -- from discharging the
19 Sackler Family in this bankruptcy from the claims of opioid
20 victims, the Debtors liquidate -- either try to evaluate the
21 assets and liabilities --

22 THE COURT: Mr. Schwartzberg, can you go a little
23 slower? Your -- I'm not sure the court reporter will be
24 picking up what you're saying.

25 MR. SCHWARTZBERG: Yes, I apologize, Your Honor.

1 The Debtor's liquidation analysis didn't even try to
2 evaluate the assets or liabilities of the Sackler Family,
3 including the opioid-related liabilities. But if the
4 Sackler Family members are being discharged as if they were
5 Debtors, then their assets and liabilities should be
6 included in the liquidation effort.

7 Simply put, the Sackler Family members are
8 reliable for only an infinitesimal portion of the 41
9 trillion opioid liability in the Debtor's liquidation
10 analysis. The (indiscernible) arithmetic reality is that
11 they were -- that if they were debtors (indiscernible)
12 liquidate all of their assets (indiscernible) under the
13 plan.

14 Moreover, in a Chapter 7 case, the Sackler Family
15 wouldn't be granted the luxury of liquidating their assets
16 over a decade (indiscernible) effectively retain
17 (indiscernible) normally paid creditors for investment
18 income generated over a decade, which is precisely what is
19 being allowed here with the decades-long payout of
20 (indiscernible).

21 When asked on cross-examination what the Sackler
22 Family loss would be after the decades-long payout, David
23 Sackler did not know what the net effect will be. He said,
24 I don't think anybody can say that with certainty. Other
25 witnesses were forced to draw conclusions based on the

1 incomplete information precisely that there's no Sackler
2 Family member as a debtor, who made -- who has made the
3 complete and public disclosure required of debtors so that
4 their complete financial situation can be understood in
5 (indiscernible).

6 Your Honor, not only did the releases violate the
7 Bankruptcy Code, but they're also fundamentally at odds with
8 the U.S. Constitution, both the Due Process clause and the
9 Bankruptcy clause. (indiscernible) of claims against the
10 Sackler Family for their role in the opioid crisis
11 (indiscernible) is at the consent of this Court. Due
12 process provides that those litigation claims
13 (indiscernible) both notice and a meaningful opportunity to
14 be heard.

15 Debtors repeatedly and (indiscernible) conflate
16 the due process afforded Purdue creditors for their claims
17 against Purdue and their participation of Purdue's
18 bankruptcy with due process for those with claims against
19 the non-debtor Sackler Family members. For example, the
20 reply brief goes to great lengths to extol the notice given
21 of the bar date in this bankruptcy. That is a red herring,
22 Your Honor, because the United States Trustee does not
23 challenge the adequacy of notice to produce creditors
24 regarding the treatment of their claims against Purdue. But
25 there was no bar date for filing (indiscernible) claims

1 against the Sackler Family precisely because they are not
2 Debtors. We don't even know the universe of claims against
3 them beyond the 400 lawsuits that were enjoined.

4 Moreover, all the notice in the world can't
5 legitimize the Court's dictating settlements (indiscernible)
6 not agreed to sell or forcing -- or being forced to
7 relinquish their claims without the consent of their day in
8 court.

9 THE COURT: Well, can we -- can we break that
10 down? I'm not -- I'm not quite sure what the last point
11 makes. But as far as due process is concerned, there's,
12 again, I believe, evidence of extensive notice of the
13 release that built on the notice to creditors and potential
14 creditors of the case, as well as extensive media notice of
15 the release. And there was certainly an opportunity to
16 object in this court to the release.

17 So, at one level I think what you're arguing is an
18 issue for the future, as the Second Circuit discussed in the
19 Motors liquidation case. The analysis of whether some party
20 who arguably is subject to an injunction got notice
21 sufficient to oppose the injunction is a fact-based inquiry
22 based upon their own particular circumstances and the
23 debtor's knowledge of them. So, isn't that really an issue
24 for the future?

25 MR. SCHWARTZBERG: Well, I think we don't believe

1 the notice is appropriate and, therefore, this Court should
2 not approve the --

3 THE COURT: Why -- on what basis do you say the
4 notice was not appropriate?

5 MR. SCHWARTZBERG: Well, Your Honor, with
6 testimony that the confirmation notice, the publication
7 notice, the plain language notice did not include a
8 (indiscernible) list of the releasing parties. All it did
9 would say the Sackler Family members or the Sackler Family.
10 It didn't include the thousands of other people that were
11 being released.

12 In addition, Your Honor, the actual notice or the
13 actual solicitation packet that went out was
14 incomprehensible. Richard Sackler himself said reading
15 Section 10.7(b) was too dense and he couldn't get through
16 it. And John Long, the CFO and the man who actually signed
17 the petition -- the schedules -- the schedules, I'm sorry --
18 the disclosure statement in the plan, indicated that he
19 could not identify all of the release parties, and he didn't
20 believe that an opioid -- an average opioid victim could
21 either.

22 We believe that if you're going to take away
23 someone's right to sue a person or an entity that you --
24 they should -- that entity should be identified. So, that
25 is reasons why we don't think there was appropriate notice.

1 As well as future claims, Your Honor. (indiscernible) future
2 claims did not receive notice and there was no future claims
3 representative. But I'll continue, Your Honor.

4 The releases -- as I was saying -- the uncertain
5 and amorphous definitions of the releases and who was being
6 released, it was virtually impossible to understand who are
7 the released parties and releasing parties, and what are
8 released. So, we believe no matter how many times the
9 Debtor advertised the shareholder releases on CNN, those
10 advertisements never provided adequate notice because those
11 releasing and those released were never adequately
12 specified.

13 The (indiscernible) even hearing the advertisement
14 and then sought out the plan and read every word of Section
15 10.7(b), basically it still wouldn't have notice, because it
16 was incomprehensible. And as I indicated, Your Honor, Mr.
17 Lowne didn't appear to have knowledge of all released
18 parties. In fact, on cross-examination we asked if it would
19 be possible for an average opioid victim, based on publicly
20 available information, to identify all the assets in
21 individuals that are getting released, he indicated, I would
22 presume if I'm not, they would not be able to, no.

23 And he further testified he couldn't identify the
24 Sackler Family's children and grandchildren included in the
25 releases, and he didn't know that this is an entity Sackler

1 Family members --

2 THE COURT: Well, let me just stop you there. You
3 have referred consistently to the Sacklers, right, as a
4 collective?

5 MR. SCHWARTZBERG: Yes, Your Honor.

6 THE COURT: And the notice itself said the
7 Sacklers, right?

8 MR. SCHWARTZBERG: Yes, Your Honor.

9 THE COURT: Doesn't that include children and
10 grandchildren?

11 MR. SCHWARTZBERG: The average person looking at
12 it may or may not know that.

13 THE COURT: All right.

14 MR. SCHWARTZBERG: And they would --

15 THE COURT: Let's move on, Mr. Schwartzberg.

16 MR. SCHWARTZBERG: Your Honor, the purported --
17 purported narrowing in both the seventh amended plan and the
18 eighth amended plan, both filed on the morning of the trial,
19 eliminated -- eliminated certain references. For example,
20 the seventh amended plan got rid of the reference to all
21 other persons. We still believe, even though those changes
22 were made, they don't do anything to clarify or materially
23 limit the scope of the extraordinary (indiscernible)
24 releases.

25 From the trial testimony, we have ascertained that

1 the releases extend the fraud claim to non-opioid
2 liabilities related to Purdue's manufacture, sale and
3 distribution of many other pharmaceuticals into future
4 conduct -- meaning, the parties who have not yet been
5 injured and not credited to the Debtors are having future
6 claims extinguished. And, Your Honor --

7 THE COURT: Can I -- can I stop you on that point?
8 I'm not quite sure... As far as future conduct is
9 concerned, if they are excluded -- I'm talking now from the
10 Sacklers -- from having anything to do with -- with Purdue
11 or Newco in the future, what are we talking about by future
12 conduct?

13 MR. SCHWARTZBERG: Your Honor, we're talking about
14 acts that would have occurred prior to the effective date.
15 So, for instance, appropriate (indiscernible) prior to the
16 effective date that are used after the effective date, that
17 would be a future claim -- that a claimant would have --

18 THE COURT: But the evidence is clear that the
19 Sacklers themselves have not been involved with this company
20 in any way, shape or form in terms of running it since
21 before the commencement of the bankruptcy case.

22 MR. SCHWARTZBERG: Your Honor, then if that's --
23 there are no (indiscernible) claims, they should eliminate
24 the future claims from releases.

25 THE COURT: I'm sorry, you're going to have to

1 slow down. I couldn't really hear that.

2 MR. SCHWARTZBERG: I said, Your Honor, if there
3 are no future claims, they should eliminate them through the
4 releases. But it appears that any actions that occurred
5 before the effective date, whatever they may be, if it
6 causes harm after the effective date, those claims are being
7 released.

8 THE COURT: Right. But you're not aware of any
9 claims that would exist against them?

10 MR. SCHWARTZBERG: I'm not aware of any, Your
11 Honor, but I do know that they're being released under the
12 plan and there must be reason for that -- or there may be a
13 reason for that.

14 THE COURT: Okay.

15 MR. SCHWARTZBERG: Your Honor, the Court also, we
16 believe, does not have the power to -- or authority to
17 enjoin claims by one third party against another third party
18 (indiscernible) there both parties to the same bankruptcy
19 proceeding. (indiscernible) Section 105 was used to create
20 it. The Bankruptcy Clause grants Congress power to enact
21 uniform laws on bankruptcy. Bankruptcy reorders the
22 rightful debtors and the creditors. It does not reorder the
23 rights of non-debtors against non-debtors, and any effort to
24 do so exceeds the constitutional authority granted.

25 It is ironic that the Debtor -- that the Debtors

1 and the shareholder release parties go to great lengths to
2 explain how creditors could never obtain personal
3 jurisdiction of the shareholder release parties and how
4 their assets are in trusts and (indiscernible) accounts
5 beyond the reach of creditors, while dismissing the United
6 States (indiscernible) argument that the Bankruptcy Court
7 does not have unlimited related to jurisdiction to
8 adjudicate or distinguish claims between non-debtors.

9 And, Your Honor, I'd like to turn to Metromedia
10 because that was discussed. Despite much argument
11 otherwise, we didn't believe that Metromedia reflects the
12 imposition of third party releases or dictates the outcome
13 in this case.

14 First, Your Honor, Metromedia did not decide or
15 discuss the issue of constitutional due process. Second,
16 (indiscernible) Supreme Court decisions undercut
17 Metromedia's analysis. Law v. Siegel established yet again
18 that Section 105 cannot be used to grant relief that the
19 Bankruptcy Code does not authorize. And even the Second
20 Circuit picks up -- it expressed doubt with Metromedia about
21 relying on Section 105.

22 And Stern v. Marshall established that article in
23 Bankruptcy Courts that constitutional authority to
24 adjudicate many state law claims. The Bankruptcy Court
25 cannot adjudicate a claim held by one debtor against another

1 non-debtor -- it certainly cannot extinguish that claim
2 their a plan confirmation.

3 Third, Your Honor, the statements in Metromedia on
4 third party releases were not beholding of the case. The
5 Court ultimately dismissed the appeal for equitable
6 (indiscernible).

7 And, fourth, Your Honor, Metromedia doesn't set
8 out factors and filings, but it does suggest that releases
9 can't be a discharge, as this one is; a release can confirm
10 blanket immunity, as this one does, and --

11 THE COURT: Can we stop on that point? It's not a
12 discharge, right? It doesn't discharge all their debts.

13 MR. SCHWARTZBERG: But, Your Honor --

14 THE COURT: And it doesn't provide blanket
15 immunity.

16 MR. SCHWARTZBERG: But, Your Honor, as it said in
17 the Second Circuit in Metromedia, a third party release may
18 operate as a bankruptcy discharge arranged without a filing
19 and (indiscernible) safeguard to (indiscernible). In fact,
20 Your Honor, this discharge provides a greater -- a super-
21 discharge. The shareholder released parties -- if the
22 Sackler Family filed for bankruptcy, they wouldn't be
23 discharged from fraud. And in this case, they're getting --
24 they're getting fraud as part of (indiscernible) against
25 them.

1 THE COURT: So, what is your view about the
2 MacArthur-Manville case then that deals with this issue?

3 MR. SCHWARTZBERG: Your Honor, I'm not familiar
4 with this case -- that case.

5 THE COURT: Okay.

6 MR. SCHWARTZBERG: But Metromedia did establish
7 factors and -- although it did not establish factors and
8 filings, it did at least require some types of substantial
9 contribution for the parties being released. Mr. Lynam
10 testified to a litany of parties being released -- perhaps
11 hundreds of people or entities, without paying so much as a
12 dime into the estate. And, indeed, Richard Sackler himself
13 did not know his personal assets, including his checking
14 account would be used for the final count.

15 Your Honor, I just want to point -- before I go
16 into my next point. Mr. Huebner, in his presentation, had a
17 whole litany of cases where there are fraud releases, and I
18 just wanted to note that it appears that those were all
19 consensual. Here, we're talking about nonconsensual
20 releases, we're talking about settlement. And just before I
21 forget that, I wanted to just address that issue.

22 And then regarding something that came up on
23 cross-examination, Your Honor. The United States Trustee
24 (indiscernible) the vote-counting rules of Section 1126 and
25 does not contest the Debtors have established acceptance of

1 a plan by the voting process. It is well established that
2 1126, as interpreted, only counts votes actually cast and
3 does not direct courts to consider the toll number
4 (indiscernible) of the votes -- the voters.

5 But Purdue and the Sackler Family have misused the
6 voting percentage to create the impression that the
7 stakeholders overwhelmingly support the non-debtor
8 involuntary releases, and that's simply not true. And to
9 give the final (indiscernible) is not deserved. The Debtors
10 represent that each and every class of creditors that voted
11 has overwhelmingly voted to accept the plan. However, they
12 also say in Paragraph 243 of the reply brief that 95 percent
13 of all the creditors voted in favor of it.

14 Your Honor, 95 percent of all the creditors did
15 not vote in favor of the plan. However, 95 percent of 20
16 percent of the creditors who voted --

17 THE COURT: Mr. Schwartzberg, how do you propose
18 to measure overwhelming support except by how everyone
19 measures an election, which is based on those who actually
20 vote? Can you name me one election that counts people who
21 just answer polls or say later what they think, as opposed
22 to those who actually vote?

23 MR. SCHWARTZBERG: Your Honor, we're noting that
24 in the --

25 THE COURT: You live -- I know you live in this

1 area instead of Washington, D.C., but I think it would be a
2 surprise to politicians that you don't count the vote, you
3 count something else, something amorphous?

4 MR. SCHWARTZBERG: Your Honor, I am not -- we are
5 not challenging what 1126 --

6 THE COURT: Are you aware of any case that has
7 looked at support, as far as overwhelming support, other
8 than by the vote?

9 MR. SCHWARTZBERG: Your Honor, what we're doing is
10 we're challenging Debtor's talking points by --

11 THE COURT: But on what basis?

12 MR. SCHWARTZBERG: Your Honor, 95 percent of all
13 the creditors did not vote --

14 THE COURT: So, you don't answer my question. You
15 would poll the man on the street?

16 MR. SCHWARTZBERG: We're not talking about
17 polling, Your Honor. We're not talking about --

18 THE COURT: No, you're not talking about counting
19 at all. Just move on from this point. I think the
20 politicians who are objecting to this plan at least
21 understand how elections work.

22 MR. SCHWARTZBERG: Your Honor, if the Debtors
23 wanted to establish that the creditors consent to the
24 releasing of claims, all they had to do was ask, but they
25 did not.

1 Your Honor, in conclusion, the Bankruptcy Code is
2 a carefully drafted, comprehensive statutory scheme that
3 strikes a balance between the rights and obligations of
4 debtors and creditors. But what the Debtors and the Sackler
5 family propose here turns that scheme on its head and
6 eviscerates both the statutory and constitutional
7 protections to which creditors are entitled. It creates a
8 bankruptcy-like option for the Sackler family without their
9 actually filing for bankruptcy and being subject to
10 obligations (indiscernible).

11 Neither the Bankruptcy Code nor the Constitution
12 allow this Court to approve a plan that cuts off the rights
13 of individuals (indiscernible) parties other than the
14 debtors, yet that is exactly what the Debtors ask this Court
15 to do.

16 Millions have already been victimized by the
17 opioid crisis that the Sackler family helped create. They
18 shouldn't be victimized a second time by having the claims
19 against them extinguished in the bankruptcy case against
20 those who are not debtors.

21 And so I (indiscernible) where I began. This plan
22 is indeed extraordinary, and it is extraordinary for all the
23 wrong reasons and confirmation should be denied. Thank you,
24 Your Honor.

25 THE COURT: Okay, thank you. Okay. I think --

1 Mr. Goldman, are you next?

2 MR. GOLDMAN: I believe I am, Your Honor.

3 THE COURT: Okay. For the State of Connecticut.

4 MR. GOLDMAN: Yes. Thank you, Your Honor. Irve
5 Goldman, Pullman & Comley, for the State of Connecticut and
6 also for -- we've agreed to coordinate our arguments and
7 I'll be presenting also for Delaware, Vermont, Oregon, Rhode
8 Island, District of Columbia, and Washington, to conserve
9 argument time.

10 THE COURT: Okay.

11 MR. GOLDMAN: And just also preliminarily, Your
12 Honor, Mr. Gold and I will be dividing up the arguments.
13 I'll be addressing for the most part subject matter
14 jurisdiction and certain other aspects of the third party
15 releases. And then Mr. Gold will be addressing Metromedia.

16 THE COURT: Okay.

17 MR. GOLDMAN: Okay. Thank you, Your Honor.

18 Before I proceed with my prepared remarks, if I
19 could just go over or respond to the points that were raised
20 by the plan proponents this morning and into the afternoon.

21 First, it's been suggested, although I'm not
22 entirely clear on this point, that 9019 would govern a
23 settlement of a creditor's direct non-state claims against
24 non-debtors, which are really not the property of the
25 Debtors to sell. I'm not aware of any authority that exists

1 for the proposition that a debtor or a trustee can attempt
2 to force a settlement of non-state claims held by creditors
3 based on the TMT standard that essentially says that if the
4 settlement does not fall below the lowest in the range of
5 reasonableness, it should be approved.

6 THE COURT: Yeah. I don't think that was Mr.
7 Huebner's intention. I think he was covering the 9019
8 Iridium TMT Trailer Ferry argument, the one that Mr. Gold is
9 going to cover.

10 MR. GOLDMAN: Okay. I just wanted to be sure.

11 THE COURT: Having said that, it's not a factor
12 that the courts in the Second Circuit regularly consider, at
13 least expressly as a factor when considering a release of a
14 third party claim. But in the Third Circuit, they do
15 discuss fairness or unfairness. They say that the third
16 party release should not be unfair. So I guess at least in
17 other jurisdictions, fairness does come in in some respects.
18 And it probably does indirectly in the Metromedia factors by
19 focusing on the consideration provided and who it goes to.

20 MR. GOLDMAN: Point well taken, Your Honor. So
21 I'll go to the next point that I wanted to respond to.

22 I don't believe anything said by Mr. Huebner
23 justifies overriding the sovereign judgements of nine states
24 and the District of Columbia, that their view of justice and
25 an acceptable resolution with the Sacklers given the amounts

1 that they propose to contribute requires a full airing of
2 their alleged culpability in the courts of the objecting
3 states.

4 The very concept of sovereignty requires that the
5 judgements of those states be respected and that they not be
6 forced to give up their property rights against non-debtors
7 by a majority or even a supermajority vote.

8 As Ms. Conroy, who others have invoked earlier,
9 had to acknowledge in her testimony, reasonable minds can
10 differ about the amounts the Sacklers should be contributing
11 in order to get a third-party release. And you have kind of
12 those minds in the he objecting states falling on the side
13 of inadequacy.

14 There was also a point that the current state of
15 affairs was portrayed as leaving a binary choice of taking a
16 stand or liquidating. However, there is a scenario in which
17 additional consideration could be provided in order to
18 achieve full consensus, but the parties have simply chosen
19 to draw the line here and attempt to force a resolution on
20 the objecting states.

21 There was another point made about --

22 THE COURT: Can I stop you -- can interrupt you on
23 that point?

24 MR. GOLDMAN: Certainly, Your Honor.

25 THE COURT: Let's assume for the moment that

1 Connecticut agreed -- let's assume for the moment that we
2 had a fourth mediation and the Sacklers agreed to contribute
3 another \$50 million like they did in the third mediation,
4 the one that Judge Chapman supervised. And Connecticut,
5 Washington, Oregon, they all went along with it except one
6 state. Or even just the City of Seattle. Do you say that
7 the whole thing should still be put aside for that
8 creditor's rights?

9 MR. GOLDMAN: Your Honor, that would be assuming
10 that with that one holdout the Sacklers would refuse to go
11 forward with the contribution?

12 THE COURT: Yeah. Let's just say one holdout just
13 decided that no amount of money was enough.

14 MR. GOLDMAN: Well, that is the difficult question
15 to be answered. I think to be principled about things, we
16 would have to respect the judgement of that one holdout.
17 And if we believed that truly it was an adequate settlement
18 ourselves, I think it would be up to us to prevail on that
19 one holdout, to see it our way. And that's the best way I
20 can answer Your Honor's question.

21 If I could move to my next point that I wanted to
22 respond to.

23 There was a reference to other claimants in our
24 state or maybe in the other objecting states to claimants
25 who may have voted in favor of the plan. And as Your Honor

1 brought out, there really is no evidence of that. But even
2 if they did, they're not elected officials of the objecting
3 states who are charged with protecting what they believe to
4 be in the public interest. So it really is a beside the
5 point type of observation that was made.

6 There was also an observation made that
7 municipalities overwhelmingly voted in favor of the plan,
8 and we acknowledge that. But again, just like the
9 individual claimant that might have voted in favor of the
10 plan, they have no authority to assert the (indiscernible)
11 claims on behalf of a state's citizenry, as the attorneys
12 general in the objecting states do.

13 THE COURT: Do you say that applies in all of the
14 objecting states?

15 MR. GOLDMAN: Your Honor --

16 THE COURT: Notwithstanding the home rule laws?

17 MR. GOLDMAN: Notwithstanding the home rule laws?

18 THE COURT: Yes.

19 MR. GOLDMAN: That I can't -- I'm honestly not
20 sure about home rule law, but I do know that one of the --
21 at least one of the cases was -- of the municipalities, I
22 believe it was the City of New Haven that was dismissed
23 because they didn't have standing to assert the type of
24 claims that the State of Connecticut AG has asserted.

25 And there was also a reference I believe by the

1 Unsecured Creditors' Committee that the state AGs have
2 reneged on the allocations formula. I don't believe that is
3 the case. That allocation formula was formulated and agreed
4 to on the premise that there would be a fully-consensual
5 settlement as part of a plan. And that obviously has not
6 occurred. So those are my points in response to the points
7 that were made this morning and this afternoon.

8 And if I can now turn to my formal part of my
9 argument.

10 It was observed by Circuit Judge Henry Friendly in
11 the pre-Code days that conduct of bankruptcy proceedings
12 should not only be right, but seem right. And it's our view
13 and the view of the other objecting state that the breadth
14 of the releases provided for the Sacklers given what we
15 believe they've done leading up to this bankruptcy. It does
16 not seem right to us, and we would contend is not right.
17 And that belief is based on the recognition that if the plan
18 is confirmed, they will have gotten every bit of protection
19 and more than they would have received in their own
20 bankruptcies and will be able to put a permanent halt to all
21 of these suits, which certainly have exposure. Yes, I
22 understand they submitted what they believe to be strong
23 defenses. But they will be wiped away without having to
24 undergo the rigors of their own personal bankruptcy, which I
25 think is a really important consideration for the Court to

1 take into account. And unlike individual debtors --

2 THE COURT: Can I interrupt you on that?

3 MR. GOLDMAN: Yes, Your Honor.

4 THE COURT: There's two parts to that. There's
5 the rigorous part and there's the personal bankruptcy part.
6 As far as the rigors, we'll come back to that. But if it's
7 putting them into or forcing them to go into personal
8 bankruptcy, if one would get less or recover less or
9 materially less in a personal bankruptcy scenario than the
10 states would be getting under the plan, that's really just a
11 punishment, right, at that point? That's what you're
12 talking about, as opposed to doing an analysis of recovery
13 under either scenario.

14 MR. GOLDMAN: Well, if you assume that you would
15 be getting less and --

16 THE COURT: Right.

17 MR. GOLDMAN: -- I'm not sure that --

18 THE COURT: We can explore that in a minute. But,
19 I mean, assume that for the moment.

20 MR. GOLDMAN: I think to a certain degree you can
21 view it as penal. But that is one of the purposes of the
22 consumer protection laws as well as providing a deterrent to
23 future wrongdoers that in essence sends a message that they
24 can't be bailed out by piggybacking on a corporate
25 bankruptcy to get a discharge. I mean, most individual --

1 THE COURT: But again, the -- to me -- and you
2 were quite candid about this, and I think I understand the
3 logic behind it. Reasonable minds may differ about the
4 amount and the other consideration to be paid. But it is
5 one thing to say I want punishment, it's another thing to
6 say we're not getting enough money. Those are two different
7 things. Right? I think.

8 MR. GOLDMAN: Well, I would -- I do understand.
9 And I think that I would say that if the amount of
10 compensation, so to speak, in the sense of cumulative
11 damages reaches an amount that the states can say -- all
12 states can say, you know, this is sufficient punishment, or
13 however you want to phrase it, and what we believe these
14 people caused, what we believe, then I don't see an issue
15 with the dichotomy that Your Honor proposed.

16 THE COURT: Okay. And can we focus on the rigor
17 part for a second?

18 MR. GOLDMAN: Absolutely.

19 THE COURT: I don't know whether Connecticut is a
20 party with the McKinsey lawsuit.

21 MR. GOLDMAN: I'm not a hundred percent sure. I
22 believe we are, but I'm not a hundred percent sure.

23 MR. HUEBNER: Okay. I mean, there was certainly,
24 I think you'd have to agree, much less rigor as far as the
25 disclosure regarding McKinsey and the claims against it and

1 its involvement and the rigor in this case with regard to
2 the discovery pertaining to various Sackler family members'
3 role in Purdue and their assets and liabilities. You would
4 agree with that, right?

5 MR. GOLDMAN: Well, not knowing what was provided
6 in McKinsey, I'm at a little bit of a disability to respond.

7 THE COURT: Okay. Well, as far as the discovery
8 taken of the Sacklers in this case, can you imagine that
9 there would be any other discovery taken if they filed
10 bankruptcy as far as their liabilities, their assets, and
11 claims against them?

12 MR. GOLDMAN: I'm not sure that I know what you're
13 getting at. There was extensive discovery. You know,
14 whether that should serve as a substitute for what one goes
15 through in the bankruptcy process, I would question.

16 THE COURT: Well, I mean, there are schedules that
17 you have to fill out. There are forms you have to fill out
18 in bankruptcy. They're not tens of millions of pages. And
19 the discovery and the disclosure with regard to assets that
20 you have a beneficial interest in are even less rigorous in
21 your own personal bankruptcy. Wouldn't the discovery just
22 repeat itself if various members of the Sackler family were
23 compelled to file bankruptcy that we've already had?

24 MR. GOLDMAN: Well, to the extent that Rule 2004
25 exams would be taken --

1 THE COURT: But wouldn't it just be updated? I
2 mean, that's all been done, right? And in fact, more than
3 done, because I insisted that it be broader than even normal
4 2004 discovery as a condition for the preliminary
5 injunction.

6 MR. GOLDMAN: Well, I understand what you're
7 saying, Your Honor. But it just seems to me that it's not
8 really a complete substitute for having to go through the
9 bankruptcy process oneself. You know, obviously there are
10 non-dischargeability concerns and deadlines. And all of
11 that could -- would likely be brought to bear on a
12 settlement that everyone would consider acceptable, the
13 prospect of that I would think would naturally bring parties
14 together. But since we don't have that dynamic, I could
15 understand why the parties here are pushing this when they
16 have a critical mass. So that's the best response I can
17 give.

18 THE COURT: Okay. That's a good response.

19 MR. GOLDMAN: So I think that was my last point.
20 And that was on to my argument as well.

21 THE COURT: Right.

22 MR. GOLDMAN: So the other point I was going to
23 make is that they are contributing an amount which in the
24 abstract could be considered substantial. But it's a
25 negotiated amount of their considerable wealth. And that

1 wealth was in substantial part obtained by the cash and non-
2 cash transfers that they acknowledge receiving over a 10 or
3 11-year period, \$11 billion, yes. \$4 billion of it was used
4 to pay taxes, but that's a benefit to them as well.

5 And it's apparent that those distributions were
6 made in response to concerns like those expressed by David
7 Sackler in an email to Richard Sackler dated May 17th, 2007
8 that, quote, "We will be sued", end quote. That is Exhibit
9 JX2237. And that family offshore trusts were set up to
10 protect the Sackler wealth from the claims they expected to
11 -- that would be asserted against them, as board member
12 Peter Boer advised Jonathan Sackler to do in his
13 confidential email, memorandum --

14 THE COURT: But, Mr. Goldman, those claims are
15 estate claims, right? That isn't a third-party claim.

16 MR. GOLDMAN: Absolutely agreed, Your Honor. I'm
17 just making the point that they set up this offshore trust
18 with the idea of protecting for claims they knew would be
19 coming in this confidential memorandum, which is JX --

20 THE COURT: But isn't this Mr. Gold's point?
21 Isn't this the Iridium analysis?

22 MR. GOLDMAN: Well, I'm at the point of the
23 argument where I'm just making our preliminary view of why
24 this does not seem right to us, the whole leadup to the --

25 THE COURT: Is the State of Connecticut prepared

1 to give back the \$285 million in taxes it received from this
2 company that was engaged in illegal practices? It got the
3 most other than the federal government by way of tax
4 payments.

5 MR. GOLDMAN: Well, there was income that was
6 derived on which taxes were owed. I don't know why we would
7 be giving it back. But I understand the point you're
8 making, that we benefitted also. But it pales in comparison
9 to what was taken out by the Sacklers, surely.

10 THE COURT: Although as far as the tax payments
11 are concerned, I do have an uncontroverted affidavit that
12 says that most of those payments, if they have not been --
13 if it had not been a partnership structure, would have been
14 paid by the Debtors directly. Right? They would have --
15 they relieved the Debtors of the tax obligation.

16 MR. GOLDMAN: Well, the fact is they set the
17 structure up this way, they took the money out, and they
18 owed the taxes. And they had Purdue pay the taxes on their
19 behalf. But I do understand Your Honor's point.

20 THE COURT: Okay.

21 MR. GOLDMAN: If I could just complete the memo
22 for the benefit of the Court for what it's worth. I was
23 going to give you the exhibit number. It was JX2241. And
24 Mr. Boer told Jonathan Sackler, quote, "For the family, it
25 may be that overseas assets with limited transparency and

1 jurisdictional shielding from U.S. judgments will be less
2 attractive to litigants than domestic assets." And that
3 suggestion proved to be prophetic, as the Debtors and the
4 Sacklers are now using the difficulty of collecting any
5 judgements against offshore trusts as one of the reasons why
6 the shareholder settlement agreement should be approved.

7 So under these circumstances, we do not believe
8 the non-consensual releases here seem right or are right --

9 THE COURT: But can you wish that away? Can you
10 wish those consequences away?

11 MR. GOLDMAN: The most we can do I think is doing
12 what we're doing, Your Honor. And that is to try to prevent
13 it from happening.

14 THE COURT: But, again, I think the avoidable
15 transfer issue really is an estate issue. In other words,
16 the Creditors' Committee and the Debtors and all the other
17 parties have their say. You all have your say, too. But
18 it's not a third-party release issue, it's an estate issue.
19 And one could certainly come to the conclusion that as far
20 as the avoidable transfers are concerned, the range of the
21 settlement is within what is reasonable given the risks on
22 the underlying liability and the risks of collection. I
23 mean, if you want to go to the Isle of Jersey and seek to
24 avoid the transfers under Jersey law and deal with
25 enforcement with the Viscount of Jersey, there are obviously

1 some issues involved with that.

2 MR. GOLDMAN: I acknowledge that, Your Honor.

3 THE COURT: Okay.

4 MR. GOLDMAN: I do acknowledge that. But I think
5 that what this goes to also, apart from the settlement, is
6 really to the fairness of the release itself. Because it
7 has to be put in context. You know, why are they getting
8 these releases when they are really just giving back a lot
9 of what was taken out over that period of time when they
10 knew that claims were coming. And so that's really -- I'm
11 not so much commenting on the Iridium settlement factors as
12 I am on how that really should bear on the permissibility of
13 the releases themselves, taking that -- in other words, you
14 would really take that into account as to how they got that
15 (indiscernible).

16 THE COURT: Well, that's a fair point. And I have
17 thought carefully and listened carefully and read the
18 evidence carefully to see how much of this \$4.325 billion
19 would be attributable to estate claims and how much would be
20 attributable arguably to non-estate claims. And no one has
21 really addressed that issue directly. I do have arguments,
22 and they're just arguments, because given that it is a
23 settlement, we didn't try the merits directly. But I have a
24 fair amount of facts and arguments that would lead one to
25 think, I believe, that the value here is not all on account

1 of the estate claims necessarily, that you can evaluate this
2 settlement as covering both. But no one particularly wants
3 to allocate the value to one or the other set of claims
4 because they're all quite aware of the possibility of a
5 default in the future where they want to litigate as hard as
6 they can.

7 But just the simple point as far as the non-estate
8 claims are concerned that only -- or I actually think less
9 than a handful of Sacklers served on the board. And I think
10 two or three were officers out of the entire family group.
11 So, you know, people refer to the Sacklers as a unit, but
12 they're actually -- the testimony shows 16, eight within
13 Side A and eight with Side B, sets of contributors, some of
14 whom I have to assume would have much stronger defenses to
15 these types of claims than others. So it's -- you know,
16 it's not an easy calculus.

17 MR. GOLDMAN: It is not, Your Honor. And I do not
18 --

19 THE COURT: I agree with you on one point. Given
20 the size of the claims here, which have not been liquidated,
21 but they are gigantic, one could always and fairly easily
22 say this is not enough, this \$4.325 billion isn't enough.
23 And at one level, that's clearly the case. Everyone should
24 get paid in full, right? On the other hand, we know, at
25 least on the personal injury side, that payments on these

1 types of claims historically are fairly low, unfortunately.
2 You know, the settlement that is in Ms. Conroy's declaration
3 where she says her firm pretty much had the people with the
4 best claims, who had prescriptions, et cetera, if you assume
5 a reasonable contingency fee, it's about \$13,500 per person
6 under that settlement. And I realize that was a while ago.
7 But it's hard to look someone in the eye and say that's
8 enough.

9 So at one level it would be quite easy for me to
10 say to the Sacklers it's not enough. On the other hand,
11 it's hard for me to say to Mr. Price and his committee you
12 have to take the risk that this all falls apart over -- and
13 it's never going to be enough, so it has to be some other
14 bid or ask, whether it's another \$50 million or another 25
15 or another \$100 million. And at some point, there's a big
16 risk.

17 And certainly AGs, who have been very aggressive
18 in pursuing the Sacklers, including the State of New York
19 and the State of Maryland -- I'm sorry, State of
20 Massachusetts, excuse me, reached their point where they
21 weren't willing to take any more risk of the whole thing
22 falling apart.

23 So I would love for the Sacklers to pay enough to
24 get your clients on board. I don't think that will happen
25 if we adopt a rule that says any one governmental entity can

1 kill the whole thing. So it's hard for me to see how you
2 reconcile that ultimately without leaving somebody at least
3 saying that they're not on board with the plan.

4 MR. GOLDMAN: All points well taken. I think
5 that, you know, it's a question of line drying as I tried to
6 get Mr. Weinberger to acknowledge he didn't quite do it.
7 But I think that it really is (indiscernible). And I think
8 that what happened here, or at least what I perceive to have
9 happened is there was a certain amount of fatigue that set
10 in. Some states just threw up their hands and maybe saw the
11 writing on the wall. But whatever it is, I do think that
12 this does come back to our sovereign right to make these
13 decisions for ourselves and not to be out voting and told to
14 give up claims that aren't held by the estate.

15 THE COURT: But there's no -- there's no case in a
16 bankruptcy context that holds that as far as states, right?

17 MR. GOLDMAN: Well, not that I could find, Your
18 Honor. But then again, there's nothing that goes the other
19 way either on this.

20 THE COURT: Well, there's plenty of caselaw that
21 says that police and regulatory monetary claims get
22 discharged in a bankruptcy case. Now, those are claims
23 against the debtor, I understand. But they don't -- those
24 cases don't distinguish between state claims and private
25 claims if it's to collect money, like Peabody Coal, for

1 example.

2 MR. GOLDMAN: Your Honor, I had cited in our
3 objection a line of cases holding that these type of claims,
4 consumer protection claims, claims brought under unfair and
5 deceptive acts and practices acts are non-dischargeable
6 under either Section 523(a)(7), again, I'm speaking now
7 individual case, or in the Section 523(a)(2)(A).

8 In my brief in the section of the plan -- or
9 argument that the plan usurped our rights to have those
10 declared non-dischargeable.

11 THE COURT: Right. But that's for individuals.
12 And if you're dealing with a Chapter 11 case, those wouldn't
13 be applying except by analogy. And again, I think the
14 circuit in the MacArthur case dealt with the 523 point.

15 MR. GOLDMAN: Well, I was directing it to the
16 Sacklers and the point that the effect of discharge that we
17 viewed they are getting by these releases really
18 circumvented those non-dischargeability provisions, if they
19 had --

20 THE COURT: I understand. I understand. But --
21 well, we're dealing with a concept that I guess when you're
22 talking about the payment of money under a plan has not been
23 directly addressed, but it's certainly been indirectly
24 addressed by the Courts.

25 MR. GOLDMAN: Can I flesh out for a moment what I

1 believe the response is to the MacArthur argument?

2 THE COURT: Sure, yeah.

3 MR. GOLDMAN: So I'm looking at the case. And it
4 says MacArthur argues that the injunctive orders constitute
5 a de facto discharge in bankruptcy of non-debtor parties as
6 not entitled to the protection of Chapter 11.

7 But that was directed to MacArthur, a corporation.
8 It didn't really deal with the issue that I'm raising. And
9 that is that the effect of discharge here in favor of the
10 Sacklers really does circumvent the non-dischargeability
11 provisions that would apply if they filed their own
12 bankruptcy. That was not a -- the comment that the Second
13 Circuit was addressing.

14 THE COURT: Except that you're not getting a
15 discharge under this plan. They're settling claims in
16 return for a release. And the MacArthur Manville case I
17 think went off on that ground, as do a lot of the other
18 cases. It's not the same thing as a discharge.

19 MR. GOLDMAN: It is not quite the same thing. But
20 for the clear majority of their debts and for the clear
21 majority of their current financial problems is solved by
22 this release, we'll call it, not a discharge.

23 THE COURT: That's fair.

24 MR. GOLDMAN: And so I think it's as close as the
25 discharges we're going to get, even though it's technically

1 not an actual discharge. I understand.

2 THE COURT: Right.

3 MR. GOLDMAN: But if I can turn now just to the
4 subject matter jurisdiction argument, which I think is
5 governed by Manville III cited in our papers, which was
6 decided three years after (indiscernible).

7 And in the context of striking down the third
8 party release there, the Second Circuit instructed us to
9 look to a state's laws to see whether the claims are
10 derivative of the Debtors or whether they are based on some
11 wrongdoing of the third party to independent legal duty.

12 And if we look to state law here, I don't think
13 there's any question that the Sacklers engaged, at least as
14 alleged, in independent wrongdoing of their own as opposed
15 to Purdue under state law.

16 The laws of some of the objecting states are
17 directly on point on this. For example, in Connecticut, an
18 individual can be liable for unfair deceptive acts of a
19 business entity if the individual either participated
20 directly in the entity's deceptive or unfair acts or had the
21 authority to control them. To the same effect is Maryland
22 law. As long as there is authority to control the acts,
23 they can be liable under unfair and deceptive practices
24 acts. To the same effect as Vermont law, where an
25 individual could be liable under their consumer protection

1 act if he or she directly participates in the acts or gives
2 direct aid to the corporate actor. And also too with
3 Washington's Consumer Protection Act, where they can be
4 liable for corporate wrongdoing if the individual
5 participates in the wrongful conduct or with knowledge
6 approves of it.

7 So all of those are independent legal duties that
8 run to the Sacklers and that would satisfy the Second
9 Circuit's testare of independent wrongdoing.

10 Now, I know that the Debtors have argued that the
11 indemnity obligations and the insurance policies are part of
12 the calculus here in determining whether there is
13 jurisdiction. And I acknowledge the conceivable effects
14 test, but maintain it is not so liberal a standard as to
15 preclude consideration of the likelihood or probability that
16 the indemnification claim will be upheld.

17 In the UBS case that the Debtor cited in their
18 brief, the Second Circuit holds that there must be a
19 reasonable legal basis for the claim of indemnity. And we
20 contend here that that just doesn't exist. And they cite
21 two sources for their obligation to indemnify the Sacklers,
22 the Purdue Pharma bylaws and Purdue Pharma's latest limited
23 partnership agreement, both of which require the indemnity
24 to act in good faith in order to ultimately be entitled to
25 indemnity.

1 But preliminary at least as to the limited
2 partnership agreement, the Debtors overlooked that it's an
3 executory contract that can be rejected along with the
4 indemnity obligation. Judge --

5 THE COURT: It still creates a claim.

6 MR. GOLDMAN: It does. It would create a
7 contingent claim of indemnity under the contract, no doubt.
8 But it would remove those obligations at least going forward
9 to indemnify. For example, for a defense clause. And there
10 are a couple of cases that do hold it executory. In re
11 Heafitz, 85 B.R. 274 (Bankr. S.D.N.Y. 1988) and the court in
12 Phar-Mor, Inc. v. Strouss Bldg. Associates, 204 B.R. 948
13 (N.D. Ohio 1997) strongly suggested it was executory.

14 But even if it was not rejected, the limited
15 partnership agreement, which is at JX0872, states that the
16 partnership shall not be obligated to indemnify the
17 indemnity to the extent a final decision by a court having
18 jurisdiction in the matter shall establish that the
19 indemnity did not act in good faith.

20 THE COURT: But again, in SPV OSUS v. UBS, the
21 putative claimant that gave the -- you know, it was third
22 party versus third party, the putative claimant that would
23 argue contribution claims was someone who was being sued
24 independently for having knowledge and participating in
25 Bernie Madoff's fraud, aiding and abetting BLMIS.

1 Nevertheless, notwithstanding all of that dirty linen, the
2 Circuit said that there was a basis for related to
3 jurisdiction.

4 MR. GOLDMAN: Acknowledged, but I'm not sure that
5 there was the level of dirty laundry presented to the court
6 there as we have here. You know, we have --

7 THE COURT: The fundamental point, which is
8 Manville II, 517 F.3d 52.

9 MR. GOLDMAN: Yes.

10 THE COURT: I mean, the case was vacated, right?

11 MR. GOLDMAN: Yes, it was.

12 THE COURT: And if the Circuit -- which, by the
13 way, was dealing with a plan that had already been
14 implemented, so it was actually accurate that these lawsuits
15 at this time against the insurers really didn't affect the
16 estate, because this was many years after the Manville Trust
17 or the Manville Plan went into effect.

18 But leave that -- leave both of those things
19 aside, that it was vacated and that under those facts, there
20 really was no effect on the estate because the plan was
21 already in place, I think over a decade, and the trust was -
22 - had already been paying out billions of dollars of claims,
23 in part from the insurance settlements. If the case really
24 does stand for the notion, which it says that only
25 derivative claims can be enjoined, it really stands for the

1 proposition that these injunctions really aren't including,
2 in Metromedia and Drexel and the like, are really not what
3 they purport to be. Because you don't need an injunction to
4 enjoin derivative claims because the Circuit law has been
5 clear since the '80s that derivative claims are property of
6 the estate.

7 MR. GOLDMAN: Well, I believe -- I believe in that
8 case they were asserting the derivative claims of Manville--
9 - well, actually, if we're going to take Manville III, the
10 claim against Travelers was -- were their own independent --

11 THE COURT: Right.

12 MR. GOLDMAN: -- wrongdoing --

13 THE COURT: Right.

14 MR. GOLDMAN: -- in failing to lead to the
15 attention, I mean, --

16 THE COURT: But --

17 MR. GOLDMAN: -- is dangerous.

18 THE COURT: -- but I think the point is that
19 Drexel and Metromedia say that under the unusual
20 circumstance where the injunction is necessary for the plan,
21 it's an integral part of the plan, it could be granted if
22 you meet other factors as well, including overwhelming
23 support for it.

24 The injunction at this point, according to the
25 Circuit in the subsequently vacated opinion, wasn't

1 necessary because the plan was already in effect and it was
2 operating. The plan wasn't going to be unwound. Using Mr.
3 Huebner's metaphor, there was no string to pull to unwind
4 the Plan. Travelers probably would have gotten the raw --
5 or whoever it was that was the settling insurer, would
6 probably have gotten a raw deal, but there was -- it was
7 after the fact.

8 MR. GOLDMAN: It was, indeed, after the fact, but
9 they certainly offset their reliance interest, having paid -
10 - I know it project -- it was upwards of \$100 million, maybe
11 not that much, into the plan. But --

12 THE COURT: Well, then I guess that was why --

13 MR. GOLDMAN: I --

14 THE COURT: -- they were -- they reversed, is that
15 Judge Lifland had found there was, in fact, jurisdiction,
16 and no one had challenged that, and therefore, it stood.

17 MR. GOLDMAN: It was, I thought, reversed on other
18 grounds by the Supreme Court.

19 THE COURT: Right. Which said that take -- it
20 takes no position on the jurisdictional issue in the
21 reversal at 557 U.S. 137.

22 MR. GOLDMAN: So, I suppose -- technically having
23 vacated, it may not have precedent, but --

24 THE COURT: Well, I guess --

25 MR. GOLDMAN: -- certainly --

1 THE COURT: -- you know, I looked at -- there were
2 very good lawyers involved in this case, obviously.

3 MR. GOLDMAN: True.

4 THE COURT: But they were not the lawyers who were
5 involved in the bankruptcy case. They were not the lawyers
6 who were telling Judge Lifland, the District Court, and the
7 Circuit Court, in Manville, this is absolutely essential to
8 get our Plan done. They were lawyers who were looking to
9 protect an insurance company after the fact.

10 And, by the way, in connection with a subsequent
11 settlement where notwithstanding their argument that the
12 order relieved them of liability, insurance companies agreed
13 to pay \$500 million more, so you could see why perhaps the
14 Circuit at that point thought that there something more to
15 squeeze here.

16 MR. GOLDMAN: It doesn't appear that way. But I
17 still think for purposes of analysis, it's still good law
18 for determining whether there is subject matter jurisdiction
19 for these type of released, irrespective of the fact that no
20 threat needed to be -- or was pulled --

21 THE COURT: Well, it's odd though because --

22 MR. GOLDMAN: -- to unravel the fabric.

23 THE COURT: -- they didn't say that they were
24 reversing their earlier case law.

25 But anyway, I -- look, there's only -- there's

1 only so much someone can say on these cases. And certainly,
2 the Osus case -- and it relies heavily on Celotex, of
3 course, the Supreme Court case, as far as with the breadth
4 of jurisdiction over third-party disputes.

5 MR. GOLDMAN: I would just make the point, Your
6 Honor, then in assessing the indemnity obligation, that you
7 do need to take into account to some degree the probability
8 that indemnity would be upheld. And I just think there is
9 just too much on the record here of findings that would --
10 will take it against a finding of good faith.

11 THE COURT: Well, I'm not, you know, again, the
12 record here is in the context of a request to approve a
13 settlement, not a trial on the merits. But having said
14 that, the settlement here is with the entire Sackler family,
15 some of whom, many of who -- I think the majority of whom
16 had no role with these Debtors other than being a
17 shareholder.

18 So, it's hard to, you know -- and as far as the
19 others, we heard from three different Board member -- four
20 different Board members, and two who were at some level,
21 executives. They're being sued, I think, those people, for
22 every claim throughout the relevant period, which I think is
23 after 2007. And it's fairly clear from the testimony that
24 while they may have been informed of marketing efforts, and
25 in fact, some of them may have been pushing for greater

1 sales, there is still a callable issue as to whether they're
2 liable for all of those claims.

3 MR. GOLDMAN: It didn't come as any surprise to me
4 that they were proclaiming their innocence, and --

5 THE COURT: I -- I understand -- I understand.
6 And I -- and one is skeptical, obviously, about this. I
7 didn't use the word "pushing" lightly. But, you know, it's
8 -- we certainly didn't have any Perry Mason moments, let's
9 put it that way.

10 MR. GOLDMAN: Well, acknowledge, Your Honor. But
11 I would say that the states were under a substantial
12 disability, having been had their actions stayed for the
13 entire duration of the case, and really being forced to try
14 -- not effectively try or -- the claims that were against
15 the Sackler on this expedited track.

16 THE COURT: Well, they had --

17 MR. GOLDMAN: So --

18 THE COURT: -- they had approximately 10 million
19 documents with a Creditors' Committee and an Ad Hoc group of
20 Non-Consenting States combing them for any signs of active
21 management.

22 If, for example, I was shown a document about one
23 ride with a salesperson, you would think that if that was
24 unearthed and there were more than the others would be too
25 in those 10-millions of documents.

1 So, I appreciate that, again, this was in the
2 context of a trial of the merits of a settlement instead of
3 the underlying issues and I have no brief for the Sacklers
4 nor do I believe any of the proponents of the Plan. But I
5 think even if one is to do some analysis of the validity of
6 an indemnification claim, it's hard to see that there
7 wouldn't be some effect, some conceivable effect on an asset
8 of the estate.

9 MR. GOLDMAN: I'm -- I would just make a point in
10 that regard, Your Honor, that it's hard to believe that
11 after being under investigation from the United States
12 Department of Justice since June of 2016, that the DOJ would
13 come up with a document like Addendum A to the Sackler
14 Settlement Agreement, which is the JX-2096. With the level
15 of detail that is in there implicating the named players,
16 after four years of investigation I think it's hard to
17 believe that they were not well supported and then weren't
18 proceeded by a thorough investigation.

19 THE COURT: Well, again --

20 MR. GOLDMAN: I'm saying, it's not --

21 THE COURT: -- I heard -- I heard the direct
22 examination on those documents, and I'll push back a little
23 bit in the level of detail. There are certainly a number of
24 allegations, but a lot is left for the imagination. And I'm
25 -- it is obviously very conceivable to me that there is

1 substantial potential liability here. I'm just -- I just,
2 on this record, it's hard to see that there's no conceivable
3 effect on the estate based on that potential.

4 MR. GOLDMAN: Well, I'll also add the point that -
5 - and this references the guilty plea in 2020, which covers
6 the conduct from -- Purdue's conduct from May 2007 to March
7 2017.

8 THE COURT: Right.

9 MR. GOLDMAN: Some rather serious allegations
10 there about ceasing detailing prescribers that they knew
11 were not prescribing correctly, and for medically and
12 necessary reasons, and the kickbacks in the Practice Fusion.

13 THE COURT: I agree.

14 MR. GOLDMAN: Right.

15 THE COURT: Although, I also note that there was -
16 - although there were four Sacklers examined, I don't think
17 any of them was asked about Practice Fusion. Maybe one was,
18 who said, I didn't -- I never heard of Practice Fusion. So,
19 look, I think -- I think we've probably said enough on this
20 one.

21 I want to be clear. I think there is substantial
22 risk that the Sacklers, or some of them, would be liable for
23 huge amounts of money, no question, both to the Debtors and
24 to third parties. The question is where you draw the line
25 given the risks on the other side of not just the merits,

1 but maybe even more importantly the effect on who gets what
2 under -- from them, the allocation issues, the abatement
3 issues that were discussed, and collectability.

4 MR. GOLDMAN: Your Honor, I don't mean to take
5 more than my allocated time. Can I --

6 THE COURT: That's fine. I --

7 MR. GOLDMAN: -- make a --

8 THE COURT: -- I'm prolonging it, so you're not to
9 blame.

10 MR. GOLDMAN: I just want to make a quick few
11 points about the Kirwan decision. And, you know, I --
12 what's notable about Manville III is that it did not hold as
13 did Kirwan. That's simply because it challenged third-party
14 release position as part of a confirmed plan. The
15 Bankruptcy Court therefore had core jurisdiction.

16 I think they were asserting related to
17 jurisdiction there, and if the fact that that particular
18 release was in the plan, you would think that if the
19 reasoning in Kirwan, is thought to be correct, they would
20 have just said, well, its core was in the plan. That's not
21 what Manville III held.

22 THE COURT: But no one argued that because it --
23 they weren't -- they weren't at confirmation. They were
24 after the fact. It was a bunch of insurance companies
25 fighting each other and a bunch of plaintiffs' lawyers. It

1 was not --

2 MR. GOLDMAN: But even so, after the fact, they
3 certainly could have argued there was core jurisdiction
4 because it was part of the Plan.

5 THE COURT: They didn't need to. They just needed
6 -- well, the whole thing was academic because they -- they
7 missed, because no one briefed it to them perhaps, that the
8 key point, which the Supreme Court picked up on, which is
9 the jurisdictional argument had decided 10 years before, or
10 20 years before by Judge Lifland's order.

11 MR. GOLDMAN: Well, I would just make the point
12 that the determination of whether something is core, really
13 should depend on whether it happens to be inserted in the
14 plan. It's just too convenient. And I understand that the
15 Kirwan decision's response to that is that it has to be
16 sufficiently related to the issues before the court, that's
17 what the response was to that --

18 THE COURT: Right.

19 MR. GOLDMAN: -- argument. But if that's the
20 case, every third-party release of an officer or director
21 could be found could be -- could be related to the issues --

22 THE COURT: Well, not necessarily. I mean, those
23 types of release may well be abused, no doubt. But I -- you
24 know, the Third Circuit dealt with this from Judge
25 Silverstein up to the other circuit in Millennium, same

1 point as CareOne.

2 MR. GOLDMAN: I understand and I still don't
3 disagree -- still don't agree with the decision --

4 THE COURT: Okay.

5 MR. GOLDMAN: -- as it's, you know, simply form
6 over substance really when they say, if it's put in a plan,
7 it must be poor, and the third-party releases really don't
8 address the merits of the claims, but effectively cancel
9 them in furtherance of the reorganization.

10 THE COURT: Except that --

11 MR. GOLDMAN: And whether the claims --

12 THE COURT: -- again, the Third Circuit standard
13 includes fairness and whether you agree with Judge Garrity's
14 interpretation of 1129(a)(7) as applied here in Dietech or
15 not, that is at least a fairness element, a fairness
16 analysis.

17 And again, you know, there is a difference if it's
18 in a plan. You have the voting. You see how people voted,
19 you see whether it's, you know, just barely accepted or
20 overwhelmingly accepted, you have it in the context of a
21 confirmation hearing with, in this case, six days of
22 evidence being presented and, you know, approximately --
23 well, a little under 40 witnesses. I mean, it's -- there is
24 -- there is -- I think there is a difference by doing it
25 through a plan, including the jurisdictional hook, which is

1 1123 and 1141.

2 This is not just a property of the estate issue.
3 You have -- you have Congress providing for -- the
4 proponents would argue, extraordinarily powerful tools in
5 the confirmation context in Sections 1123 and 1141, that 105
6 would be in assistance of.

7 MR. GOLDMAN: Well, the final point I'll make on
8 this, Your Honor, and I understand you may have a different
9 view on this. But, I mean, whether the claims are cancelled
10 as part of a plan or are adjudicated on the merits, the
11 result is the same from the perspective of the party who is
12 being forced to give up the release. They're claims are
13 gone, they can't prosecute them anymore, and their claims,
14 although they might be channeled into a trust, are severely
15 limited by what it is put into that pot. And the balance of
16 their claim is extinguished.

17 So, to me it is form over substance to join up a
18 dichotomy, but I understand the Third Circuit and Judge
19 McMahon see it differently.

20 THE COURT: Okay. And frankly, I think the
21 Circuit Courts generally see it differently. At this point,
22 at least in the Blixseth case, the Ninth Circuit has said
23 that some types of third-party claims could be eliminated
24 under a Plan. In Pacific Lumber, Judge Jones actually
25 seemed to say that perhaps in the mass tort context you

1 could do that, but not in this sort of general release of
2 the Os and Ds.

3 So, I think at this point, the only Circuit on
4 record, as opposed to several, like, the Seventh, Second,
5 Third, First, Sixth, Eighth, support third-party releases,
6 is the Tenth Circuit. But they haven't had a case since
7 1990 really on this point.

8 So, I -- look, this is the -- the cases, the
9 courts, the Circuit Courts, that say that these types of
10 releases are proper, and therefore, I think, supported
11 jurisdictionally, do so requiring the bankruptcy court to
12 take a very exacting hard look at all the facts and
13 circumstances. That's different than the normal settlement
14 where you take a look, and a good look if someone's
15 objecting, but not that type of level of inquiry.

16 But they do say that if it's within those
17 parameters, which of course, appellate courts are free to
18 say, well, no, it really didn't fit within those parameters,
19 but if it does fit within those parameters, that this is
20 authorized.

21 MR. GOLDMAN: With that, Your Honor, I'll just
22 make one final point in which I haven't addressed yet. And
23 that -- and that deals with what I view as preemption, and
24 relating to Section 1123, which states, notwithstanding any
25 --

1 THE COURT: Right.

2 MR. GOLDMAN: -- estate are, but the plan can
3 provide adequate means for its implementation, which the
4 Debtors would argue would include a third-party release.
5 But I think that what that does, is it effectively is
6 preempting the police power claims of the states that we're
7 arguing here for by, you know, effectively eliminating them.

8 And there is case law that I cited in our
9 objection, the PG&E case in the Ninth Circuit and -- as well
10 as the Urban Tanner decision in the First Circuit, that hold
11 basically that the -- a plan has no right to preempt these
12 type of police power claims.

13 THE COURT: No. Except in those cases, what the
14 plan was doing was not channeling a monetary claim to a
15 fund. What the plan in PG&E was doing was changing the
16 regulatory oversight of the debtor as far as the UC approval
17 of fundamental corporate changes. They're really a couple
18 different things. I mean, the Third Circuit's federal Mogul
19 case, I think is pretty impeccable in its analysis of 1123
20 and what can be done under it and what can't be done under.
21 And, of course, that didn't involve something exactly like
22 this either.

23 But clearly, the statute means something, and it's
24 hard to see the logic of applying PG&E to channeling money.
25 In fact, PG&E itself said, 1123 applies to only financial

1 matters. Well, I think nothing's really more financial than
2 wanting to get more than the agreed allocation for each
3 state; that's money.

4 MR. GOLDMAN: I had viewed that -- and I know what
5 Your Honor's referring to, the holding that it -- I had
6 viewed that to be directly to the notwithstanding state law,
7 applicable state law. I had viewed the court to meant that
8 the state law they were talking about, being notwithstanding
9 to, was financial related.

10 THE COURT: Well --

11 MR. GOLDMAN: So -- but that's the way I took --

12 THE COURT: -- to me, I mean, you don't -- you
13 don't need -- you know, that's too narrow a description
14 because then, you know, Ohio v. Kovacs doesn't matter.
15 Right? I mean, you -- the statute to say it, instead of the
16 fact that it's a discharge anyway. I mean, again, state law
17 claims for money are discharged in corporate bankruptcies.
18 So, I -- it has to -- it has to be broader than just getting
19 rid of a claim.

20 But that's just my take on it. There's no holding
21 exactly on point; I understand that.

22 MR. GOLDMAN: Okay. Well, with that, Your Honor,
23 I will yield to my colleague to finish up on the Metromedia
24 factors.

25 THE COURT: Okay.

1 MR. GOLDMAN: And thank you for your time, Your
2 Honor.

3 THE COURT: Well, on the -- on Iridium I thought,
4 but maybe not. Maybe I'm missing --

5 MR. GOLDMAN: Okay.

6 THE COURT: Anyway, Mr. Gold?

7 MR. GOLDMAN: Yes. Thanks, Your Honor.

8 THE COURT: Okay.

9 MR. GOLD: Thank you, Your Honor. Matthew Gold,
10 Kleinberg Kaplan Wolff & Cohen, representing the states of
11 Washington, Oregon, and the District of Columbia.

12 And I'll just say it again that we have
13 coordinated with the attorneys' generals' offices of
14 Connecticut, Delaware, Rhode Island, and Vermont in order to
15 provide a unified presentation to the Court.

16 The parties were concerned because of some
17 comments the Court had made in the context of joinders, that
18 somehow their cooperating with us could be held against
19 them. But -- and I am confident that that is not how the
20 Court sees it.

21 THE COURT: No. The only issue that I was
22 addressing is that if someone doesn't file their own
23 objection and just files a joinder, if the party to whose
24 objection they joined settles or withdraws their objection,
25 the joining party has nothing, and that's all, and nothing

1 more than that.

2 MR. GOLD: Thank you, Your Honor. And I guess I
3 should have started just to make sure that you can hear me
4 okay, and that I'm --

5 THE COURT: I can, but when you -- when you rock
6 back, I can't. So, if you could -- I hate to say it, if you
7 could stay at a rigid position, or at least closer to the
8 microphone, that would be good.

9 MR. GOLD: I will try to stay this way, Your
10 Honor. Thank you.

11 THE COURT: All right.

12 MR. GOLD: Okay. Your Honor, we urge you not to
13 make the historic mistake of confirming this Plan. The Plan
14 contains fatal flaws, will be reversed on appeal. The pain
15 for all the people who are hoping for benefits under the
16 Plan will be far, far worse if the Plan is confirmed and
17 then reversed.

18 This Plan is like a huge rocket ship. Many people
19 have worked long and hard to put it together, but it is
20 clear upon inspection that the engineer's plans contain
21 terrible flaws, in this case, the non-consensual third-party
22 releases in favor of the Sacklers, imposed upon sovereign
23 states.

24 The Debtors are saying, we worked so hard to put
25 this rocket ship together, so we can't stop now. We'll keep

1 our fingers crossed that nothing bad happens after liftoff.
2 But it clear that the wiser course of action is to keep the
3 rocket on the ground and work hard to correct the flaws now.
4 The parties need to focus on their joint goal of getting
5 help to victims, but without the mistaken premise that
6 sovereign states can be compelled to grant releases of
7 police power actions against the Sacklers and against their
8 will.

9 Now, Your Honor, I'm going to give you a brief
10 road map into what our argument is going to be about. We
11 have preserved in our papers for appeal the argument that
12 Metromedia was wrongly decided, and the United States
13 Trustee discussed that. But we will not repeat that for
14 Your Honor. We understand that Your Honor was bound by
15 Metromedia.

16 The focus of our argument today is that the
17 proposed injunction, non-consensual third-party release are
18 improper under Metromedia. The impropriety is based both on
19 the nature of what is being enjoined, states exercising
20 police powers, which I will address briefly -- shortly, and
21 the beneficiaries of the injunction, the Sackler family, the
22 legal standards we think are relatively -- should be
23 uncontroverted here.

24 Metromedia states that it is ultimately a matter
25 of facts and circumstances, as the Debtors themselves

1 pointed out. But in addition, it is an elementary and
2 ancient element of our laws that equitable relief, including
3 the injunctions that are contained in the Plan, do not go to
4 those who have unclean hands. The clean hands doctrine
5 involves bad acts by the beneficiaries of the proposed
6 injunction that relate to the relief sought, and that is
7 exactly what our evidence does. It shows bad acts by the
8 Sacklers that relate to the injunction being sought.

9 Now, one other housekeeping matter I need to clear
10 up, Your Honor. It's not clear to me exactly why anyone had
11 the impression, except for the way that the Debtors
12 structured their chart, and I would be addressing Rule
13 9019/TMT Trailer/Iridium.

14 First of all, as Your Honor pointed out, the
15 standards under Rule 9019 and the standards for non-
16 consensual third-party releases are very different things.
17 Rule 9019 covers settlements of estate causes of action. It
18 has nothing to do with non-consensual third-party releases.
19 Whether the Estate has satisfied its burden under Rule 9019,
20 Iridium or TMT Trailer is irrelevant to direct claims of
21 third-parties against non-Debtors.

22 In any event, we have nothing to add to what was
23 in our papers regarding Rule 9019, Iridium or TMT Trailer
24 with respect to the settlement of the Estate causes of
25 action and I will be focusing my argument with respect to

1 non-consensual third-party releases and Metromedia.

2 I will -- I think it is important to note about
3 Metromedia that like all the decisions, it stuck to the
4 facts in the case. The Debtors are trying to read into the
5 case more than that. The main takeaway of the case is that
6 releases are subject to abuse and should be used rarely.
7 That holding is being mocked by the reported use here.

8 I will also note that the decision surveyed
9 earlier decisions dealing with the topic and that is why,
10 because no earlier decisions dealt with the circumstances
11 here, that there's nothing in Metromedia that deals with our
12 particular circumstances.

13 The Debtors have made the astonishing argument
14 that the central holding in Metromedia is that releases are
15 appropriate as long as they are important to the Debtor's
16 restructuring. I submit that the Debtors got it backwards.
17 Metromedia held that releases are inappropriate unless they
18 are important to the Debtor's restructure. In other words,
19 importance to restructuring is necessary but not sufficient.

20 Debtors also argue that payments to be made by the
21 Sacklers are substantial. Their argument is basically, it's
22 billions of dollars. Of course it is substantial, but it is
23 easy to lose sight of the fact that claims in this case are
24 in the trillions of dollars. In other words, the Debtors,
25 under the stewardship of the Sacklers caused trillions of

1 dollars of harm to the people of the states of the United
2 States. As a result, the Sacklers are facing exposure to
3 those states that measures in the trillions of dollars.
4 Getting rid of trillions of dollars of exposure through the
5 payment of a billion dollars is a pretty sweet deal.

6 In short, there are a lot of cases --

7 THE COURT: Can we explore that?

8 MR. GOLD: Certainly, Your Honor.

9 THE COURT: That sounds like you're accepting that
10 they would be liable for the trillions of dollars and that
11 more than, or materially more than the settlement sum would
12 be collected. What is your basis for saying that?

13 MR. GOLD: Your Honor, I am not accepting that. I
14 carefully used the word "exposure" --

15 THE COURT: Okay.

16 MR. GOLD: -- because there is the potential for
17 that. We have not asked this Court -- I think all the
18 parties have agreed that it is not for this Court to
19 actually make findings regarding the exact merits of such
20 actions and --

21 THE COURT: But I'm supposed to consider the risks
22 and the rewards of both alternatives: the alternative of the
23 plan versus the alternative where I deny confirmation of the
24 plan.

25 MR. GOLD: Well, Your Honor, your -- I think that

1 is taken into account in our argument. I'm not sure exactly
2 what you're asking me here.

3 THE COURT: I think, again, if you're going to get
4 to that, fine. But I just don't accept the premise that
5 because they face substantial exposure, they're not paying
6 enough.

7 MR. GOLD: Well, no, that's not the argument that
8 I'm making, Your Honor. I'm simply marking the argument
9 that it's a very good deal from their perspective. And that
10 the --

11 THE COURT: That's the same point. Not paying
12 enough means it's a good deal. It's the same point.

13 MR. GOLD: That could be. I'm simply comparing
14 the relative sizes of the two, Your Honor. But the Debtors
15 have certainly not shown any case where a payment that was
16 so trifling in connection with the claims in the case was
17 deemed substantial.

18 Debtors also argue that we are --

19 THE COURT: But, again, trifling -- you can define
20 trifling in a couple of different ways, but ultimately, it
21 would seem to me that trifling means, if it really is
22 trifling, that it is not sufficient in terms of the actual
23 legal risk faced by both sides.

24 MR. GOLD: Well, first, Your Honor, we do not
25 believe that it is for this Court to make an evaluation of

1 the risks faced by the sovereign states in determining
2 whether or not to accept a settlement or to prosecute claims
3 against the Sacklers.

4 THE COURT: But you were just telling me under
5 Metromedia this is insufficient. So how am I supposed to
6 determine sufficiency unless I do that?

7 MR. GOLD: What I am saying --

8 THE COURT: There are 38 sovereign states that say
9 it is sufficient. So I think I need to ultimately make that
10 determination as to whether they're right or you're right if
11 I'm going to be applying the Metromedia factors. I
12 understood Mr. Goldman that I shouldn't even get there. I
13 got that point. But now we're at applying the factors and
14 one of them is a materially sufficient contribution. So
15 don't I have to inquire as to whether it's sufficient or not
16 and just the fact that a state says it isn't shouldn't, end
17 the day there if I'm applying the Metromedia Factors? And
18 logically, because 38 states and thousands of governmental
19 entities say it is sufficient.

20 MR. GOLD: Your Honor, I think we're talking about
21 two different things here.

22 THE COURT: Okay.

23 MR. GOLD: The fact that -- we do not dispute that
24 reasonable minds can differ about whether or not the deal
25 that is proposed by the Debtors can be accepted or not be

1 accepted and the fact that 38 states have decided that they
2 wish to take this deal does not, in our view, mean that the
3 Court can determine that they are being more reasonable than
4 states that are not and therefore, their view should be
5 imposed on them.

6 However, with respect to the substantiality prong,
7 if you will, under Metromedia, we think that that can be
8 measured in a couple different ways. What I was addressing
9 right here was the matter which I think is fairly undisputed
10 before the Court of comparing the amount of money that is
11 being paid with the amounts of claims in the case. The
12 amount of money that's being paid here is a tenth of a cent
13 on payments to Unsecured Creditors in this case. And what I
14 am simply saying is that none of the cases involving an
15 application of the substantiality decision under Metromedia
16 or otherwise have found that a payment was substantial when
17 it was such a tiny percentage of the amounts of claims in
18 the case.

19 THE COURT: Do you have any cases that talk about
20 a percentage? I know that there is language in Metromedia
21 and in other cases that talk about paying all or
22 substantially all of the claims. I'm aware of that
23 language, but I'm also aware of decisions that support a
24 payment and injunction where there is a substantial payment
25 or contribution of consideration. So I'm not aware of --

1 other than that language that I alluded to -- there being
2 any analysis of a percentage versus the claims.

3 MR. GOLD: Your Honor, I agree with what you have
4 stated. Some cases, yes, have talked about substantial
5 payment of claims, which is certainly not the case there.
6 And other cases, although they did not expressly go through
7 that analysis, we tried to look at what was happening in
8 those cases and we have not found a single case where there
9 was such a disparity between the return to Creditors and the
10 amounts being paid.

11 THE COURT: Nor I expect have you found an amount
12 as large as 4.325 billion dollars either.

13 MR. GOLD: But also not any case where the number
14 of claims were in the trillions, Your Honor. We believe
15 those two are inextricably linked.

16 THE COURT: Well, not necessarily.

17 MR. GOLD: Okay. Well, that is at least our
18 argument, Your Honor.

19 THE COURT: Okay.

20 MR. GOLD: The Debtors argue that we are inventing
21 a police powers exception to non-consensual third-party
22 release juris prudence. It is not entirely a blank slate.

23 First of all, we are not arguing for an exception
24 to Metromedia or carve out from Metromedia. We are
25 suggesting that Metromedia properly applied would result in

1 no third-party releases being imposed on sovereign states,
2 not that it's an exception to the case.

3 But we also note that there are strong hints, if
4 you will, from related context regarding the importance of
5 claims asserted by governmental entities.

6 THE COURT: Can I -- I think I'm going to do this
7 and I apologize, but your colleague, Mr. Goldman, really did
8 cover it. We spent a good 45 minutes on this police power
9 argument. You've also briefed it. I just don't know if it
10 really makes sense to spend more time on it.

11 MR. GOLD: Well, Your Honor, I will try to make
12 just a few brief points then even though -- I apologize if I
13 am running over on what Mr. Goldman said.

14 THE COURT: Okay.

15 MR. GOLD: I will first note that Mr. Kaminetzky
16 tried to distinguish the First Alliance case -- I don't
17 believe Mr. Goldman addressed that -- because the
18 governmental entities would not enforce judgments against
19 the Debtors. That is not the issue here. Here we are
20 talking proceeding against non-Debtors.

21 I will also note caselaw in the Southern District
22 in Ion Media, 419 Bankruptcy Reporter 585, the court
23 approved third-party releases after governmental claims have
24 been carved out. And I will also state that the Debtor has
25 argued that, in connection with this, that we are trying to

1 create an exception here, we would just note -- and I don't
2 think that I need to cite them -- that there several
3 provisions in the Bankruptcy Code as we've noted the rule
4 statute, the automatic stay provision, that creates special
5 rules protecting claims asserted by governmental entities.

6 But the circumstances though --

7 THE COURT: Actually, those rules don't protect
8 against the constraints on paying those claims.

9 MR. GOLD: All I'm saying, Your Honor, is they
10 demonstrate that Congress had in mind that claims and police
11 power actions could be treated differently from other claims
12 in areas where Congress had specifically provided a power in
13 the first place. Where Congress provided that there was an
14 automatic stay, they provided that there would be exceptions
15 for police power actions. Where Congress provided a removal
16 statute -- excuse me, Your Honor.

17 THE COURT: Yes, they did it specifically and
18 narrowly the way they actually laid it out.

19 MR. GOLD: But only in connection with the power
20 that they had first granted. Likewise with removal. They
21 had a removal power. They provided an exception. Congress
22 has not provided for non-consensual third-party releases and
23 so it has not had an opportunity to carve out an exception
24 that demonstrates the special treatment that such claims
25 should be afforded.

1 THE COURT: Well, they've certainly known about it
2 since the enactment of 524(g).

3 MR. GOLD: They've known about it but they've not
4 added an expressed provision that provides any breadth to
5 it, so we are left with a statutory void.

6 THE COURT: They actually did acknowledge the
7 validity of the pre-524(g) injunctions and then Legislature
8 said this should be worked out in the caselaw, which has
9 happened. If they want to act, they will act in the future
10 which is before Congress this very day so I'm not sure how
11 much one can take away from their lack of acting other than
12 that they've been aware of these issues for decades.

13 MR. GOLD: I agree with Your Honor and clearly, we
14 are not dealing here with previous injunctions of the sort
15 that are referred to in 524(h). I simply note that Congress
16 should not be faulted for not crafting an exception to a
17 rule that they have yet to legislate on specifically.

18 Now the Debtors also argue that this case is not
19 about police powers, but instead about money and point out
20 that criminal conduct is being carved out of the releases
21 that are being granted. With all respect, this shows a
22 fundamental misunderstanding of police powers.

23 Police powers go well beyond the criminal law and
24 the carve out of criminal violations, though laudable, is
25 completely inadequate. The Estate claims that we are

1 addressing here are brought in the State's parens patriae
2 capacity. Now I want to briefly address parens patriae.

3 THE COURT: I'm sorry. You guys have done this in
4 your briefs. I think you should tell me why this isn't
5 about money and leave it at that. Isn't that all this is
6 about?

7 MR. GOLD: That's why --

8 THE COURT: I mean the point that I think both you
9 and either Mr. Goldman or Mr. O'Neill made is if there'd be
10 a little more money, we might be on board, or a lot more
11 money. There's no injunctive relief that you're seeking
12 here. The allocation has been agreed. In fact, Mr. O'Neill
13 touted it as the best thing since sliced bread, almost a
14 miracle. So we're just talking about money.

15 MR. GOLD: With respect, Your Honor, we are not
16 talking about money until the State agrees to take money.
17 We are talking about a regulatory -- and if the State
18 Attorney General decides --

19 THE COURT: What other relief would be sought? If
20 the plan were confirmed and your clients were carved out,
21 what other relief would be sought other than money?

22 MR. GOLD: Your Honor, our clients are very
23 concerned about the public perception and the precedent that
24 this case sets. They are very concerned that this case
25 establishes the situation which I could call the perfect

1 crime. Now I have to backtrack because I'm not literally
2 talking about accusations of criminal wrongdoing against the
3 Sacklers. That's just the phrase that describes what I'm
4 thinking of.

5 What I'm talking about here is the situation where
6 a family in control of a company that is, itself, admittedly
7 engaged in criminal activity, takes the proceeds of that
8 activity, then dangles those proceeds in order to obtain a
9 full release from the consequences of that action or maybe
10 not a full release, maybe just a very, very huge release.
11 The point is that our clients are very concerned about that
12 precedent that is being set and recognize that the actions
13 that are being brought here have a -- the actions that are
14 being not brought here, the actions that are proposed to be
15 stopped in part have the effect of disincentivizing
16 wrongdoing on this scale. And by --

17 THE COURT: So, how do they make -- I've already
18 asked Mr. Goldman. They're going to keep the tax money
19 though, right?

20 MR. GOLD: Your Honor, honestly, I -- if a request
21 is made for tax money to be returned -- this is a context
22 that I'm not particularly -- that I don't think has been
23 addressed in any caselaw in this context and is honestly an
24 issue that has yet to be addressed, but I've heard of a case
25 that faulted a state for accepting tax money under what, at

1 the time, it thought was a legitimate tax payment.

2 THE COURT: And Connecticut is not going to see
3 the return of charitable contributions to various colleges
4 in Connecticut and other charities? And let's just move to
5 a different topic than that, which is -- does this mean that
6 the State of Connecticut won't, in the future, settle with
7 the McKinsey's and J&Js of the world?

8 MR. GOLD: Your Honor, just to be clear, I
9 represent the State of Washington, not the State of
10 Connecticut.

11 THE COURT: Okay. The State of Washington won't
12 settle with the J&Js and McKinsey's of the world?

13 MR. GOLD: They may, Your Honor, and, in fact,
14 they have reached a settlement with the McKinsey's, but that
15 was their choice to do so. We maintain that there is a huge
16 and significant difference for the State of Washington to
17 reach a settlement that is its choice or to have this Court
18 tell the State that that is the choice it has make.

19 THE COURT: All right, but that's really what it
20 comes down to, right? That's really, ultimately, all of
21 this police power argument in this context boils down to,
22 which is the states that are objecting want to have the
23 ability to decide whether the settlement money should be
24 paid or not, right? And I guess what you're telling me is
25 one of two things: either there is no amount of money that

1 would be sufficient or there just hasn't been enough so far.
2 One of those two.

3 MR. GOLD: Your Honor, I am not telling you either
4 of those. I am just telling you that the Attorney General
5 of the State of Washington and likely the other Attorneys
6 General who are part of the Objecting States, have weighed
7 the package. It's a complex package. It has what I'll call
8 apples and oranges because there's several different
9 components to it. Money is a part of it. Money is not the
10 only part of it. And they have weighed those in determining
11 whether or not the settlement has the right elements in
12 that. THE COURT: Well, I --

13 MR. GOLD: Even if the settlement is brought
14 forward here --

15 THE COURT: -- haven't heard anything other than
16 -- I'm sorry, Mr. Gold. I haven't heard anything other than
17 their dissatisfaction with the money. I don't -- I haven't
18 heard anything else about the plan being objectionable.

19 MR. GOLD: Your Honor, honestly, to begin with, I
20 think properly so that Your Honor has not been privy to all
21 of the discussions that have gone on --

22 THE COURT: I know, but --

23 MR. GOLD: -- in mediation --

24 THE COURT: -- as far as the --

25 MR. GOLD: -- that discuss the --

1 THE COURT: -- settlement is concerned, I haven't
2 heard any aspect. I mean, a major part of the planned
3 proponent support for this settlement is based upon their
4 argument that it is not just one settlement, but it's an
5 integrated multi-settlement settlement, and you can't pull
6 out the Sackler piece without destroying the rest of it.
7 And if there's something about the Sackler piece beyond the
8 amount of money being paid that is affecting the objecting
9 states' determination, I should know about it because so far
10 I'm thinking that this is just about money. Now, money's
11 important.

12 MR. GOLD: Your Honor, I --

13 THE COURT: Believe me, and I --

14 MR. GOLD: -- I think that --

15 THE COURT: -- understand your argument about each
16 state and each municipality should have the right to say I'd
17 need to be carved out. And I understand that issue. We
18 don't need to cover it anymore, but if there is something
19 other than money here that the settlement is deficient on, I
20 should know about it.

21 MR. GOLD: Well, Your Honor, I think that the
22 answer to that question I can start with a few easy items.
23 For one thing, as you've heard repeatedly, the settlement
24 also contains provisions carefully negotiated regarding
25 making public certain documents and not other documents in a

1 document repository.

2 THE COURT: Oh, so, okay. We don't have any --

3 MR. GOLD: And --

4 THE COURT: -- document repository at all, and
5 we'll waive the attorney-client privilege. We'll have the
6 Sacklers waive the attorney-client privilege, which I'm sure
7 the AGs would like to have established as a precedent for
8 their privilege in the future.

9 MR. GOLD: Your Honor, we ask the --

10 THE COURT: Let's be realistic, Mr. Gold (sic),
11 all right?

12 MR. GOLD: Yes.

13 THE COURT: So I guess what you're saying is you
14 want to have a trial without a document depository, right?
15 Or repository. You want to have a --

16 MR. GOLD: Your Honor --

17 THE COURT: -- full trial on the merits.

18 MR. GOLD: I -- I've not said that, Your Honor.

19 THE COURT: Okay.

20 MR. GOLD: I will try to restate what I am saying
21 here.

22 THE COURT: All right.

23 MR. GOLD: First of all, I just -- let me mention
24 by comparison. Mr. Huebner and I -- this may seem slightly
25 roundabout, but I am honestly answering Your Honor's

1 question. Mr. Huebner put up a very fine chart during his
2 presentation earlier where he showed a whole bunch of other
3 cases that -- dealing with opioid liability. And his point
4 was that, in those cases, there were complete releases that
5 were granted of the scope like what was being done here.

6 But he left out the most compelling parts of his
7 chart. First of all, in those cases, there were no non-
8 consensual third-party releases imposed. The cases got
9 resolved without having to have non-consensual third-party
10 releases. And those cases did not devolve into the
11 dystopian Hobbesian nightmare that the Debtor sketched out
12 as the only alternative to the plan.

13 In fact, I would submit that they demonstrate the
14 exact opposite, that the States Attorneys General are not
15 wild, crazy actors, but extremely responsible public
16 servants who, while trying to obtain justice and payments
17 for their states, are mindful of trying to avoid chaotic
18 situations and are very capable of negotiating with each
19 other to keep things from devolving into chaos.

20 We submit that if this case does not proceed from
21 the mistaken premise that non-consensual third party
22 releases could be imposed on the states that it is likely
23 that responsible heads would come up with a solution that
24 protected the public interest and achieved some kind of
25 justice. Exactly what that would be would have to be

1 thrashed out.

2 But the experience in these other cases suggests
3 that the dismissive comments posed to Washington to say that
4 you just want chaos, you just want to sue, you want
5 everything to go away is far from the truth in that while
6 what happens in one case doesn't necessarily prove what's
7 happening in another case, it certainly gives strong reason
8 to believe that cooler heads will prevail and that the
9 parties, once they understand what the bounds of their
10 jurisdiction and what they can get are, can reach a
11 resolution.

12 Very compelling evidence was presented in the case
13 by the Sacklers about how much they want the resolution,
14 about how important it is that they have a resolution, that
15 they need and want global finality. And they are, in fact,
16 paying \$4.25 billion, albeit over ten years, in order to
17 obtain that, which suggests that they -- that that is
18 important to them too. So we submit that it is -- even
19 though no one can make predictions, especially about the
20 future, the -- that the likelihood here is that there are
21 plenty of different possible outcomes, and that it is a
22 mistake to assume that, while chaos would come from having
23 parties be able to negotiate from the premise that it is up
24 to them when to grant a release rather than up to the Court
25 through bankruptcy power.

1 THE COURT: Okay. Now, I did direct a second
2 mediation on this issue, and I think the Sacklers, because I
3 know they're well-represented, would've understood that that
4 was a pretty good indication. I didn't believe that they
5 had dug deep enough. Are you saying I should just deny
6 confirmation and just trust that, as these cases proceeded,
7 there would be some organization, including as to reviving
8 all of the allocation provisions in the plan as between
9 private and public, and within the public, and as far as
10 abatement is concerned? Or are you saying something else?

11 MR. GOLD: Well, Your Honor, I'm saying something
12 close to that, but not exactly that. I am saying, first of
13 all, this would be far from the first case where the parties
14 have come together to try to propose a plan have learned
15 that there was some problem or legal problem with the plan,
16 had been sent back to the drawing board by the Court because
17 they have to work out that problem. And then after a period
18 of time, negotiations produced a new plan.

19 And the -- and you scarcely need me to list the
20 various tools that judges use in order to reach that point
21 between mediations, consideration about whether the
22 effective theory, whether other plans could be permitted to
23 be filed, and so forth. I'm just saying that we've seen
24 this process in many cases, and that there is ample scope if
25 the parties are proceeding under a realistic assessment of

1 what they can achieve, that they will be able to reach a
2 resolution.

3 Just by way of an example because it came up in
4 our testimony, the Sacklers understood, the Debtors
5 understood that the reach of this Court did not encompass
6 the claims of certain Canadian creditors. They understood
7 based on that premise that they were going to have to allow
8 the liability and exposure to stay on one side and to
9 address what was left. And in all these other cases that
10 are not Perdue, resolutions have been reached where parties
11 have negotiated around the problem that they can't compel
12 all of the states to reach a resolution. We just submit
13 that that would likely be here. And it's a shame we agree
14 --

15 THE COURT: Look, your group --

16 MR. GOLD: -- that this case has reached this
17 point.

18 THE COURT: -- can't even agree on how to submit
19 evidence, right? You had your client's and you had
20 Maryland. What assurance would I have that the extra time
21 spent here would actually achieve anything given the
22 theories that you are ultimately relying upon, and the
23 apparent inability of your group to act as a unit?

24 MR. GOLD: Your Honor, I will not contest Your
25 Honor's observation that sometimes dealing with this group

1 resembles the Seamus herding of cats. What I will say,
2 though, is that this is far from the only situation that
3 that has occurred. And again, I simply culled out the facts
4 of so many things that the states have managed to agree on.
5 They've managed to agree on allocations amongst themselves.
6 They've managed to agree on many issues.

7 They have not been able as of yet to reach
8 agreements under all issues. And that can be frustrating, I
9 understand, but that does -- the fact that it may be
10 painstaking and frustrating does not create a standard under
11 Metro Media where the Court can grant releases of non -- of
12 state claims that it wouldn't otherwise have.

13 THE COURT: Well, I don't know. When I've already
14 had two mediations by two of the best mediators in the world
15 on this issue?

16 MR. GOLD: And Your Honor, progress has been made.
17 The -- I would submit that part of the problem with the
18 mediation process so far is that the parties were proceeding
19 under the premise that they would be able to get -- if this
20 Court would rule that under Metro Media and otherwise that
21 non-consensual third-party releases could be imposed on the
22 states.

23 If the parties had an indication that that was not
24 the case, I think you would see a lot of movement in the
25 litigation because the parties have to reassess. This is

1 true of all mediations. Parties make their assessment based
2 on where they think the law is going to go. So that has
3 affected what -- how these mediations have gone.

4 THE COURT: I'm sorry. I have not talked to Judge
5 Chapman about her mediation, but we view these issues, I am
6 sure, very much the same because we're guided by precedent.
7 So what you're asking would actually artificially tilt the
8 playing field. But maybe we should move on. I think I did
9 have an answer to my question.

10 MR. GOLD: Okay. The -- thank you, Your Honor. I
11 will ask your indulgence for 30 seconds to address *parens*
12 *patriae* because I don't believe Mr. Goldman addressed this
13 point specifically. But because -- and I don't believe it's
14 been properly explained in the Debtor's response. I believe
15 it evidences a confusion regarding its significance here.

16 The -- I will just say that -- it's an odd Latin
17 phrase that I'm probably mispronouncing. It's been
18 mentioned in the briefs, but they show so little
19 understanding of the concept that the Debtor's simply argue
20 -- excuse me, but this is not a *parens patriae* case.
21 Nothing could be further from the truth. My definition of
22 *parens patriae* is democracy. Or to take Abraham Lincoln's
23 definition, government of the people, for the people, by the
24 people.

25 The attorneys general are elected officials. That

1 is government by the people. Parens patriae is nothing less
2 than government for the people the principle that the state
3 has the right and the obligation to protect its people from
4 harm. And as exercised by the people's elected officials so
5 that the people can judge them. The Creditors Committee is
6 constituted to look at the financial interests of creditors.
7 It is not looking at protecting the people of the states
8 from harm. The Debtor's Special Committee is not looking at
9 that. The Debtors are not looking at that, and we --

10 THE COURT: All right. But Mr. Gold --

11 MR. GOLD: -- submit that --

12 THE COURT: -- we've already covered this. The
13 way the states are protecting people from harm here is by
14 asking for more money. It's not to stop someone or make
15 someone build a better fence. It's not to stop someone from
16 polluting. It's to get more money. So it is financial. So
17 let's move on. I understand parens patriae very well.

18 MR. GOLD: Thank you, Your Honor. The -- I will
19 -- there's been a lot of discussion about how difficult a
20 case this is, and that's been mentioned by many parties. I
21 just want to again say that the attorneys general, including
22 Attorney General Ferguson of Washington -- I've been
23 grappling with this process for a long time, and I hope that
24 the parties grant him the respect of recognizing that the
25 actions of him and the other attorneys general are based on

1 a full and serious grappling of what they consider to be the
2 proper response to this.

3 And again, which we say, buck stops with the
4 attorneys general, not with these other parties. Mr.
5 Huebner revealed what I consider to be a shocking ignorance
6 of how our country is organized. The municipalities are
7 subsets of the state, but more to the point, Mr. Huebner and
8 Mr. Price had the audacity to ask in argument who supports
9 the attorneys general.

10 My answer is very simple. Attorney General
11 Ferguson of Washington received 2,226,418 votes in his last
12 election. That's who supports Attorney General Ferguson,
13 and he will have to face the voters again who can weigh in
14 on whether he has made the proper choice in connection with
15 these releases. And we again submit that's an issue for him
16 and the voters, and not for this Court.

17 The Debtors argue that giving the Sacklers non-
18 consensual third-party releases produces the best result for
19 creditors. Now, that's a value judgment that weighs the
20 dollars brought in this case. It ignores that I've already
21 described as the perfect crime message that can be -- that
22 can also be read in the result of this case.

23 But the key point that I want to emphasize here is
24 that it is easy to produce a better result when one
25 contributes value that one doesn't own. I will illustrate

1 this with a simple analogy. The Debtors could've improved
2 the plan greatly and produced much more value for Creditors
3 and opioid victims if they included the plan an injunction
4 requiring Bill Gates to contribute several billion dollars
5 to the plan trusts. Now, the flaw here is obvious. It is
6 Bill Gates' money. It is up to him whether to contribute to
7 the plan trusts.

8 My point is that the good that can be done with
9 the money is irrelevant to the question of whether the
10 debtors have the right to compel the contribution, and the
11 same is true here. All the good that can be done with the
12 money is not relevant. All the hard work that everyone has
13 done is not relevant. The results of plan voting is
14 irrelevant. What is relevant is that the Court cannot and
15 should not grant these releases.

16 THE COURT: Well --

17 MR. GOLD: The --

18 THE COURT: -- I -- that sounds pretty odd. I
19 don't think your attorney general really means that, right?
20 Ignore the good result because, and the "because" is what?
21 What can be done better?

22 MR. GOLD: Oh, I'd --

23 THE COURT: Not what could be done better, right?

24 MR. GOLD: Well --

25 THE COURT: Something else?

1 MR. GOLD: Because one of two things has to
2 happen, Your Honor. Either a -- either an offer can be made
3 with all its components, including money, but not
4 exclusively money, that is satisfactory to the attorney
5 general, or litigation continues until the parties are ready
6 to reach a resolution that is satisfactory. That's the rule
7 in most litigation. Happens all the time.

8 Now, I understand that in some contexts it's
9 convenience to jump ahead there and to compel parties to do
10 that, but we submit that this is not an area where the Court
11 has the authority to do that. And so he -- so in this case,
12 yes, it has to await the elected properly constituted
13 attorney generals deciding that either the -- whatever's
14 offered with all its component are adequate or to continue
15 until a different resolution can be reached. The --

16 THE COURT: That's not really a Metro Media
17 argument, though. That's really Mr. Golden -- Goldman's
18 argument. So I think we're probably coming to the area of
19 diminishing returns at this point.

20 MR. GOLD: Okay. Well, I will -- I have one more
21 legal point to make, Your Honor, and then I'll move onto the
22 next part of my presentation. The -- Mr. Huebner invokes
23 the tragedy of the commons in his argument, but it's really
24 the same issue. What would be the commons here? It seems,
25 to understand his analogy, that the commons has to be the

1 Sackler family and its property.

2 THE COURT: No, that's not --

3 MR. GOLD: Yes.

4 THE COURT: -- at all what he's talking about.

5 You guys just aren't listening. You have hundred and
6 thousands of people who hate the Sacklers who have agreed to
7 this. It's not for the Sacklers' benefit. It's because
8 they have made a calculation that they do better, "they" the
9 creditors do better, "they" the victims do better. They
10 would love to have the Sacklers pay more money. This is not
11 a plan for the Sacklers. You just get over that rhetoric,
12 all right? I agree with you --

13 MR. GOLD: I'm sorry --

14 THE COURT: -- and I agree with Mr. Goldman.
15 Reasonable minds can disagree as to what is the best result,
16 but this rhetoric really doesn't help. And frankly, it just
17 -- it's just not consistent with the record or with the
18 constituents in this case or --

19 MR. GOLD: And I'm sorry --

20 THE COURT: -- with my view of it, which is I
21 could care less what the Sacklers want other than the effect
22 of pushing them too far so that you do have a tragedy of the
23 commons. So actually address the tragedy of the commons
24 instead of just bloviating about a plan being for the
25 Sacklers' benefit.

1 MR. GOLD: Your Honor, I am sorry if I did not
2 express my thought properly, and I certainly don't wish to
3 upset the Court. I am simply trying to understand the
4 analogy that when someone refers to the tragedy of the
5 commons, that refers to some common asset that is being used
6 by some parties to the detriment of others. A lake,
7 perhaps, that some are polluting in so that others cannot
8 use. I understand the basic concept, and I'm asking myself
9 in this context what is meant by the commons.

10 What is the commons here that is -- that we are
11 being accused of spoiling for the benefit of others? What I
12 am suggesting here is that the commons in this context
13 cannot mean the debtors or their estates because we are
14 really not contesting what is happening with the property of
15 the Debtors' estates --

16 THE COURT: Wait.

17 MR. GOLD: -- and what is being done there.

18 THE COURT: But the record is crystal clear that
19 the current plan at least, and the work that the parties
20 spent for over a year in allocating the value of the
21 Debtors' estates wouldn't survive the collapse of the
22 settlement with the Sacklers.

23 MR. GOLD: I understand that, Your Honor, and it
24 was carefully constructed that way. I simply wish to
25 observe that -- and I did not bring the analogy of the

1 tragedy of the commons into this. This was the Debtors'
2 argument.

3 THE COURT: Right.

4 MR. GOLD: My only point is that the commons here,
5 if I'm understanding the Debtors' analogy, is the money that
6 the Sacklers are contributing or the assets of the Sacklers
7 in general, that's what is meant by the commons in applying
8 this analogy. And it is not really the Debtors' property at
9 issue, and that's --

10 THE COURT: All right. I guess -- I think they
11 would disagree with you, which is that the commons is the
12 entire set of agreements that the parties have agreed to,
13 not just the Sackler piece of it.

14 MR. GOLD: Well, that --

15 THE COURT: And I do understand your point, but
16 we're just coming back to the same point every time, which
17 is that you believe every state needs to agree to this, and
18 perhaps every governmental entity.

19 MR. GOLD: Well, I'm not arguing --

20 THE COURT: And that's really what it comes down
21 to --

22 MR. GOLD: -- with respect to other --

23 THE COURT: -- because there's really not a whole
24 lot of on-point, directly on-point, precedent on that issue.

25 MR. GOLD: We agree, Your Honor, and that's why

1 I'm now ready to move onto new points.

2 THE COURT: Okay.

3 MR. GOLD: The -- which are the factual issues.

4 Pursuant to a stipulation and order that the state's reached
5 with various parties, it's on the docket at, excuse me,
6 number 3601, all of our exhibits have been admitted into
7 evidence without an objection for all purposes. I just note
8 that we submitted a fair amount of evidence, and the amount
9 of evidence we introduced is very much part of the point.

10 Our argument, as I said before, is that the
11 conduct of the Sacklers weighs tremendously upon whether or
12 not the leases are proper under Metro Media and under
13 general federal law. And so that when we say that the
14 Sacklers' conduct renders them undeserving of the benefits,
15 it is significant that we are not talking about isolated
16 pieces of evidence.

17 Mr. Huebner made the incredible statement that the
18 objectors have introduced no evidence. Nothing could be
19 further from the truth, as I've said before. Now, I'm going
20 to -- now, Your Honor, I'm -- what I am prepared to do, but
21 Your Honor can stop me at any point, is to address the
22 evidence that we put forward, some of which was addressed by
23 Mr. Goldman, and I will not repeat any piece of evidence
24 that he discussed. But I feel that I am caught between a
25 rock and a hard place here candidly, Your Honor, because --

1 THE COURT: No, I wanted you to get to the
2 evidence about an hour ago. So please do it, yes.

3 MR. GOLD: Okay. I'm sorry. Okay. Very good.
4 So the -- I will summarize the evidence that we submitted as
5 first a series of state complaints. I could give the joint
6 exhibit numbers if necessary. The Debtor guilty plea and
7 DOJ statement. The DOJ Sackler settlement. Those documents
8 are, we believe -- certainly the last several -- well-known
9 to Your Honor. Several of them are on the court docket and
10 were part of motions that were approved.

11 However, these documents have not been given their
12 due in this context. The point has been made all too often
13 that the salient point of these documents is that the
14 Sacklers have not conceded that they are true, and we don't
15 dispute that point. But this leads to what I call the
16 fallacy of they-said-we-said. The argument is essentially
17 being made that if a statement is made and the Sacklers deny
18 it, that all that one can do in that circumstance is to
19 simply not know what the answer is, or to consider that as
20 equally likely that the fact be true or not true. And --

21 THE COURT: Well, you can assume that I don't
22 approach it that way.

23 MR. GOLD: Okay. Thank you, Your Honor. That's
24 why we think it is significant that the complaints that
25 we're talking about here are not fishing expedition

1 allegations from some commercial complaint, but are based on
2 years of investigations by the U.S. attorneys and the state
3 attorneys general. And we submit that it is simply not
4 credible that anyone would conclude that no one has any idea
5 whether these allegations are true.

6 Furthermore, due to this Court's injunction, the
7 state of knowledge is somewhat frozen in place from 2019.
8 Now, I recognize that discovery was taken in the court
9 process, but the Debtors and the Sacklers have often pointed
10 to statements like, these are the only Sacklers who have
11 been named in complaints. Well, no new complaints could be
12 filed, so the -- even as new information came out, no new
13 Sacklers could be named in any complaints.

14 THE COURT: Well --

15 MR. GOLD: Without that freeze, we would --

16 THE COURT: -- are there any documents that
17 actually show other Sacklers in a management role or a
18 hands-on board role that are in evidence?

19 MR. GOLD: Well, Your Honor, the -- let me turn to
20 what the documents are. The -- we would start by urging the
21 Court to carefully consider addendum A to the Sacklers'
22 settlement. It's 31 pages long and contained 170 numbered
23 paragraphs. It contains in detail the manner in which the
24 named Sacklers abused their stewardship of Perdue.

25 I can cite to some highlights if that's helpful to

1 the Court, or if the Court's familiar with it I can skip
2 through that at the Court's discretion.

3 THE COURT: No, we've spent a lot of time on it,
4 and I am very familiar with it.

5 MR. GOLD: Okay. Then I will presume that Your
6 Honor is familiar with this. The -- those allegations are
7 corroborated, the statements really, are corroborated by
8 significant extrinsic evidence, such as the Practice Fusion
9 guilty plea, the McKenzie judgment, what I have referred to
10 as the Price exhibits, and the exhibits that were attached
11 to motion by the non-consenting state group at docket number
12 2012.

13 THE COURT: I'm sorry. The McKenzie -- you said
14 the McKenzie judgment?

15 MR. GOLD: It was a settlement that was
16 incorporated in the judgment --

17 THE COURT: All right. So it's a settlement with
18 --

19 MR. GOLD: -- that are part of our papers --

20 THE COURT: -- McKenzie.

21 MR. GOLD: Yes.

22 THE COURT: All right. And the Practice Fusion
23 judgment.

24 MR. GOLD: Yes, and please.

25 THE COURT: And the motion that you referred to is

1 the one seeking further discovery to waive the privilege?

2 Is that the one you're referring to?

3 MR. GOLD: Yes. The purpose of the motions
4 clearly was not -- and some of the legal issues involved in
5 that motion are not directly germane to our issue here. But
6 facts can be relevant to several different legal issues at
7 the same time, and we submit that the facts that were
8 adduced in connection with that are very relevant to an
9 assessment of the -- whether the Sacklers are deserving
10 parties to receive the benefit of a federal injunction.

11 I can -- again, Your Honor, I can indicate some of
12 the elements that are taken from there or I can assume that
13 Your Honor is familiar with all of them and that it is not
14 necessary for me --

15 THE COURT: Well, I'm not familiar with the --

16 MR. GOLD: -- to go through them.

17 THE COURT: -- Practice Fusion judgment. Does
18 that judgment refer to the Sacklers' role in dealing with
19 Practice Fusion?

20 MR. GOLD: It pulls together, Your Honor, the -- a
21 -- we submit that has two components to it. On one hand,
22 the Debtors' interactions with Practice Fusion were part of
23 the Debtors' guilty plea. The -- but again, we have this
24 curious construct with respect to the guilty plea where the
25 guilty pleas was done by the Debtors as an entity, but no

1 admissions were made regarding the underlying factors that
2 went into it.

3 We submit that the facts of the Practice Fusion
4 guilty plea, which are consistent with and support the
5 elements that are described in the relevant statement, and
6 that provide corroborating independent evidence to suggest
7 that certainly the portions of those statements that deal
8 with activities with Practice Fusion are, in fact, true,
9 notwithstanding the blanket denials that have been issued by
10 the Sacklers and the Debtors.

11 THE COURT: I think -- I'm not sure about the
12 blanket -- I don't think there is a blanket denial by the
13 Debtors, one. Two, my question really went to whether the
14 Practice Fusion judgment or any other document related to
15 Practice Fusion in evidence adds to the examination that was
16 had on Addendum A, as far as any Sacklers role vis-à-vis
17 Practice Fusion.

18 MR. GOLD: Honestly, Your Honor, I'm not sure I
19 can give you a specific answer to the question the way you
20 have phrased it there.

21 THE COURT: Well, I would have thought during the
22 examination, one of the attorneys that was doing it would
23 have pointed to some document besides Addendum A if it
24 pertained to the Sacklers role with Practice Fusion. And
25 I'm leaving aside general testimony that I've received as to

1 the four witnesses role at Purdue.

2 MR. GOLD: Well, Your Honor, I will simply note
3 that Mr. Edmunds from Maryland is going to be wrapping up
4 the presentation, at least this side, and he is probably
5 better suited to answer that particular question than I.

6 Okay. I will mention, subject to Your Honor
7 telling me you're familiar with these things, a few items
8 from what we're calling the UCC exhibits, if Your Honor
9 understands what I'm referring to. They're all independent
10 -- they have all been admitted as part of the joint exhibit
11 book.

12 There is an email from 2012 -- this is JX-2938 --
13 that describes the Sacklers as providing micromanaging the
14 sales team beyond belief.

15 There is a memo -- this is JX-2943 -- in which
16 Dr. Landeau identifies as a problem that the board was
17 serving as de facto CEO.

18 There is an email exchange -- this is JX-2943 --
19 between Richard and Jonathan Sackler from February of 2011,
20 attaching a memorandum discussing the board that states,
21 "There seems to be a consensus that the role of the board
22 and that of management is blurred, compared with the
23 distinctions made by other major corporations."

24 THE COURT: I'm sorry. I think you gave me the
25 exhibit number for both of those two, the Landeau memo and

1 the one you just went to.

2 MR. GOLD: I believe you are correct, Your Honor.
3 If you give me just a moment, I will give you the correct
4 numbers here. I'm sorry. The first of the two I mentioned
5 is 2943 and the second is 2941.

6 THE COURT: Okay. And what's the date of that
7 memo?

8 MR. GOLD: If by memo, you mean the second one,
9 that is February 15th, 2011.

10 THE COURT: Okay.

11 MR. GOLD: There is an October 2013 business plan
12 -- this is JX-2995 -- that are excerpt. Section 5(b) is a
13 focus for the board on increasing sales by targeting high
14 volume prescribers.

15 There is JX-2951, a September 2013 memorandum,
16 which reflects a McKinsey presentation to the Purdue board
17 that suggests turbocharging the sales engine, and it's a
18 quote. There are corroborating matters also from what I'm
19 referring to the non-consenting state group -- this was
20 originally filed as Docket 2012, but JX-2931 are emails from
21 2013 reflecting that the board gave a ringing endorsement of
22 the McKinsey proposal.

23 And JX-2925, a 2008 McKinsey email, describing
24 that decision making at Purdue was an utter failure due to
25 board interference.

1 THE COURT: All right. Never mind, you can go
2 ahead, Mr. Gold.

3 MR. GOLD: Thank you, Your Honor. I will also
4 note that this relates now to Ilene Sackler. Due to a
5 stipulation that was entered just at the very end of the
6 trial, rather than having her be examined at trial, her
7 deposition was admitted into evidence.

8 It is JX-3298. She admitted at Pages 84 and 85 of
9 her deposition that she didn't pay much attention during
10 board meetings. At a minimum, that cinches the case for
11 breach of fiduciary duty that could be brought with respect
12 to her.

13 Counsel for Maryland --

14 THE COURT: All right, but that's not a third-
15 party claim, right?

16 MR. GOLD: No. That reflects to -- that reflects
17 the proprietary of the state claims more than third-party
18 claims, I believe, Your Honor. I'm not going to say that
19 they're completely irrelevant. It just jumped off the page
20 at me in one consequence.

21 THE COURT: Well, I mean, it's hard for me to --
22 the ultimate issue here, as far as the third-party claims,
23 is the balance between being what you just described Miss
24 Ilene Sackler admitting to and someone being more than a
25 proper board member in terms of being hands on, so why don't

1 we just focus on the third-party claim documents.

2 MR. GOLD: Thank you, Your Honor. In conclusion,
3 I just wish to respond to the question that has been asked
4 by plan proponents: Why are estates opposing this
5 settlement?

6 I will simply say that we have not questioned the
7 good faith that states and other parties who've accepted the
8 settlement. I think we've established, Your Honor, that we
9 recognize it's a difficult decision that involves weighing
10 apples and oranges, and we ask that the decision of the
11 objecting states be respected as well.

12 With respect to respect and good faith, I will not
13 respond specifically to the cruel comments that Mr. Price
14 made regarding the Attorneys' General of several states. I
15 will simply say that just speaking for Washington in this
16 regard, we suggest that you look at what Washington has done
17 rather than what anyone might insinuate.

18 And for instance, the funds that McKinsey -- that
19 Washington received in the McKinsey settlement have gone to
20 abatement, and that was done by Washington without the need
21 of having the Bankruptcy Court or anyone else direct
22 Washington that that's what they had to do.

23 Unless the Court has any --

24 THE COURT: Is that in the record?

25 MR. GOLD: I do not believe it is on the record,

1 Your Honor. It's only a matter that this was raised for the
2 first time to me by Mr. Price's comment earlier.

3 THE COURT: Okay.

4 MR. GOLD: I believe it's a matter of public
5 record and that the Court could take judicial notice of it
6 if we had to brief that one.

7 THE COURT: Did it enhance abatement or just
8 replace funds that had already been allocated towards
9 abatement?

10 MR. GOLD: Actually, I would ask -- I see that Mr.
11 O'Neill is Mr. O'Neil is here and he can answer that
12 specific question better than I can if I can yield to him
13 for this, Your Honor.

14 THE COURT: Okay. I guess Mr. Gold put you on the
15 spot, Mr. O'Neil, so if you could answer that question.

16 MR. O'NEIL: The State of Washington would be
17 happy to supplement the record, Your Honor. It was
18 appropriated for abatement services, and it was not
19 replacement money. It was appropriated ad initio by the
20 legislature on the recommendation of the attorney general.

21 THE COURT: All right. Thank you, Mr. Gold.

22 MR. GOLD: Thank you, Your Honor. Yes, unless you
23 have any questions, I am ready to yield to Mr. Edmunds.

24 THE COURT: Okay, that's fine. Thanks.

25 MR. EDMUNDS: Your Honor, if you're ready for me,

1 I'm here.

2 THE COURT: Yes, and I can see you and hear you
3 fine.

4 MR. EDMUNDS: All right. Thank you, Your Honor.
5 Brian Edmunds for the State of Maryland.

6 Let me first of all say that I will adopt for our
7 state the arguments that Mr. Goldman and Mr. Gold have made
8 on behalf of the other states. And I'm going to kind of --
9 there are specific points that were assigned to me today. I
10 think the Court has gotten into them to some extent in its
11 questions, so I'm just going to try to, at this point,
12 address the questions that I think may be left over that the
13 Court has at this stage of a lengthy argument.

14 I mean, I think the first one that is important
15 and what I was going to talk about anyway, is what it is
16 that we are seeking here to do. Is it just about money?
17 It's not. What this is is about implementing the police
18 power that we have, and specifically about achieving
19 deterrence and regulating the opioid market.

20 Money is certainly important, receiving money in
21 the form of compensation, disgorgement, penalties that are
22 authorized under not only the Maryland statutes, but all of
23 the state's statutes that I'm aware of, is important. But
24 it's important not just for the purpose of compensation.
25 It's important for the purpose of deterrence, for the

1 purpose of the regulation that it provides to the conduct of
2 businesses in the marketplace, especially in a marketplace
3 as important as the prescription drug marketplace.

4 To that end, the statutes that we proceed under,
5 Maryland's is mentioned in our separate objection, but they
6 give -- ours is called a cease and desist proceeding, and we
7 are authorized in that context incidentally to recover
8 compensatory damages.

9 But the proceeding generally operates for an
10 injunction, which we would I think, you know, certainly, we
11 would seek an expansive one against both Debtors and the
12 Sacklers in the proceeding in Maryland, and it also permits
13 the recovery of disgorgement, of damages as I said, and of
14 civil penalties among other things that the statute provides
15 for.

16 And when I look at this, when we look at this,
17 right, my full-time job is to assist our attorney general in
18 carrying out the police powers that are assigned to him by
19 our Constitution and statutes. What I look at here and what
20 he looks at is whether this actually will bring about a
21 change in conduct, and from that standpoint, it's not
22 enough.

23 And that, I think, is also the reason why to have
24 our claims sort of brought in the same context -- and
25 everything I heard this morning, you know, relegates us to

1 the status, I think, of a co-creditor, of a private creditor
2 is the problem that we're dealing with, right.

3 We have a set of responsibilities that is greater
4 than the responsibilities of counsel who appear here for
5 private creditors. We have a set of responsibilities to the
6 public that yet elects our attorney general that instituted
7 our government, for which the protection of which is what we
8 are paid for, to see to it that conduct is changed, and we
9 don't think that this settlement does that.

10 I think that when you look at it from the ex-ante
11 perspective of somebody who operates within the marketplace,
12 what you see from this is that the Sacklers were able to get
13 away with a majority of the money that they took, both from
14 Purdue and from consumers. And that, I think, as well as a
15 full airing of the conduct and the full adjudication of the
16 conduct is what, more than anything else, we seek.

17 I mean, money is certainly important, Your Honor.
18 It is.

19 THE COURT: Can we just stop on that point? So I
20 have no doubt, Mr. Edmunds, that you're a dedicated public
21 official. So you're saying that you need a full litigation
22 of the claims against the Sacklers; is that what you're
23 saying?

24 MR. EDMUNDS: I am saying that that is one thing
25 that we would seek and that is one thing that I think would

1 have value. Is it the only thing we would seek; is it
2 something we would pursue --

3 THE COURT: Well, if you're going to seek money --

4 MR. EDMUNDS: -- or everything else?

5 THE COURT: -- and that in any form other than --
6 if you're seeking money in the form of a settlement, I think
7 you'd have to agree with me that you wouldn't have a full
8 public airing and a trial.

9 MR. EDMUNDS: I think that's true, Your Honor.

10 THE COURT: Okay.

11 MR. EDMUNDS: I mean, and I think that there are
12 tradeoffs that have to be made, right?

13 THE COURT: So it isn't the main thing you're
14 seeking.

15 MR. EDMUNDS: I didn't say it was. I said it's
16 one --

17 THE COURT: Well, I thought I heard you actually
18 say it was the most important thing, but maybe I misheard
19 you.

20 MR. EDMUNDS: Deterrence and changing conduct are
21 what I've said. And if I misspoke -- to be very clear,
22 those are the most important things, right? I think they're
23 the same thing, but that is what is most important to the
24 State of Maryland. I believe that that is what is most
25 important to the other objecting states.

1 THE COURT: And the --

2 MR. EDMUNDS: There are other thing- --

3 THE COURT: Could I just focus. The conduct that
4 you're seeking to deter is fraudulent transfers?

5 MR. EDMUNDS: No, Your Honor.

6 THE COURT: No, okay.

7 MR. EDMUNDS: That is some conduct. Well, I
8 should -- our action against the Sacklers and against Purdue
9 did not have as its focus fraudulent transfers.

10 THE COURT: All right.

11 MR. EDMUNDS: But I think we are the State and
12 fraudulent transfers are something that we prohibit, so I
13 would not carve them out completely from what I think is in
14 the State's interest to seek to redress.

15 THE COURT: Well, except it's not covered by any
16 of your unique statutes. It's an estate -- not estate, a
17 estate cause of action.

18 MR. EDMUNDS: I would -- I mean, I --

19 THE COURT: There's no dispute about that, Mr.
20 Edmunds.

21 MR. EDMUNDS: I would actually --

22 THE COURT: There's literally no dispute about
23 that proposition. And I hope your boss doesn't understand
24 it differently because then that person is operating on a
25 misconception.

1 MR. EDMUNDS: I don't think that we understand
2 that differently, Your Honor, that those are the estate's
3 causes of action.

4 THE COURT: Okay.

5 MR. EDMUNDS: But I do think we have an interest
6 in seeing that even the estate's causes of action are
7 successful and maintained.

8 THE COURT: But that's not a --

9 MR. EDMUNDS: But for our part --

10 THE COURT: -- that's not a state parens patriae
11 protected interest.

12 MR. EDMUNDS: Your Honor, that's certainly not the
13 interest, as I said, for which we brought actions against
14 Purdue and the Sacklers, the members of the Sackler family
15 who served as its directors.

16 THE COURT: Right.

17 MR. EDMUNDS: But those actions relate to what
18 they have done in the marketing and sale of OxyContin and
19 other opioids. And our interest is clearly in preventing
20 the deaths that result from when people commit unlawful
21 practices in the marketing and sale of dangerous drugs, and
22 we have --

23 THE COURT: So let me be clear. When you're
24 talking about a cease and desist proceeding, you're not
25 talking about having the Sacklers ceasing and desisting,

1 right? Because under this agreement, consistent with their
2 actions for the last two years, they have ceased and
3 desisted, right?

4 MR. EDMUNDS: I'm not sure that that's true.

5 THE COURT: You're talking about someone else
6 ceasing and desisting, not the Sacklers, right?

7 MR. EDMUNDS: I think that this -- no, I'm talking
8 about direct claims against the Sacklers, Your Honor, and I
9 think it's --

10 THE COURT: Well, you referred to a cease and
11 desist proceeding, which means stopping something from
12 happening. And I'm assuming what you're referring to is
13 other people, stopping other people, right?

14 MR. EDMUNDS: It can also stop conduct that has
15 happened from further happening, right? I mean, we don't
16 lose the relief just because the actor, when faced with a
17 suit, stops committing the problematic conduct. We still
18 have the right to continue.

19 THE COURT: But as far as that actor is concerned,
20 it's not a cease and desist relief that you're seeking at
21 that point. I'm not disputing that you wouldn't have a
22 claim, you're seeking money still. But if they've stopped,
23 they've stopped.

24 MR. EDMUNDS: Your Honor, first of all, I think
25 factually, there is room for disagreement that they have

1 stopped. They have stopped serving as members of the board
2 of Purdue. There is a website that is out there now that
3 makes false claims about OxyContin on behalf of part of the
4 Sackler family that is at issue here.

5 So, I mean, I don't -- you know, stopping -- they
6 have stopped some of the conduct perhaps. But I still think
7 in a cease and desist order proceeding and a proceeding we
8 would bring under our Consumer Protection Act, we still have
9 the ability to seek a cease and desist order and an
10 injunction that keeps them from restarting the conduct, for
11 example.

12 THE COURT: And isn't this -- doesn't the plan do
13 that very thing with an injunction?

14 MR. EDMUNDS: I think that the injunction in the
15 plan would be perhaps broader and have more in it if we were
16 to do it separately.

17 THE COURT: Have you made any suggestions to that
18 effect on how to make it broader?

19 MR. EDMUNDS: I have not personally, but I believe
20 that members of the NCSG have, and I would have to leave it
21 to them to explain because it's been a while since I looked
22 at it. But I know that that has been something that is in
23 the works. You know, you have to divide up, I guess, and
24 that's a part that I have not looked at specifically for
25 purposes of what I would say to Your Honor today.

1 THE COURT: Okay.

2 MR. EDMUNDS: But I do think that there is that
3 issue, right? I mean, we are concerned -- and not just
4 conduct that relates to opioids. If we sought an injunction
5 at the state level against the Sacklers, I think we would be
6 looking at more broadly prohibiting them from engaging in
7 future violations in the pharmaceutical space and perhaps
8 just future violations in the sale and marketing of products
9 in the state in general, which I believe that this
10 injunction does not do.

11 So I think that that is the issue here, right?
12 The money is important, but to put it in perspective, Your
13 Honor, I mean, we spend -- the last figure I saw was
14 something close to a billion dollars a year on the opioid
15 crisis. And so, our share of this gets paid out in weeks,
16 maybe a month, right, by money that we are already spending.

17 And I would note, Mr. Huebner I think erroneously
18 cited the Maryland statute as the example of what states
19 would do with the money were it not for the plan. In fact,
20 Mr. Huebner overlooked our 2019 statute that dedicates all
21 money we receive by virtue or settlement or by judgments
22 against opioid industry participants to opioid abatement
23 period.

24 There's no need for that language in Maryland's
25 case. There's no need for the plan to commit it to

1 abatement. And so, if that was his example for all of the
2 states, I can't -- I don't have a 50 state survey prepared,
3 but I do know that a lot of others have statutes and the
4 ones that do not have agreed.

5 THE COURT: Although the statutes, in some
6 instances, have subsequently been amended as far as other
7 types of settlements, right, and they can be amended.

8 MR. EDMUNDS: Your Honor, they can be amended.
9 But, I mean, I think that they are as committed as they can
10 get when there is a statute that dedicates opioid -- you
11 know, when the legislature enacts, and the governor signs a
12 statute that provides the money from opioid crisis related
13 litigation goes for relief of the opioid crisis and cannot
14 be replaced, I think that that's, you know, maybe the gold
15 standard.

16 But I know that other states, like Washington as
17 Mr. Robinson O'Neill just mentioned, have done it in other
18 ways, not by statute. But there is a lot of money that I
19 think the states have worked hard on recovering for
20 themselves and for their citizens that are being spent on
21 abatement without the need to impose a bankruptcy plan of
22 reorganization that, you know, mandates that they do that.

23 So I think that -- but I think that, you know,
24 money is important certainly, but the bottom line is that
25 this is conduct that will keep going on and in our judgment

1 as we look and make decisions about what is necessary to
2 protect our citizens and what is necessary to kind of avert
3 a crisis that leaves I think 140 in the United States dead
4 each day, almost seven in Maryland dead each day. We look
5 at this and we don't think that it does it. We don't -- we
6 think it --

7 THE COURT: Well, again, that's my question.
8 Whose conduct are you referring to?

9 MR. EDMUNDS: The Sacklers here, Your Honor.

10 THE COURT: All right.

11 MR. EDMUNDS: I mean, the particular -- I know
12 that there has been some question as to how broad that
13 category of the Sacklers is and how far into the family it
14 reaches. But I would say for at least the ones who served
15 as directors, their conduct needs to be addressed and they
16 need to --

17 THE COURT: Well, listen. I think if that is your
18 state's issue, that can certainly be address very easily I
19 believe by the Sacklers, consistent with all that has been
20 represented to me during this trial as to their lack of a
21 role going forward. So I don't -- I really -- you know, but
22 that's fine.

23 MR. EDMUNDS: But I suppose, Your Honor, it's the
24 Sacklers plus, right? It's also future people who engage in
25 the marketplace, future directors, because we don't -- you

1 know, we can't, we don't have the resources to regulate all
2 conduct. I think that the deterrent effect, the general
3 deterrent effect I think is the word that the law professors
4 would use for it, is important too.

5 We are worried about the conduct that the Sacklers
6 engaged in here, but we are also worried that it will be
7 repeated by others. And I think that the idea the amount,
8 you know, 4.3 billion in this context when you've taken so
9 much more and when your conduct has caused so much harm, I
10 think that the amount is insufficient to effectuate that
11 kind of deterrence.

12 It doesn't -- it's our tool to kind of stop bad
13 conduct that we're exercising here. That's what the police
14 power is, and I think that we don't succeed in doing that
15 from this settlement.

16 THE COURT: Well, do you succeed if the result is
17 years of litigation and, in all likelihood, a lower
18 recovery?

19 MR. EDMUNDS: I don't -- I just don't agree with
20 that.

21 THE COURT: I'm not asking you to accept the truth
22 of that. I'm just posing you a hypothetical, and I should
23 have introduced what I was saying by saying that.

24 MR. EDMUNDS: I think that the issue -- I mean,
25 obviously, you can compare outcomes, right, and you can

1 hypothesize the outcome that wouldn't be as good but might
2 be what happened and compare it and you see what the
3 comparison is. But I think that the issue is that, you
4 know, we can't know and it's our decision to make, right?

5 THE COURT: Well, I guess that comes back. You
6 can actually make a fairly well-informed decision on that
7 point, and that's why we have a six-day trial with, you
8 know, 200 binders of evidence and thirty some plus
9 witnesses.

10 MR. EDMUNDS: Right. I could talk about that.

11 THE COURT: Okay.

12 MR. EDMUNDS: Well, I'm sorry, I didn't mean to --

13 THE COURT: No, no. So I think that that is a
14 point that needs to be addressed.

15 MR. EDMUNDS: Okay. Well, what I saw from the
16 trial, right, our standard, the standard under the Maryland
17 Consumer Protection Act. I believe it's the standard in all
18 states. It derives from a case in I think the Seventh
19 Circuit called FTC v. Amy Travel Services, and that's a case
20 where the Seventh Circuit sets out the standard for holding
21 people, you know, corporate individuals, individuals who are
22 in business associations liable for conduct.

23 And the standard it sets is that, one, is
24 obviously direct participation, and I think that there is
25 evidence of that, clear evidence of that. In particular, in

1 Richard Sackler's concession that he engaged in things like
2 the McKinsey marketing, the McKinsey marketing plan, and you
3 know, had by himself a call with McKinsey's -- with the
4 McKinsey employees that were proposing these things, and
5 that the board then subsequently implemented their
6 recommendations and that the board also discussed them, and
7 it certainly didn't change them.

8 So I think that -- so the Amy Travel standard is
9 direct participation, and then there's another prong and it
10 is the right to control the conduct and knowledge or
11 constructive knowledge of what the conduct is. And each of
12 the board members who testified before Your Honor said that
13 they read the board materials, which are in evidence and
14 are, you know, among -- I think there's more, but there are
15 documents that have been presented to the Court.

16 And each of them made clear that the board
17 discussed and engaged in, you know, the review of proposals
18 on marketing and sales put forward by management. They have
19 -- two of the board members who testified have a
20 disagreement as to what their purposes were in doing that,
21 but I think they all admit to the fact that they, in fact,
22 had the right to control the conduct and were, on some
23 level, aware of what the conduct was.

24 THE COURT: What do you think the degree of that
25 awareness was as far as the evidence shows and the conduct

1 that you're referring to?

2 MR. EDMUNDS: Well, I have to get to another
3 point, and I will answer that. But I have to answer that
4 based on what we've been permitted to do. Right? I was
5 careful. We were careful to follow what Your Honor had
6 ruled as to what evidence we were allowed to present. And
7 as you know, you know, there is more that we did not use.

8 So I think that the evidence on that shows a high
9 level of awareness of at least two of the Sackler Family
10 members. The documents for Mortimer Sackler, the few on
11 which we actually cross-examined him because they had a
12 relevance directly to other issues before the court, such as
13 the milking the business email demonstrate a degree of
14 participation in sales and marketing that is sufficient to
15 establish liability under Maryland, and I think, under other
16 states' law.

17 So I think that the evidence, just the limited
18 evidence before the Court, which was presented not for the
19 purposes of establishing these claims, demonstrates that we
20 have what we need if we were to go forward. You know,
21 Richard Sackler's testimony goes pretty far to establishing
22 his liability and the liability of others.

23 And I think that Mortimer Sackler, even, who
24 defended his conduct, the evidence still shows that he has
25 his hands in the sales operation and is aware of it, and is

1 reading reports, and is participating in discussions. And
2 the email and documentary evidence, limited though it was --

3 THE COURT: Well, can we --

4 MR. EDMUNDS: -- under the circumstances --

5 THE COURT: You've said that three or four times.
6 I limited it so that it would be necessarily for the truth,
7 but you are certainly entitled to examine each witness on
8 whatever documents you had.

9 MR. EDMUNDS: I had understood the Court as having
10 made relevance rulings as to whether -- because Debtors'
11 case, you know, sort of carved out the states' claims
12 against the Sacklers from what Debtors were presented that
13 we were not allowed to go beyond what I would call a very
14 limited -- you know, I mean, set of things that we did.

15 THE COURT: Well, I don't know why --

16 MR. EDMUNDS: Because that wouldn't be --

17 THE COURT: -- you asked --

18 MR. EDMUNDS: -- relevant to the --

19 THE COURT: -- Richard Sackler --

20 MR. EDMUNDS: -- determining --

21 THE COURT: -- about his participation in actual
22 settlement marketing calls, then.

23 MR. EDMUNDS: I asked that to establish the
24 repeated conduct. I mean, I cross-examined him based on the
25 document.

1 THE COURT: Right. I know.

2 MR. EDMUNDS: But as relevant to the issue that I
3 mentioned before, which is the need to change conduct, the
4 need for the settlement to --

5 THE COURT: That's why --

6 MR. EDMUNDS: -- (indiscernible) the conduct.

7 THE COURT: -- you were cross-examining him on
8 that? Okay, fine.

9 MR. EDMUNDS: That is why I was.

10 THE COURT: All right.

11 MR. EDMUNDS: I mean, the issue there is that they
12 had to guilty pleas, 2007 and 2020, and that they continued
13 after 2007, and to some extent, the conduct in 2018 was
14 repeated with respect to other foreign entities. I mean,
15 that was the purpose. And so we did not dig underneath that
16 to show the documents that the DOJ may have had in its
17 possession when it came up with those allegations and
18 incorporated them into what it did.

19 THE COURT: Are you representing to me that you
20 have those documents?

21 MR. EDMUNDS: I have some of them. Certainly.

22 THE COURT: And they were offered to be introduced
23 ever in this case?

24 MR. EDMUNDS: Your Honor, we understood that the
25 underlying merits of the states' claims were not at issue,

1 and so limited ourselves to a short cross, short direct,
2 rather, of each of these witnesses. I mean, you know, at
3 one point I had sent, I think Mr. Joseph said, 6,200 pages
4 for use. And we didn't do that. But we had those
5 documents. The Court received them.

6 So, I mean, that was the... You know, we had had
7 before the bankruptcy a much longer trial planned than the
8 State of Maryland. It was on the schedule, I believe. And
9 that, I think, would have been necessary to fully present
10 the claims.

11 But in any case, the point is that it's the
12 conduct, right? And to the extent the states are being
13 treated as if they were -- you know, needed to make
14 decisions in the same way that private creditors do here,
15 which I'm not faulting, that's just not our consideration.

16 THE COURT: Okay, well --

17 MR. EDMUNDS: We have more.

18 THE COURT: I've heard them from all three
19 lawyers, and I don't need to hear it again, because you guys
20 have made that point and that's fine.

21 MR. EDMUNDS: Okay. Your Honor, let me just -- I
22 wanted to talk -- I have one more point, and that is about
23 the third-party -- and I think that maybe this is going to
24 be addressed more in what the parties to over the next night
25 and into Wednesday on the third-party releases, to the

1 extent they apply to third parties other than the Sacklers.
2 Right?

3 And the issue is just that that -- when Mr.
4 Huebner presented this morning, he referenced some other
5 settlements. I think that the list of released parties in
6 this case is broader than any of those that he mentioned.
7 The consultants, advisory board representatives, contract
8 sales representatives of Purdue Pharma, whose conduct is
9 released related to at least Purdue's opioids.

10 And I think that that is a broad area, that if
11 changes aren't made we need to talk about, because those
12 releases are so broad as to even further prevent us from
13 changing the conduct here. Everybody who participated with
14 Purdue and what Purdue did gets out of it. Some of them
15 have not contributed a thing to the plan. And, you know, I
16 hope that we are still -- I have received confirmation, but
17 I hope that we are still discussing those issues and can
18 present something different to the Court for its
19 consideration jointly with other parties on Wednesday.

20 And I guess I'll stop at that for now. I don't
21 think it makes sense to go farther until we know the answer
22 to that.

23 THE COURT: Okay.

24 MR. EDMUNDS: But that is a concern. And so with
25 that, yeah, I think that that -- those are the points that I

1 would like to make in addition to what Mr. Gold and Mr.
2 Goldman said.

3 THE COURT: Okay. Very well. Thank you.

4 MR. EDMUNDS: Thank you, Your Honor.

5 MR. ROBINSON-O'NEILL: Your Honor, this is Tad
6 Robinson-O'Neill from Washington. You had asked if the
7 McKinsey documents are in the record. They are. It's JX-
8 2623 and JX-2624. The operative provision of the 2/4
9 document, which is the McKinsey settlement in Washington
10 state is Paragraph 2 under the payment information, which
11 obligates the State of Washington to spend all of the
12 proceeds from the McKinsey settlement on opioid abatement.

13 I don't think Your Honor really wants me to track
14 down the budget allocations --

15 THE COURT: No, that's fine.

16 MR. ROBINSON-O'NEILL: -- into the program --

17 THE COURT: That's fine. I also know there were
18 similar provisions in the tobacco settlement. But states
19 have developed since then. I appreciate that.

20 MR. ROBINSON-O'NEILL: Thank you, Your Honor. If
21 you have no more questions, I'll step down.

22 THE COURT: Okay. All right. Mr. Fogleman,
23 you're going to go?

24 MR. FOGELMAN: If that's all right with the Court.

25 THE COURT: Yeah. Go ahead.

1 MR. FOGELMAN: Thank you, Your Honor. My name is
2 Larry Fogelman, and I represent the United States of America
3 in these proceedings. I would like to make a few points on
4 three key issues: due process, Metromedia, and subject
5 matter jurisdiction.

6 Your Honor, it would violate the due process
7 clause of the Constitution if this Court strips the rights
8 of sovereign states as to the Sacklers and the rights of
9 individual victims of the opioid crisis due to the Sacklers.
10 The states and individuals must be provided with reasonable
11 notice and an opportunity to be heard before their property
12 interests are taken away.

13 And let's make no mistake. This third-party
14 release takes away property rights of states and individuals
15 in their causes of actions against the Sacklers. The
16 release is effectively a judgment on the merits. It has res
17 judicada affect and it will render their claims worthless.

18 The Second Circuit in Metromedia recognized this
19 point. The Court said, on Page 142, "In form, it is a
20 release; in effect, it may operate as a bankruptcy discharge
21 arranged without a filing and without the safeguards of the
22 Code."

23 Now, let's talk about notice, Your Honor. The
24 notice provided in this case was not a summons and complaint
25 seeking to take away property rights of states and

1 individuals against the Sacklers. Rather, it was noticed
2 that there would be a confirmation hearing with disclosure
3 about losing your right to sue the Sacklers. But this short
4 form of notice in a bankruptcy proceeding to which the
5 Sacklers are not even debtors, is not a substitute for
6 service of a summons and a complaint.

7 A notice of an impending confirmation hearing does
8 not confer personal jurisdiction over states and individual
9 victims, and their claims against the Sacklers, and it is
10 not sufficient to give the Court power over those claims.
11 Rather, formal service of process is required.

12 As Mr. Huebner said this morning regarding the
13 Sacklers, to sue the Sacklers, you have to sue --

14 THE COURT: Did the Second Circuit --

15 MR. FOGELMAN: -- and secure --

16 THE COURT: -- require that in the Motors
17 Liquidation case? The service of a summons and complaint?
18 The most recent Second Circuit case --

19 MR. FOGELMAN: Your Honor, that --

20 THE COURT: -- discusses due process in this area?

21 MR. FOGELMAN: That case address claims against
22 the estate, not third --

23 THE COURT: And against the --

24 MR. FOGELMAN: -- not claims against third parties
25 --

1 THE COURT: -- and against the successor entity?

2 MR. FOGELMAN: Well, yes, Your Honor. But again,
3 there was no third-party release at issue in GM, so it's a
4 totally --

5 THE COURT: You know, Mr. Fogelman --

6 MR. FOGELMAN: -- distinct issue.

7 THE COURT: -- I think I understand this argument.
8 I also understand that if this plan is not confirmed, your
9 client gets roughly \$2 billion more and essentially all of
10 the value of the Debtors. So I will read your brief. I
11 really don't think I need to hear anything more on this.
12 You're at a complete conflict --

13 MR. FOGELMAN: Your Honor, that is not true, Your
14 Honor.

15 THE COURT: I've said enough.

16 MR. FOGELMAN: May I address that point?

17 THE COURT: I've read your brief. Your brief is
18 thorough. But I just, frankly, do not understand the
19 position of the United States, and I don't believe it can be
20 articulated in this case.

21 MR. FOGELMAN: I believe it can, Your Honor. And
22 I'd be happy to do so, if you'd give me an opportunity.

23 THE COURT: You should do that now.

24 MR. FOGELMAN: Yes, Your Honor. First of all, it
25 is not true that if this plan is not confirmed, then

1 automatically the government has a \$2 billion claim. Purdue
 2 has a right to back out of the settlement if this plan is
 3 not confirmed. And in terms of having different positions,
 4 Your Honor, it is --

5 THE COURT: You have a \$1.7 billion --

6 MR. FOGELMAN: The government did (indiscernible)
 7 --

8 THE COURT: -- superpriority claim. And there's
 9 no --

10 MR. FOGELMAN: That's right, Your Honor.

11 THE COURT: And there's no --

12 MR. FOGELMAN: But the Debtors have the right --

13 THE COURT: Then there's no abatement trust,
 14 right?

15 MR. FOGELMAN: Your Honor, the Debtors have the
 16 right unilaterally to pull out of its resolutions with the
 17 government. If the plan is not confirmed, that creates the
 18 PVC. We have worked very hard, Your Honor, to come up with
 19 resolutions that work towards the public interest, that
 20 create a PVC.

21 We have been working tirelessly throughout this
 22 process to help draft documents relating to the covenants of
 23 the new company, the injunction relief of the new company.
 24 We have worked nights, we have worked weekends, even leading
 25 up to this confirmation hearing, towards that end.

1 At the same time, Your Honor, it is also true that
2 we believe that this release violates the due process
3 provisions of the Constitution, and we feel it is incumbent
4 upon us to explain that view to the Court.

5 THE COURT: Okay. And that's --

6 MR. FOGELMAN: We don't think that is --

7 THE COURT: -- been explained.

8 MR. FOGELMAN: -- inconsistent, Your Honor.

9 THE COURT: I've read the brief and I don't need
10 to hear more on this, Mr. Fogelman.

11 MR. FOGELMAN: May I move on, then to, briefly,
12 the Metromedia and subject matter jurisdiction points?

13 THE COURT: Briefly, because it's been covered
14 already, and again, it's covered in your brief.

15 MR. FOGELMAN: Thank you, Your Honor. With regard
16 to Metromedia, I'll just make a few quick points. First,
17 with regard to one of the factors described by the Second
18 Circuit that enjoined claims were channeled to the
19 settlement fund, rather than extinguished.

20 Well, the only settlement fund that's set up here
21 is for the opioid claims relating to Purdue's conduct. But
22 the release that's at issue covers a far broader, almost
23 incomprehensible, number of topics for which there is no
24 settlement fund that's set up. It would cover -- I mean,
25 the language in the release is, anything based on or

1 relating to or in any manner arising from in whole or in
2 part, the Debtors as such entities existed prior to or after
3 the petition date, including the Debtors' opioid-related
4 activities, manufacture, marketing and sale of products,
5 interactions with regulators concerning opioid-related
6 activities or products, and involvement in the subject
7 matter of the pending opioid actions, and the past, present
8 or future use --

9 THE COURT: And I --

10 MR. FOGELMAN: -- or (indiscernible) use.

11 THE COURT: I understand that point, Mr. Fogelman,
12 and I'm very sympathetic to it. And I think I've made my
13 views known to the Debtors.

14 MR. FOGELMAN: I appreciate that, Your Honor. But
15 it's not just the fraud claims that are a problem.

16 THE COURT: No, no.

17 MR. EDMUNDS: This release covers --

18 THE COURT: I understand that. I understand that.

19 MR. EDMUNDS: -- everything, from -- okay.

20 THE COURT: And in fact, some of the testimony by,
21 I believe, the Sacklers who are closest to the issues, have
22 focused on a release related to Purdue's opioid-related
23 activities. That was what they're looking for. Although
24 then they said, well, we're going to rely on our lawyers.
25 And I think I made it very clear that the lawyers run a real

1 risk of proposing a release that is far too broad, and that
2 will have the effect of not being approved, as opposed --
3 instead, proposing one that's consistent with the
4 consideration is being paid for.

5 MR. FOGELMAN: I appreciate that, Your Honor. And
6 in fact, that language is so broad, as to reach things like
7 workplace safety claims, if they existed, employment packs
8 issues, environmental law, civil fraud, beyond opioids,
9 contracting fraud, state ADA laws, labor laws. I mean, this
10 list is so broad that it would cover the example Your Honor
11 gave that if somebody ran over a pedestrian while delivering
12 opioids, the Sacklers get a release for that too. I mean,
13 it's just an impossibly broad release that shouldn't be
14 approved by the Court.

15 And Your Honor, who does it cover? It doesn't
16 just cover the Sacklers. It covers financial advisors,
17 attorneys, accountants, investment bankers, consultants,
18 experts, other professionals. I mean, why is Paul Weiss
19 getting a release in this case? It's incomprehensibly
20 broad. And there's no evidence that any third party has
21 contributed to the releases, and so they're not entitled to
22 get them.

23 THE COURT: Well, except they're --

24 MR. FOGELMAN: Garrett Lynam testified --

25 THE COURT: I'll check on only one point on that,

1 which is -- and we're leaving out the excluded parties, of
2 course -- but there are --

3 MR. FOGELMAN: Yes.

4 THE COURT: -- directors and officers who are
5 contributing their insurance rights. So they are
6 contributive something. But I understand your broader
7 point.

8 MR. FOGELMAN: Yes. No matter how you slice it,
9 Your Honor, maybe there's a handful of people who are
10 contributing something, but it is not the thousand-plus
11 people on Schedule H and all of their attorneys,
12 accountants, investment bankers and so forth. I mean, this
13 release would cover the McKinsey example that Your Honor
14 given court. And I'm calling it McKinsey because they're an
15 excluded party, but you can call it Company X, and McKinsey
16 is off the hook or, you know, if there's turbocharging and
17 what McKinsey did.

18 And Your Honor, carving out just fraud isn't
19 enough, because a lot of state statutes that are based on
20 the False Claims Act, you can find somebody liable for
21 acting in reckless disregard. And so if a McKinsey type
22 acted with reckless disregard, that's enough for a fault of
23 claims act liability. And so, the idea that you're just
24 going to carve out fraud doesn't get you there.

25 And public nuisance, another big issue we've heard

1 about throughout this case, that there's -- according to
2 this release, you can't bring a public nuisance claim
3 against McKinsey or other consulting firm that's engaging
4 turbocharging.

5 Your Honor, another factor in the Metromedia
6 standard is that the enjoined claims would directly impact
7 the Debtors' reorganization by way of indemnity or
8 contributions. I take Your Honor's point that there may be
9 a few of those. But again, there's been very limited, if
10 any, evidence presented on that point. And so the Debtors
11 have not met the Metromedia standard for the vast majority
12 of entities and people covered by the release.

13 THE COURT: But the --

14 MR. FOGELMAN: Another factor the Second -- yes?

15 HE COURT: No, I think you're making the same
16 point. And I'm trying to say as clearly as I can, generally
17 I agree with you.

18 MR. FOGELMAN: Yes.

19 THE COURT: So, okay.

20 MR. FOGELMAN: Okay. Thank you, Your Honor. Just
21 a couple more here on Metromedia, and then I move on to
22 subject matter jurisdiction. Another factor that the Court
23 mentioned you had looked at is whether the plan provided for
24 the full payment of the enjoined claims. That's obviously
25 not the case here. I think creditors are getting less than

1 a tenth of a cent on the dollar.

2 And then there's the question of the estate
3 receiving substantial contributions. And I'm not --

4 THE COURT: You know --

5 MR. FOGELMAN: -- Your Honor, I --

6 THE COURT: If you had full payment, you wouldn't
7 need a release. So clearly, there's something wrong with
8 that point. I think --

9 MR. FOGELMAN: I'm just raising it --

10 THE COURT: -- it has to be if you --

11 MR. FOGELMAN: -- because it's one of the
12 standards --

13 THE COURT: I understand.

14 MR. FOGELMAN: -- the Second Circuit set.

15 THE COURT: But it's --

16 MR. FOGELMAN: I --

17 THE COURT: It has to be reviewed. I think,
18 frankly, the Third Circuit formulation, which is, is it
19 fair, is a better way to look at it than that factor, which
20 just can't... I mean, it just seems really boneheaded to
21 say that because \$4.325 billion won't pay off or resolve the
22 opioid crisis, you shouldn't take it. I think you need to
23 really analyze what the alternatives are, and of course, how
24 tied in it is to the plan, and who is covered by the
25 release.

1 MR. FOGELMAN: Understood, Your Honor. One other
2 factor that the Court in the Second Circuit mentioned was
3 whether the estate receives substantial consideration. We
4 address that point in terms of Exhibit H and in terms of
5 very few, if any, individuals providing contribution.

6 I want to just point out that Garrett Lynam, the
7 Executor of the Sackler Estate, was asked a question. "So,
8 for example, all the facts that the release provision -- and
9 I believe it's discussed before -- but it references his
10 financial advisor, his attorneys, accountants, investment
11 bankers, consultants, experts, and other professionals, none
12 of those are giving a financial contribution to the estate,
13 right?: And he answered, "Correct."

14 Richard Sackler testified that, "Question: I have
15 just one, or expect to have just one question to you, other
16 than members of the Sackler Family or Trust, in which they
17 may be beneficiaries, are you aware of any personal entity
18 that will be contributing monetarily to the more than \$4
19 billion in settlement payments that are contemplated by
20 Purdue's plan. Answer: I am not aware of any."

21 And Your Honor, with regard to the Sacklers
22 themselves, I think there is a really important question
23 here about the use of their trust fund assets as opposed to
24 their personal assets. It's not clear on this record that
25 the Sacklers themselves are actually personally contributing

1 anything. They're using their trust as a sword and a
2 shield, Your Honor --

3 THE COURT: But can we --

4 MR. FOGELMAN: It's a sword because they're trying
5 to use their contribution into the estate by their trust to
6 say, aha, look at what we're doing; we're entitled to a
7 release. But then, when you ask them, well, you know, is
8 that money -- like could you be sued for that amount? And
9 you know, if you have a judgment creditor, if the judgment
10 creditor gets a judgment against you, can you be sued? I
11 asked that to Mortimer Sackler. He essentially said no. So
12 u sing your trust as a sword and a shield, and it's all
13 their money?

14 THE COURT: Why is that -- I don't --

15 MR. FOGELMAN: It's coming from the trust, and why
16 are the Sacklers getting a release?

17 THE COURT: But I guess I really would push back
18 on that one. First of all, they're obligated for an amount.
19 They're not obligated, you know, just from a particular
20 asset.

21 Secondly, if in fact their own assets would be
22 insufficient to make the payments and there is, as I think
23 the record is clear, at least say an issue as to whether in
24 a contested context, third parties could get at the trust
25 assets, why shouldn't the trust assets be viewed as a

1 positive being contributed to the relief? Because they
2 couldn't find it without it.

3 MR. FOGELMAN: They're trying to have it both
4 ways.

5 THE COURT: No, but --

6 MR. FOGELMAN: They're trying to have it both
7 ways.

8 THE COURT: But --

9 MR. FOGELMAN: They should acknowledge, then, that
10 it's their money. I mean, I think a few of them did testify
11 to that --

12 THE COURT: I'm not sure --

13 MR. FOGELMAN: -- and that, you know, if this plan
14 is --

15 THE COURT: To me, these are both clichés. But
16 sometimes a negotiation is a win-win, where is if you
17 litigate, it's a lose-lose. So maybe --

18 MR. FOGELMAN: Your Honor, Kathe Sacker said, "My
19 trust assets or my personal assets are my assets as well."

20 THE COURT: I agree. That --

21 MR. FOGELMAN: She treated them like they were
22 hers.

23 THE COURT: That is an issue that we'll --

24 MR. FOGELMAN: But then when she was asked --

25 THE COURT: No, no. That is an issue that will be

1 litigated.

2 MR. FOGELMAN: -- do you have personal control --

3 THE COURT: That is an issue that would be
4 litigated, and I don't know how it would ultimately come out
5 because I'm not ruling on the merits. But I can see how it
6 could come out either way, if this was a litigated attempt
7 to reach a judgment. And this settlement avoids that issue.
8 And to me it's --

9 MR. FOGELMAN: Understood, Your Honor.

10 THE COURT: -- you know, I don't see a problem
11 with it because in fact the record, I believe, is
12 uncontested that without those trust assets, neither side of
13 the family could pay this settlement. They could pay about
14 \$1.1 billion --

15 MR. FOGELMAN: Your Honor --

16 THE COURT: -- at most. And that's before
17 lawyers.

18 MR. FOGELMAN: I have a simpler point. I have a
19 simpler point, Your Honor. There's no evidence in the
20 record, I don't think -- someone can correct me if I'm
21 mistaken -- that the Sacklers actually are making any
22 personal contributions. When Mortimer Sackler was asked
23 that question, he said, you know, in terms of how much ends
24 up coming out of my personal estate versus my trust, I don't
25 know at this time.

1 Kathe Sackler --

2 THE COURT: But that's because it's --

3 MR. FOGELMAN: (indiscernible)

4 THE COURT: -- it's an aggregate number that they
5 have to pay, and ultimately, the estate doesn't care where
6 it comes from. They have bargained to have them be out of
7 these foreign companies by a certain date. But it's an
8 aggregate number --

9 MR. FOGELMAN: Understood. But --

10 THE COURT: -- so those answers were accurate
11 answers. They don't know, because it could be under either
12 source. But it is also true --

13 MR. FOGELMAN: But it's a test in the Second --

14 THE COURT: -- that they don't have the money on
15 their own to make the payments in a contested context. So
16 to have --

17 MR. FOGELMAN: Your Honor, it's --

18 THE COURT: -- to have the --

19 MR. FOGELMAN: -- it's a test in the Second
20 Circuit --

21 THE COURT: -- the trust agree to make the payment
22 to go to the Royal Court of Jersey and asked for permission
23 to do it is actually -- I actually think a win for the
24 estate, because they don't have to fight that issue. They
25 might ultimately win the issue --

1 MR. FOGELMAN: But it --

2 THE COURT: -- but they don't have to fight it
3 this way. So I think we're being a bit --

4 MR. FOGELMAN: Okay. Your Honor, I --

5 THE COURT: -- a bit metaphysical on this point,
6 Mr. Fogelman.

7 MR. FOGELMAN: I'll move on to subject matter
8 jurisdiction, Your Honor.

9 THE COURT: Okay.

10 MR. FOGELMAN: I just wanted to make the point
11 that it's a test of, you know, who's provided substantial
12 contributions. On this record, it's not clear if the
13 Sacklers personally are providing --

14 THE COURT: Well, they're --

15 MR. FOGELMAN: -- their (indiscernible).

16 THE COURT: -- on the hook for it. They're
17 definitely on the hook for it.

18 MR. FOGELMAN: Yes. Yes, Your Honor. On subject
19 matter jurisdiction, Your Honor, I just wanted to briefly
20 touch a couple of points that have been raised. Your Honor,
21 third-party releases do not arise under Title 11. There's
22 nothing in the lawsuits of the States and individuals
23 against the Sacklers, lawsuits that predated the bankruptcy,
24 that arise under Title 11. They instead arose under the
25 State substantive laws cited in those complaints that

1 alleged causes of actions against the Sacklers.

2 And so, you know, just because there is a plan and
3 releases are included in the plan, does not mean that the
4 settlement agreement -- I'm sorry -- that the litigations
5 themselves arise under the Court's core jurisdiction.

6 The correct question is whether the Court has
7 jurisdiction over the lawsuits filed by the sovereign states
8 and individuals, not whether the Court has subject matter
9 jurisdiction over confirming a plan. And that issue was
10 addressed in the Ninth Circuit *Dunmore v. United States*, 358
11 F.3d 1107 (9th Cir. 2004). The Ninth Circuit said, when
12 presented with a mixture of core and non-THE COURT: core
13 claims, you must employ a claim-by-claim analysis to
14 determine whether the Bankruptcy Court could enter a final
15 order for that claim. And that's a similar holding from the
16 matter of *Zale* in the Fifth Circuit, that landed in our
17 brief as well.

18 Judge Bernstein wrote in the *Drier* case, 429 B.R.
19 112, 131 (S.D.N.Y. 2010), the question is not whether the
20 court has jurisdiction over the settlement, but whether it
21 has jurisdiction over the attempt to enjoin the creditors'
22 unasserted claims against the third party. You've got to
23 break it down and look at what's at issue. In this case,
24 it's the lawsuits themselves, not just the plan. The plan,
25 the fact that it's part of a plan, doesn't confer core

1 jurisdiction over the third-party release. And the reason
2 that has to be right --

3 THE COURT: So, I guess --

4 MR. FOGELMAN: -- Your Honor, is that --

5 THE COURT: I guess this is why I was somewhat
6 upset with the government's stance here. I understand these
7 are live issues. I understand that there are courts that
8 disagree with your position, including the Third Circuit.
9 And frankly, even the Ninth Circuit in the (indiscernible)
10 case?

11 But I don't see why the United States is picking
12 this case to raise this issue. And we'll just leave it at
13 that.

14 MR. FOGELMAN: We're doing our best to get it
15 right, Your Honor. And we believe this is the correct --

16 THE COURT: Right.

17 MR. FOGELMAN: -- legal analysis.

18 THE COURT: Right. Notwithstanding --

19 MR. FOGELMAN: And it's a case that --

20 THE COURT: -- what would happen as a result.

21 MR. FOGELMAN: Your Honor, there are 10 sovereign
22 states that are going to lose their rights to file lawsuits.
23 We think that's really important. As well as individuals
24 who filed lawsuits against the Sacklers --

25 THE COURT: Right. So they --

1 MR. FOGELMAN: -- who are losing their rights --

2 THE COURT: -- will have a lawsuit --

3 MR. FOGELMAN: -- and that's why we're here.

4 THE COURT: -- and the United States will have a
5 \$1.7 priority claim, superpriority claim.

6 MR. FOGELMAN: Again, Your Honor --

7 THE COURT: So I think there must be --

8 MR. FOGELMAN: -- they do have the right to pull
9 out of the settlement.

10 THE COURT: -- very grateful that you're looking
11 after their interests as you pick their pocket. Let's move
12 on.

13 MR. FOGELMAN: I disagree with Your Honor's
14 characterization. I don't think that's fair --

15 THE COURT: Well --

16 MR. FOGELMAN: -- or correct. Your Honor, the
17 reason that it has to be the case that Your Honor -- that
18 you can't have core jurisdiction over a lawsuit between
19 third parties that is included in a plan, the reason that
20 has to be true is that it's a bedrock principle of subject
21 matter jurisdiction.

22 The Supreme Court, in Insurance Corporation of
23 Ireland v. Compagnie Des Bauxites, 456 U.S. 694, 702, from
24 1982, wrote, "No action of the parties can confer subject
25 matter jurisdiction upon a federal court."

1 And so, Your Honor, if the Court doesn't have
2 jurisdiction over the lawsuit from one third party against
3 the Sacklers, then simply by putting it in a plan, if that
4 were permitted, you'd be doing exactly what Insurance Corp.
5 of Ireland said you can't, which is manufactured in
6 jurisdiction. Plans are not magic. It can't be that
7 anything you put inside a plan automatically comes within
8 the Court's core jurisdiction.

9 The Johns Manville case also noted it was
10 inappropriate for the Bankruptcy Court to enjoin third-party
11 claims against third-party non-debtors solely on the basis
12 of that third-party's financial contribution to a Debtor's
13 estate. If that were possible, a debtor could create
14 subject matter jurisdiction over any non-debtor third party
15 by structuring a plan in such a way that it depended upon
16 the third-party contributions.

17 As we have made clear, subject matter jurisdiction
18 cannot be conferred by consent of the parties. And so too
19 here, Your Honor, again, just by including these releases in
20 the plan does not confer jurisdiction. Even if Your Honor
21 disagreed and you found that because this is a plan, it was
22 core jurisdiction of the Court, it would violate Article 3
23 of the Constitution for a bankruptcy judge to ultimately
24 make the decision on whether the lawsuits filed by sovereign
25 states and individuals against the Sacklers can be released.

1 The Bankruptcy Court simply can't reach (indiscernible) when
2 it's the final adjudication of the merits of the state law
3 claims, when neither the states nor the parties are parties
4 to the bankruptcy proceeding. And that's Stern v. Marshall.
5 The Supreme Court held there that just because the Code --

6 THE COURT: Mr. Fogelman --

7 MR. FOGELMAN: -- with certain --

8 THE COURT: I --

9 MR. FOGELMAN: You know Stern well. I get it,
10 Your Honor.

11 THE COURT: Right.

12 MR. FOGELMAN: But Your Honor, look, just because
13 the Bankruptcy Court -- look. In that case, the Bankruptcy
14 Court lacked constitutional authority to hear Anna Nicole
15 Smith's cross-claims --

16 THE COURT: I don't need to hear about Anna Nicole
17 Smith, for the 5,000th time. All right, please. You
18 covered this in your brief. You're apparently going to
19 appeal this --

20 MR. FOGELMAN: Yes, Your Honor, my point --

21 THE COURT: -- whenever, and hold up the
22 distributions to these people forever, and that's the United
23 States' choice. So, be my guest, all right. I'm done with
24 this argument. I want to hear the Canadian municipality --

25 MR. FOGELMAN: Your Honor, my point is simply that

1 it --

2 THE COURT: No. I want to hear the Canadian
3 municipality creditors. I don't understand this. There has
4 to be some level of prosecutorial discretion here. So, Mr.
5 Underwood, you're next.

6 MR. UNDERWOOD: Good evening, Your Honor, Alan
7 Underwood from Lite DePalma Greenberg Afanador, on behalf of
8 certain Canadian municipal creditors, Canadian First Nations
9 creditors.

10 We want to make clear, first of all, Your Honor,
11 is that Canadian creditors not -- and there's testimony to
12 this -- they were approached. Mr. Dubel testified to this
13 fact -- they were not approached by the Debtors' Special
14 Committee, they were not approached by Debtors' counsel.
15 They did independently try to become involved in this case,
16 but unfortunately it didn't result in -- what they hoped
17 for.

18 So, the irony here is, Judge, you've got ten
19 parties that really are trying to figure out whether they
20 want to be a part of the abatement and claims process here.
21 And if you've got one foreign, or a group of foreign parties
22 that desperately wanted to be a part of this, expected to be
23 a part of this, and were ultimately not.

24 And so, ultimately, where we are today --
25 actually, my understanding is there's 17 -- in the year

1 2020, there were 17 Canadians who died each day from opioid
2 toxicity. Ultimately, in terms of the plan, the proposed
3 plan that is before this Court, I think it's a close call,
4 but I think it probably, ultimately is in favor of the
5 Debtors in terms of the scope of the releases that can be
6 granted with regard to the US States.

7 I think the answer is different with regard to the
8 Canadian municipalities. And that's why -- and certainly,
9 as to the First Nations -- and that is why when the
10 objection, a limited objection to the Provinces settlement
11 was filed, we attempted to alert the Court to
12 (indiscernible).

13 So, ultimately, in terms of what is pending right
14 now, before you -- there is issue with regard to the fact
15 that subject matter jurisdiction of this Court may not
16 extend to these claims, and there's a couple of different
17 reasons for that. And these claims are different from the
18 state, 50 state and territory claims that we've otherwise
19 addressed at great length before this Court.

20 In terms of --

21 THE COURT: It's not really a subject matter
22 jurisdiction point, is it? Because they filed their claims
23 here. And again, there may be a recognition issue; I
24 understand point. The Canadian Court may feel that these
25 Canadian creditors' claims against the US entities --

1 because that's all we're talking about here; we're not their
2 claims against the Canadian entities. The release doesn't
3 extend to that. So, the Canadian Court may feel that their
4 claims against the US entities aren't being sufficiently
5 well-treated under the plan for recognition to be granted.
6 But I don't think it's a jurisdictional issue.

7 MR. UNDERWOOD: Well, I think it is an interesting
8 -- I understand the distinction the Court is making with
9 regard to subject matter jurisdiction. I think, though,
10 that the distinction may be a little bit finer. In the
11 first case --

12 MR. HUEBNER: Your Honor. Your Honor,
13 (indiscernible) I apologize, the parties may have forgotten
14 that we actually have a separate allocation of time for Mr.
15 Underwood, on Wednesday, to discuss Canadian jurisdiction.
16 This is only third-party releases. I think he already
17 expressed his view. I certainly don't mean to cut anybody
18 off, but there's actually a different pod for this exact
19 issue. We obviously need to respond to some of the things
20 that were said --

21 THE COURT: That's fair. I think -- and I didn't
22 appreciate which way you were going there, Mr. Underwood.
23 If this isn't on the release, we'll cover you later. We'll
24 cover you on Wednesday.

25 MR. UNDERWOOD: I think, you know, it relates to

1 the release, but it relates to the release in a different
2 way than almost every other party, so I have no problem, as
3 long as I'm afforded the time that I would have had here to
4 address this independently later on. And I appreciate the
5 Court's time.

6 THE COURT: Okay. I didn't want to cut you off
7 totally. I just thought, on this one point, as we got into
8 your argument, it seemed to be covering jurisdiction
9 generally, as opposed to just the release. But if you could
10 cover both points on Wednesday, that's fine. But I don't
11 know if you have any other points on the release?

12 MR. UNDERWOOD: With the respect to the releases,
13 if you'll just give me one very quick comment. Ultimately,
14 I don't think that there are points that can't be addressed
15 on Wednesday, other than I can tell you that the Canadian
16 creditors are not beneficiaries of any form of channeling,
17 injunction or trust. And that's a --

18 THE COURT: They do get -- I'm paraphrasing, I
19 think, the Debtors' argument on this, although I'll ask them
20 about it. You're not getting money directly as part of the
21 Sackler settlement, as I understand it, as an unsecured
22 creditor in that class. But I think the Debtors would say
23 two things: First, it's far from clear that your clients
24 have claims that are subject to the release, i.e., claims
25 against the US entities as opposed to the Canadian entities.

1 And when you read the proofs of claim, I think there is some
2 question as to, you know, how is the claim actually against
3 the US entities? That's point one.

4 Point two is, I think they would say that the
5 money that is going to unsecured creditors wouldn't go to
6 them but for the release, and but for the Sackler
7 settlement, because the parties that, in essence, would
8 swallow up that money, that would be going to the unsecured
9 creditors, aren't swallowing it up because of the money that
10 the Sacklers are paying, which is supported by the
11 liquidation analysis, which has unsecured creditors getting
12 nothing. So, I think that's their argument.

13 MR. UNDERWOOD: Right. I mean, Your Honor, I
14 don't know if you want to put this off until Wednesday or you
15 want to carry forward with your --

16 THE COURT: Well, if you have a response to that.

17 MR. UNDERWOOD: Yeah, well, I do, and I think that
18 there's a linkage there that may be the step too far under
19 Second Circuit's holdings, meaning, you know, if we look
20 back at where this comes from under, you know, 542(g) Johns
21 Manville and this whole progeny of cases, I think that there
22 is a legislative intent and a judicial intent, in most
23 cases, to link the channel injunction, the establishment of
24 a trust with the relief that's provided. That link is
25 missing here.

1 I would also say, you know, that look, if you look
2 at the breadth of case law, there are releases, and there
3 are releases. I would suggest that there are Section 105(a)
4 releases that are related to the Debtors' business and
5 professionals that are -- and no question -- commonplace. I
6 think that the scope of these releases is something greater,
7 much more in the fashion of a mass tort release -- that's
8 what it is -- and I think it requires a different analysis.
9 That's my position on that, Your Honor.

10 THE COURT: Thank you, that's helpful. Okay, and
11 I think the last group to speak to this is the Gulf
12 Underwriters and St. Paul and Marine, et al.

13 MR. LUSKIN: Yes, Your Honor, Michael Luskin,
14 Luskin, Stern & Eisler for Gulf and for St. Paul. This is
15 very limited objection to the scope of the release insofar
16 as it covers three non-debtor entities. We have a
17 settlement agreement; the contract with six Purdue entities:
18 three are debtors, three are non-debtors. And under the
19 terms of the release provisions in the plan, the non-debtors
20 who are listed as Side B Shareholders in Appendix H --
21 that's at page 498 of 499 in the disclosure statement are --
22 their indemnity obligations are being released.

23 These are third-party claims, direct claims
24 against the insurers. For instance, a coverage claim by the
25 Committee against Gulf. I'll be very, very brief, since

1 Your Honor has heard the full book on third-party releases
2 today, but look, Metromedia is not satisfied with --

3 THE COURT: Can I interrupt you -- I'm sorry, Mr.
4 Luskin.

5 MR. LUSKIN: Yes, you may.

6 THE COURT: I just want to make sure, who is
7 giving a release of what, that you're objecting to? Gulf
8 and St. Paul are releasing who?

9 MR. LUSKIN: No, no, no. Gulf and St. Paul are my
10 clients. The plan is releasing my counterparties. They are
11 Purdue Frederick, PF Laboratories, and PRA Holdings. Those
12 three companies owe -- have agreed under an agreement back
13 in 2006, to indemnify the insurance companies for defense
14 costs, for instance, in third-party suites that exist now,
15 at that may exist in the future.

16 That was part of a -- the facts on this, they're
17 very simple and they're set out in a stipulation which is
18 ECF3589.

19 THE COURT: Okay.

20 MR. LUSKIN: It's a two-page stipulation. So,
21 what we have is a contract that's from 2006 --

22 THE COURT: I got it. I just -- it wasn't --

23 MR. LUSKIN: You got it, okay. Okay, I'm sorry, I
24 wasn't clear. So, what the plan does, is it, it gives the
25 three debtor parties, the three, my three -- three of the

1 six debtor counterparties, my counterparties, it gives them
2 the benefit of the plan release. Fine, we don't have a
3 problem with debtor parties getting release. These are non-
4 debtor parties who have made no contribution, who have not
5 participated in this case, who will owe us money, or do owe
6 us money on the indemnities.

7 And, frankly, there's been zero showing
8 whatsoever, that this release, for these three non-debtors
9 is necessary for the plan. I do not see how a -- the
10 elimination of a bargain for commercial benefit by non-
11 debtors is fair, to use the Third Circuit, and I believe
12 also the Second Circuit standard. I --

13 THE COURT: And because they're non-debtors
14 there's no 502(e) or 509 issue.

15 MR. LUSKIN: Correct.

16 THE COURT: Okay.

17 MR. LUSKIN: They're non-debtors and I think that,
18 under the standard, that seems to be a common theme in
19 today's arguments. This is -- removal of this thread will
20 not cause the tapestry to unravel. This is a loose end that
21 can safely be trimmed off and should be trimmed off. I
22 think that if the Court applies the exacting hard look that
23 is required under Metromedia, you will require the Debtors
24 to revise the plan to allow these -- to remove these
25 releases and to allow the indemnity provisions to continue.

1 That's all I have, Your Honor.

2 THE COURT: Okay, thank you.

3 MR. LUSKIN: Thank you.

4 THE COURT: I think those are all of the people on
5 the list. I know it's fairly late, but I would like the
6 Debtors -- unless they have someone else to do it -- to
7 respond to the last two arguments, Mr. Underwood's and Mr.
8 Luskin's.

9 MR. HUEBNER: Your Honor, may I ask the Court a
10 question --?

11 THE COURT: Sure.

12 MR. HUEBNER: -- before we -- onto that. The
13 objectors went for four hours, and obviously, the Court had
14 many questions for them and that's fair. A bunch of things
15 were said that I believe, on behalf of the estates -- and
16 based on emails and texts I've been getting, I think with
17 the exception of two minutes for the UCC, I will make an
18 omnibus response that will be relatively brief and targeted.
19 But many things were said factually; many things were said
20 about the Debtors and the plan and other constituencies.
21 But I actually feel relatively strongly, in a case of this
22 import, probably do merit a response.

23 Obviously, if the Court's view is -- you know, I
24 read every single thing and I don't not need or want to hear
25 from the Debtors or, in general, the proponents in the

1 aggregate, to the Debtors; clearly, we will take the Court's
2 direction. But there are some points that I actually think
3 are very important, but obviously, in this and in all things
4 we're guided by what the Court thinks is important; not by
5 what we think is important. Meanwhile --

6 THE COURT: I would like to hear the response to
7 Mr. Underwood's point that there's no channeling injunction
8 for a fund to his clients, and then a response to Mr.
9 Luskin.

10 And then, it would seem to me, that if you think
11 there was a clear factual misstatement, you should point me
12 that and point me to the evidence that would show why. I
13 don't think I need extensive rebuttal on the arguments
14 though, or any rebuttal, frankly. I think it's really just
15 -- I have to confess, I want to focus on those last two
16 points: channeling, not for the unsecured, and the Gulf
17 Underwriters' point. And then, if you feel that you have to
18 correct the record you should do that too, with cites to the
19 record.

20 MR. HUEBNER: You know, what I'll do is, I will
21 cut out about 95 percent of what I was going to say and
22 confine myself to cites to the record that I believe are
23 important. I'll have to take a little extra pause between
24 the two points, which I hope the Court is okay with, because
25 I'll be skipping so very many things that are important to

1 us. But obviously, that's what I'm going to do.

2 In the interim, there will be Mr. Tobak getting
3 read to address both of those points, to which I think we're
4 actually quite comfortable with our answers, which in part
5 are in our papers, and part you will hear in a few minutes.

6 Your Honor, first of all, we heard from several of
7 the objectors who sort of testified about the lack of
8 adequate notice and the fact that they were stayed during
9 the case, and they attempted to impress on the Court that
10 that limited their ability, including with respect to
11 disclosure of the assets and liabilities of the Sacklers.

12 Here are the record cites, Your Honor, that I
13 think belie that claim. There are 2,188 pages of
14 disclosures and forensic examination of the Sacklers assets
15 and liabilities that are on the docket. Mr. Collura
16 testified to the 355-page report, 1A. Mr. Rule testified to
17 the 400-page report, 1B. Neither of those witnesses was
18 cross-examined. Mr. DeRamus testified to the valuation of
19 the non-cash transfers and set forth his findings in a 520-
20 page report. No party cross-examined our witness Mr.
21 DeRamus.

22 Mr. Martin, who submitted two declarations,
23 spanning 913 pages, analyzed the assets of the A Side and B
24 Side of the Sackler family. No one other than Mr. Underwood
25 cross-examined Mr. Martin.

1 The UCC letter which was attached to Mr.
2 Atkinson's declaration goes on for about 15 pages, providing
3 record evidence of the extraordinary diligence done by the
4 Creditors Committee, specifically about -- sorry, someone is
5 on camera who I'm guessing does not want to be, in the plaid
6 shirt -- thank you -- specifically summarizing the
7 discovery, the financial information and the analysis of the
8 liability and culpability of the Sacklers. That evidence,
9 Docket Number 3460, among many other things, talks about
10 450,000 documents produced by the Sacklers; 800,000
11 documents produced by the ACs; 40,000 documents produced by
12 the other 2A entities, which are a form of IAC, and close to
13 200,000 documents produced by Norton Rose.

14 In addition, Your Honor, Dubel declaration,
15 paragraph 23, contains record evidence of the Special
16 Committee of the Board, reviewed over 960,000 documents
17 through its advisors.

18 A stipulation entered into, 10 those many months
19 ago, at the beginning of the case, Docket Number 518, called
20 the Tripartite or UCC Stipulation, required the Sacklers to
21 make detailed financial presentations. Paragraph 17, which
22 I will not read, is very long and has many subparts, of all
23 the financial information that the Sacklers were required to
24 provide or risk contempt under the stipulation approved by
25 this Court, to no objection. I believe, if my memory is

1 right -- and maybe it's not on that point, because it's been
2 along day -- on Docket Number 518.

3 So, Your Honor, with respect to that, I'll say
4 only one other thing: 257 parties signed the protective
5 order entered in this case, that provided, I believe, 100
6 million pages of documents, to basically any and every party
7 that participated in this case, to use as a treasure trove
8 and a hunting ground to find things with respect to the
9 liability and culpability of the Sacklers, 257.

10 So, when lawyers talk about lack of information
11 and lack of transparency, it just seems so utterly belied by
12 the record that it's not a surprise that they never have
13 citations. Obviously, I will not cite Your Honor to Your
14 Honor, since I'm directed to record evidence, but much of
15 this information is about the foreign assets and the foreign
16 entities where the money is. And it would be very, very
17 difficult and arguably impossible to get in discovery
18 without letters rogatory and (indiscernible) getting the
19 cooperation of foreign jurisdictions, etc.

20 Item number two, which is factual. You know, I
21 want to apologize to the State of Washington and to the
22 State of Maryland. Apparently, in pulling together cites
23 for the general proposition, that many states are obligated
24 to put recoveries in their treasuries, I picked two bad
25 examples. It was my fault and I take responsibility for

1 that.

2 There are many states who not only don't have such
3 a special provision, but have the opposite provision. In
4 Oklahoma, for example, right after we settled with them pre-
5 filing, they passed 74 Oklahoma Statute annotated 30.6, to
6 bar the attorney general from doing settlements and putting
7 money directly into opioid as opposed to in the state
8 treasuries.

9 So, there are many devoted public servants and
10 many elected officials, each doing the best they can. I
11 should have left the point more general, which is there can
12 be no assurance that the money will go to abatement if there
13 are direct recoveries, as opposed to, I think citing
14 Maryland -- and I apologize again, both to Mr. Edmunds and
15 to the AG for my mistake in not knowing that there was a
16 subsequent, more specific statute that, praise the Lord,
17 directed opioid recoveries to abatement.

18 Your Honor, with respect to transparency and
19 notice, I will rest on the extraordinary record -- I won't
20 respond to that at all.

21 Your Honor, it's not record evidence, and forgive
22 for straying for a nanosecond -- you know what, scrap that;
23 delete it and retract it.

24 Your Honor, this is in order and this is fact:
25 Your Honor asked Mr. Gold, and got what I actually think --

1 actually from Mr. Goldman, excuse me -- possibly the most
2 important question that is the cornerstone of the entire
3 hearing. Under your theory, what happens if one
4 governmental entity potentially is against the will of
5 everyone else, if it's literally 613,999 creditors to one?
6 Whether because that governmental entity is acting in the
7 best of all possible fates and believes that the terms,
8 etc., is not satisfied; or whether it's -- just wants much
9 more than it deserves, and the now has ultimate extortion in
10 a situation where a single foreign town or domestic town or
11 municipality, or state, under 10127 which, as Mr. Kaminetzky
12 pointed out, defines governmental units with breathtaking
13 precision, the term that is incorporated as used in the
14 Police Power Provision at 364.

15 And I apologize for picking on Connecticut, Mr.
16 Shore's home state, as we learned today. But here's the
17 fact? Connecticut's proof of claim, under penalty of
18 perjury, asserts \$50,686,000,000 against Purdue. And of
19 course, we know that -- and believe me, I'm not pushing back
20 -- that many people believe that any claim against Purdue is
21 a claim against the Sacklers.

22 So, on some level, that's all you need to know;
23 which is, since individual states, almost all of them, are
24 asserting claims in the tens of billions of dollars, and
25 many municipalities are asserting massive claims, what they

1 are, in essence telling you, is that in their view, 99.999
2 percent consensus is irrelevant because one entity -- and
3 under, you know, some of the theories we heard today,
4 including my often very dear friend Mr. Fogelman -- and how
5 he lives with the dissonance of being one of the hardest
6 working people in this case, for abatement and for a PHI,
7 and working on the injunction day and night, to make sure
8 the DA is satisfied with it, to make the new company cleaner
9 than any company ever, while at the same time filing a
10 statement and arguing passionately, as far as I can tell, an
11 objector; not only has the settlement of a \$2 billion claim
12 - I don't understand any of that.

13 But under his theory, defining the governmental
14 entity, if any entity -- any entity in the world -- can put
15 a proverbial block, even if all 50 states -- and we even get
16 Seattle on board -- and all 22,495 cities, counties
17 (indiscernible) support, with one group of tort plaintiffs,
18 with one lawyer, with a \$20 billion asserted claim, says
19 they're not in the deal, everything crumbles to the ground.
20 There's no way that anybody actually believes that that can
21 be the right answer.

22 You Honor, with respect to record evidence, sort
23 of, on the direct claims versus estate claims, I would point
24 the Court to paragraph 239 of our brief, where we clearly
25 state that we believe that the estate claims are very

1 substantially stronger than any of the direct claims.
2 Because when it comes to invading the corpus of trusts, when
3 you have a (indiscernible) claim for estate value that was
4 transferred into a trust, you stand very differently than
5 having an in personam claim against a beneficiary of the
6 trust when you try to pierce the trust to get the value out
7 of your trust.

8 Suffice it to say, Your Honor, I was as bewildered
9 as you were by your colloquy with Mr. Fogelman. The fact
10 that someone is agreeing to dip into a trust where there is
11 an additional layer of recovery risk, I think speaks to the
12 wisdom and strength of the settlement. There's no sword and
13 shield at all. It's the opposite; they're putting down a
14 force field and making the trust obligors, instead of saying
15 that they have no liability and will only pay out of
16 personal assets.

17 Your Honor, the record evidence I think also shows
18 -- I actually don't have pin cite for this.

19 You know what? Before I say that, I want to say
20 something else, actually of extraordinary import
21 (indiscernible) personally. And some of the new arrivals
22 who are participating in this hearing probably do not know
23 this, you know, we arrived, Davis Polk, for the first time,
24 in March 2018 -- no prior connection to the Sacklers, no
25 prior connection to Purdue.

1 I'll just let the facts speak for themselves;
2 which is, by January 2019, every Sackler was gone from the
3 Board and out of management. And there was a majority of
4 new blue chip, independent directors, who not only were four
5 of the seven, but were the entirety of the Special
6 Committee, to whom there was irrevocable delegation.

7 I think it's fair to say that we understand
8 cleaning house and deterrents and propriety.

9 So, now onto this point: It is simply a fact that
10 out of the 57 human beings who, I believe, are descendants
11 of Mortimer and Raymond Sackler, only 11, to our knowledge,
12 were ever on the Board at any time. And as I said before, a
13 fair number of them are not US citizens, do not live in the
14 United States and have never been involved.

15 So, those are just the facts that inform the
16 landscape. And, you know, when people ... I'll leave that
17 alone.

18 Next fact, Your Honor, the GDP of the United
19 States of America in 2020, was \$20,930,000,000,000. That's
20 a fact. Why is that fact relevant? Because what you heard
21 from many people is a totally unsupported new theory that
22 the ratio of harm alleged to the settlement, is somehow
23 legally relevant. Under that theory, if the Sacklers had
24 the entire wealth of the United States of America's 2000
25 GDP, and they contributed the whole thing, it would still be

1 insufficient. Because the \$40 trillion number, that we
2 constantly remind people, is the amount of filed proofs of
3 claim -- there's only 10 percent of them, because 90 percent
4 were filed in an unliquidated amount.

5 So, if you extrapolate out, there could be \$400
6 trillion worth of claims, which means that the United States
7 of America donated its GDP, would be about 5.2 percent of
8 the alleged harm, and would not be sufficient to settle, due
9 to the amount alleged.

10 Your Honor, with respect to the police and
11 regulatory dimension -- and this is so important -- and
12 again, I'm not going to make argument; I'm going to stick
13 what's in the record. The covenants contained in the Eighth
14 Amended Plan and in the Mediator's Report, supported by 80
15 percent of the states and the MSGE Group, speak passionately
16 and directly to this exact point. We don't begrudge anyone
17 who wishes we were getting a lot more from the Sacklers. I
18 hereby swear that I would rather take another billion or two
19 billion or three billion from the Sacklers, and put it to
20 work on abatement. So does everyone; that's not the issue.
21 The issue is, did all the rest of the states and almost all
22 the mutants -- and we'll talk the parens patriae and I'll
23 direct Your Honor to the citations for that in just a moment
24 -- are they entitled to have their views effectuated? Or
25 does any individual not on board get a blocking right?

1 So what is the record evidence, Your Honor? The
2 record evidence is that by the time the third mediation was
3 concluded, the covenants to the deal that directly address
4 deterrence and regulatory and even frankly penal include the
5 following: the Sacklers are barred for life from any further
6 connection to Purdue. Purdue is stomped out of existence in
7 Chapter 11, and its assets are transferred to NewCo.
8 NewCo's governors are picked by the government. They will
9 pick the board and the overseeing trusts. There will be a
10 monitor continuing. We have had two illustrative --
11 illustrious monitors.

12 And it was Your Honor's suggestion, and we did it
13 at the very beginning of the case and it is not going away.
14 There is an injunction that is going to be in place, and I
15 was very confused by Mr. Edmunds until he said, quite
16 understandably, because we're all overwhelmed by the needs
17 of this case, that people had to divide and conquer, right?

18 The NCSG, as this Court remembers well, doubled in
19 length the original injunction from 2019 after three or four
20 or five weeks of negotiation. And we are now very close to
21 an agreed injunction that goes yet further still that all of
22 the states are involved in negotiating. And hopefully we
23 will reach global piece.

24 Mr. Fogelman and the DEA is also deeply involved.
25 And my understanding is that document is just about done and

1 has just about universal agreement. So there's that and
2 then there's the repository which I'm not going to repeat
3 the terms of because Your Honor has heard them enough. And
4 then there are the naming rights, and then and then and
5 then.

6 And so if you want to talk about deterrence and
7 messaging to say we will take your company away from you, we
8 will rip it out of your hands, we will stomp it out of
9 existence, we will transfer its assets to a trust for the
10 benefit of the American people, they will have a monitor, we
11 will pick the board, you will be barred and you have to sell
12 all your overseas companies and give us over \$4 billion, the
13 largest settlement in the history of Chapter 11, it's not
14 what I think matters because that's irrelevant. It's what
15 97 percent of our governmental creditors, 80 percent of the
16 states, and as Mr. Shore and Mr. Arik so eloquently noted,
17 an even higher percentage of the actual human beings
18 injured.

19 Back to record evidence, Mr. Gold testified that
20 there will not by dystopia of the plan fails. That's not
21 what the record evidence shows because in this case, the
22 past is a very excellent prediction of future performance.
23 And Mr. Delconte's liquidation analysis, which I'll be
24 talking a fair bit more about when we get to best interest
25 on Wednesday, is the evidence on this as is what the Court

1 of course will take judicial notice of which was described
2 at length in our pre-filing brief, the so-called
3 informational brief, that describes exactly what was going
4 on pre-filing, that states and municipalities and tribes and
5 plaintiffs competing against one another to get there first
6 and get value from the Sacklers with new litigations being
7 filed, sometimes 20 a day, in different courthouses, et
8 cetera.

9 And that's what the evidence shows. It's not that
10 the AGs thought that it would be irresponsible. There are
11 600,000 people, each who passionately believe they have
12 enormous claims that deserve vindication.

13 Your Honor, with respect to sovereignism --
14 sovereignty, I'm not going to repeat what was in Mr.
15 MacLay's brief, except to note that he goes on starting at
16 Paragraph 9 on Page 5 for quite a few pages with a lot of
17 pretty convincing-looking case law and statutory cites to me
18 about home rule including ironically -- I'm not going to
19 take the fall for this one if it's wrong since it's not my
20 brief -- California, Oregon, Washington, Connecticut and
21 Delaware are among the states that provide for home rule
22 either in their constitutions or by legislation. Then he
23 cites a lot of stuff.

24 So states are unquestionably critical sovereigns
25 and it's true. It's true. I guess I don't know enough

1 about American politics as maybe I should. I don't -- I
2 don't know that I'm profoundly ignorant. I think that may
3 have been a little bit much. But I do know that out of the
4 4,924 U.S. governments who voted, 4,914 are not objecting to
5 the plan and ten are.

6 Finally, Your Honor, I think, I want to note that
7 every one of the objectors disclaimed a desire to talk about
8 Iridium. They said, not my thing, I'm not talking about
9 Iridium, that's not me. But then they all did, every one of
10 them, because what they did was they cited a document or two
11 or three or five that, you know, suggests that the Sacklers
12 have a lot of risk here.

13 Let me be very clear because you can assume that
14 the special committee, which has looked at 960,000 documents
15 and the UCC that has done the same, share that view
16 passionately. The Sacklers have very substantial risk here,
17 in the billions of dollars. I've said it at so many
18 hearings that only new entrants to the case, I think, could
19 possibly believe to the contrary. It is to settle that risk
20 that they are agreeing to all of these covenants and paying
21 this money.

22 Whether it's enough money is for the creditors to
23 decide. And they have decided decisively and definitively.
24 If it is truly unlawful, that's for the Court to decide.
25 But for people to give you one or two documents and say,

1 look, Mortimer knew, that Dr. Richard knew, do you think we
2 don't know that? Do you think the Court doesn't know that?
3 This has been three-and-a-half years full-time. We know
4 much more than this were the tip of iceberg, and we never
5 would have allowed the Sacklers to get on the stand for
6 three days and tell their story and defend themselves.

7 To say that there were no Perry Mason moments is
8 an understatement. But this is for bankruptcy is for. It's
9 for collective action to solve otherwise unsolvable problems
10 and to do the best or the most that one knows how. If it's
11 truly illegal, then Your Honor will turn it down, and I
12 actually terribly fear what will happen, as you have heard
13 from me in spades. But to say that it shouldn't go through
14 because they found a document or two or three that suggested
15 that the Sacklers had risk, we found hundreds.

16 We know what the risk is. And that's in the
17 negotiation and the mediation, there Judge Layn Phillips and
18 Mr. Ken Feinberg spent 11 months full-time. No one's even
19 heard of hiring a mediator by the month, full-time for a
20 year. All they did, without breaching mediation privilege,
21 was get presentations, hundreds of pages long with
22 attachments and excerpts and arguments and quotes. And they
23 then jointly recommended 4.275.

24 So I don't appreciate the kind of, you know, sub
25 silentio Iridium testimony to people who keep saying that's

1 not their issue. We are very comfortable that the will of
2 the overall number of creditors and governmental creditors
3 supports the deal. The issues that are left are really
4 entirely legal, and we stand both on Mr. Kaminetzky's
5 argument which I think address everything, along with the
6 papers of all the supporting parties.

7 So with that, Your Honor, I've left out a lot of
8 what I wanted to say. But I would ask you to indulge me. I
9 just want to say one last thing, I promise, and then I'll
10 turn to Mr. Tobak.

11 When either litigants in this case or those who
12 report on what's happening refer to this plan as the Sackler
13 plan or the Sacklers, you know, exploiting a loophole in the
14 Bankruptcy Code, it's almost impossible to overstate how
15 painful that is, not to me, but to the UCC and the AHC and
16 the MSGE and the Native American tribes and the adult PI
17 victims and the NASPI victims and the MAS medical monitoring
18 claims and the hospitals and the third-party payers and the
19 ratepayers and the schools.

20 Every one of those groups had to look deep inside
21 and figure out whether they would support this plan or not.
22 The Sacklers are the defendants. That's all they are.
23 They're not the voters. They're not the proponents.
24 They're not the supporters. They're not the craftsmen. In
25 fact, they didn't even see this plan for months. They sent

1 Howard to get copies of it because it wasn't their business.

2 We are the plaintiffs. And they are the defendants.

3 Unless the plan is unlawful, the 4,500 pages of
4 uncontested testimony and expert reports make it clear there
5 is no better way out of this. We all wish there was more.
6 But the consensus of everyone in the case, except for ten
7 people basically, is that we're not getting more voluntarily
8 and the involuntary route is vastly, vastly worse.

9 With that, Your Honor, I'll ask Mr. Tobak to
10 please come up and address the two technical questions.
11 Your Honor, I promise you I cut out 90 percent of what I was
12 going to say. I apologize for straying a little bit from
13 record evidence. Obviously this is a case of tremendous,
14 tremendous import to the Debtors who, while not government
15 officials, are in fact the fiduciaries for all parties for
16 whom we actually care rather desperately and passionately.

17 THE COURT: Okay. Thank you.

18 MR. TOBAK: Marc Tobak -- oh, sorry. Thank you,
19 Your Honor. Marc Tobak, Davis Polk & Wardwell for the
20 Debtors. With respect to Mr. Underwood's point that his
21 clients' claims are not channeled, that's entirely correct
22 and appropriate for four reasons. One is simply that the
23 Canadian munis' claims are fundamentally different from
24 those of domestic non-federal-governmental entities.

25 As has been discussed over the course of these

1 hearings, the plan treats claims against the Debtors and has
2 refocused at length today on claims against release parties
3 and shareholder release parties that relate to the Debtors.
4 Thus the plan treats Canadian municipal and First Nation
5 creditors' claims against the Debtors or claims against the
6 shareholder release parties that relate to the Debtors.

7 But unlike the domestic federal -- domestic non-
8 federal public claimants, the Canadian municipalities and
9 Canadian First Nations can look to a separate company, to
10 Purdue Canada for recoveries and, to the extent that they
11 have claims against any shareholder release party that
12 relates to the conduct of Purdue Canada and not the conduct
13 of the Debtors, can look to those parties for those non-
14 debtor-related claims. That means that they're both
15 fundamentally different from the claims that are treated
16 through NOAT.

17 As a consequence of that, they've received
18 different classification and treatment under the plan.
19 They're classified in the class 11-C as a general unsecured
20 creditor and, unlike the participants in NOAT, don't receive
21 distributions on account of abatement. They could however,
22 to the extent that they succeed in proving their claim and
23 withstand the objection that the Debtors would intend to
24 pursue, would receive those recoveries directly in the form
25 of a recovery from the pool of money set aside from those

1 creditors, unlike NOAT that receive abatement funds which
2 are obviously subject to a great deal of carefully
3 negotiated covenants and promises about how those funds
4 would be used.

5 To the extent that this argument is intended as an
6 argument that the releases -- the fact that these claims
7 would not be channeled matters for the Metromedia analysis,
8 Your Honor, I would say as we sorted out and as Mr.
9 Kaminetzky noted, Metromedia is not a matter of factors and
10 prongs and ultimately turns on the importance of the release
11 to the plan and the fact that these claims, as is
12 appropriate given their different treatment, are not
13 channeled does not matter for the Metromedia analysis of why
14 the third-party release of those claims with respect to
15 claims against or related to the Debtors is appropriate.

16 Finally, to turn to the sovereign immunity
17 argument, I think it's very clear, as we set forth in our
18 brief, that Section 106 of the Bankruptcy Code abrogates
19 sovereign immunity and abrogates the sovereign immunity of a
20 foreign -- of a foreign entity, whether it be a foreign
21 state or one of its instrumentalities. And there's really
22 no case that we've been pointed to or evidence that we've
23 been shown that a foreign sovereign immunity has any
24 application here.

25 That's I think all we had to say on that argument,

1 unless Your Honor has any further questions.

2 THE COURT: Okay. No, that's fine. And then you
3 were also going to address the insurance companies'
4 argument.

5 MR. TOBAK: Yes. With respect to Gulf
6 Underwriters, ultimately I think the safest thing to point
7 out is that we obviously do not represent the IACs or non-
8 debtor entities that were party to that settlement
9 agreement. And I think the safest point is to say that that
10 point has been the subject of discussion and I think should
11 be continuing to be the subject of discussion. On the other
12 hand, to the extent the analysis for the release of those
13 claims is really the same as the analysis for all those
14 which we've discussed.

15 THE COURT: Okay. All right.

16 MR. TOBAK: I see Mr. Underwood is on.

17 THE COURT: Okay. Mr. Underwood, you've made your
18 point too. I just wanted to hear a response to it. I don't
19 think I needed any point/counterpoint at this point.

20 MR. UNDERWOOD: Thank you, Your Honor.

21 THE COURT: All right. Mr. Preis, I see you
22 there. I don't know if you have anything brief to say in
23 rebuttal.

24 MR. PREIS: I do, Your Honor. It will be less
25 than 60 seconds. Can you hear me?

1 THE COURT: Yes.

2 MR. PREIS: Thank you, Your Honor. Just for the
3 record again, Arik Preis, on behalf of the Official
4 Committee of Unsecured Creditors. As Mr. Peter pointed out,
5 there are a lot of misquotes, a number of factual assertions
6 that were simply wrong including about things that -- but it
7 doesn't really change the legal argument. So I'm not going
8 to take Your Honor's time.

9 What I did want to ask, and just to get
10 confirmation to this point, is that the stipulation that we
11 agreed to at the beginning of the evidentiary -- of the
12 hearing also extends to anything that was said about the
13 evidence during the oral argument. One could read that
14 stipulation as not extending further.

15 But there was some colloquy that you had with Mr.
16 Gold or Mr. Goldman about evidence that they had or didn't
17 have. Obviously we're staying out of it, as we did during
18 the evidentiary portion. But I just wanted to make sure
19 that the stipulation also extends to the oral argument.

20 THE COURT: Right. That's my understanding.
21 Again, I think the stipulation ultimately is built in
22 suspenders in any event because I can't imagine anything
23 being effective collateral estoppel. But yes, that's my
24 understanding.

25 MR. PREIS: Thank you, Your Honor. That's all.

1 THE COURT: Okay. All right. I'm not sure --

2 MR. UZZI: Your Honor?

3 THE COURT: Yes?

4 MR. UZZI: Just -- Gerard Uzzi, from Milbank on
5 behalf of the Raymond Sackler Family. Just to deal with a
6 factual issue on the Gulf Underwriters objection, and I
7 appreciate Mr. Tobak saying that there are discussions going
8 on and we're happy to continue those discussions.

9 But just in case we don't come back to this topic,
10 just to explain, you know, the background here, these relate
11 to -- the indemnification obligations relate to policies
12 that predate or ended in 2003. So it all deals with prior
13 conduct prior to 2003. The only parties that can make a
14 claim under this policy would be the MDT.

15 We have given not just in connection with this but
16 other things, the Sackler family and the related parties
17 have turned over all their insurance rights to the Debtors.
18 So this release is just to make sure something doesn't come
19 back through the back door just like any other claim that
20 could be made against us for the debtor's conduct, Your
21 Honor.

22 And again, I'm happy to continue the conversations
23 with the Debtors, with Mr. Luskin as well. But in case we
24 don't come back to it, I just wanted to put some context
25 around that, Your Honor. And I'm happy to answer any

1 question you have.

2 THE COURT: Okay. No. That's fine. Thanks.

3 MR. UZZI: Thank you, Your Honor.

4 MR. LUSKIN: Your Honor, may I -- I just wanted to
5 --

6 THE COURT: Yes. But you're not coming through
7 clearly for some reason.

8 MR. LUSKIN: Because I'm not using my microphone
9 and now I am.

10 THE COURT: There you go.

11 MR. LUSKIN: I took Mr. Huebner's admonition and
12 got myself a headphone, and I don't know how to use it.

13 THE COURT: Okay. All right.

14 MR. LUSKIN: I apologize. I certainly welcome the
15 opportunity to talk to Mr. Uzzi. Please do call. And also
16 our objection -- we have no idea whether additional claims
17 can or will be made. These are indemnity claims. The point
18 is they have not been -- or the possibility of such claims
19 has not been obliterated.

20 They still could be asserted. And there are some
21 litigations pending where we do have defense costs that are
22 covered under the settlement. So there are both existing
23 claims and potential claims. But we are happy to discuss
24 any resolution. Give me a call. Thank you, Your Honor.

25 THE COURT: Okay. And just for the record, that

1 was Mr. Luskin on behalf of Gulf Underwriters.

2 MR. LUSKIN: Oh, sorry. Yes.

3 THE COURT: And I guess I had thought that there
4 was some preservation of insurers' rights in the MDT. But
5 maybe I'm missing that. I'll just leave it at that. I know
6 that that subject is heavily documented. Okay. Anything
7 else before we break?

8 MR. UNDERWOOD: Your Honor, if I may, this is
9 Allen Underwood on behalf of the Canadian municipalities and
10 First Nations. I do want to reserve the right on Wednesday
11 to very briefly unpack this issue, a little bit of sovereign
12 immunity as well as why --

13 THE COURT: Right. No. That's -- that's fine,
14 and that's the jurisdictional issue. But that's fine.

15 MR. UNDERWOOD: Thank you, Your Honor.

16 THE COURT: Okay. All right. Let's break until
17 Wednesday morning then. This -- these two issues have taken
18 up a full day. But I have little doubt that we would finish
19 on the remaining issues in a full day. These issues were
20 much more significant, I believe, not to really belittle the
21 other issues, but I think they require more time so that the
22 parties' arguments could be fully understood.

23 I hope the parties use that day productively, not
24 just on the last issue that we were discussing, but also on
25 the release issues in two ways: first, in narrowing the

1 release further; secondly, while I believe I fully
2 understand Mr. Huebner's point, that it just can't be the
3 case that one creditor or one public creditor could veto or
4 crater this plan, there is still risk on all sides with
5 respect to the plan and potential appeals of the plan if
6 only insofar as it would pertain to delay and cost and of
7 course the delay here includes not only getting money to
8 individual personal injury creditors but also in getting
9 money to governmental entities to abate or help to abate the
10 opioid crisis.

11 I told the parties once that they should have
12 another mediation. That mediation went to Judge Chapman. I
13 can't imagine anyone who would be able better to get the
14 parties to see the pros and cons of their cases and to
15 facilitate a settlement than Judge Chapman. I'm not going
16 to direct further mediation. I think this hearing should
17 illustrate to the parties on both sides of the table, that
18 is the objecting states on the one hand and the Sacklers on
19 the other, the risks that they face.

20 I will note that I found Kathe Sackler's testimony
21 cogent and her stating that she and her family members
22 wanted to avoid spending more money on lawyers and have that
23 money directed to abating the opioid crisis and to personal
24 injury creditors.

25 I will note however that a lot of money has been

1 spent on lawyers in getting to this point. If there is any
2 message in what I've just said, it is that if an agreement
3 can be reached with the objecting -- remaining objecting
4 states that involves not only narrowing the release but
5 providing for additional funds or clarifying the injunctive
6 relief in the plan, the parties should focus on that tonight
7 and Wednesday.

8 That will clearly be your best opportunity to do
9 so. And you should use it. The time has passed at this
10 point to speechify. One really needs to focus on the type
11 of analysis that I was discussing with Mr. Goldman. And I'm
12 speaking not just to the states but also to the Sacklers.
13 So please use that time productively. Thank you all. I'll
14 see you all on Wednesday at 10:00.

15 (Whereupon these proceedings were concluded at
16 6:41 PM)

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

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: August 24, 2021

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