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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 16-34221-H2-11
§ HOUSTON, TEXAS
ABC DENTISTRY, PA AND § TUESDAY,
ABC DENTISTRY WEST OREM, § NOVEMBER 7, 2017
§
PLLC, §
DEBTORS. § 1:38 P.M. TO 2:24 P.M.

MOTION HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE PARTIES: SEE NEXT PAGE
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1 HOUSTON, TEXAS; TUESDAY, NOVEMBER 7, 2017; 1:36 P.M.

2 THE COURT: All right. We're here on the ABC
3 Dentistry case. It is 16-34221.

4 We'll take appearances in court followed by any on
5 the phone.

6 MR. ALANIZ: Good afternoon, Your Honor. Omar
7 Alaniz from Baker Botts on behalf of the Debtors.

8 MR. LONG: Good afternoon.

9 THE COURT: Good afternoon.

10 MR. LONG: Charles Long, Larry Fin (phonetic) and
11 Mark Brewer appearing on behalf of Dr. Rohi.

12 THE COURT: Good afternoon.

13 MR. MOORE: Hal Moore with the Texas Attorney
14 General's Office on behalf of the State of Texas.

15 MR. HOLDER: Phillip Holder and Jake Williams on
16 behalf of the Debtor.

17 THE COURT: Good afternoon.

18 I know this is oral argument, but it may make
19 sense to go a different route. I just want to tell you-all
20 a proposal I have and see if it makes sense.

21 First of all, the briefs were very much
22 appreciated and helpful and I'm not doing what anybody asked
23 me to do.

24 I have given quite a bit of thought to the right
25 way to approach this. And wonder if it doesn't make more

1 sense to go ahead through the way that I walk out today and
2 have you argue against that, instead of starting from
3 scratch.

4 The two best examples that I can give you are: I
5 don't -- I am not even close to being persuaded that I
6 should pay Dr. Rohi's claim in preference to the *qui tam*
7 claim, as opposed to paying it along with it.

8 And I'm also not at all persuaded that I'm not
9 going to pay the attorneys fair compensation for their work
10 done.

11 And since you-all are sort of diametrically
12 opposed on those two issues, it turns out that the approach
13 that I think I should take has very little sensitivity in
14 terms of arguing over particular numbers.

15 So if you want to see that, I will. If you want
16 to try to argue to me sort of blindly knowing where I'm
17 coming out today, that's fine. It's not that I won't listen
18 to you and maybe even throw away what I walked out with if
19 you want me to. But if you think your time would be more
20 productive by seeing where I start, I'm happy to do that as
21 well.

22 Mr. Alaniz, Omar Alaniz, you've got to know this
23 isn't your issue, but let me hear from the AG and Mr. Long.

24 Do you-all want to start your oral argument from
25 scratch, or do you want me to show you where I start the day

1 and let you argue against where I start today?

2 MALE VOICE: If I may defer to my colleague on the
3 telephone, Mr. Morris, who I believe is arguing on behalf of
4 the State in this matter?

5 THE COURT: Mr. Morris, are you there on the
6 phone?

7 MR. MORRIS: Good afternoon, Your Honor. For the
8 Record this is Hal Morris with the Office of the Texas
9 Attorney General. I'm joined by my colleague Ashley Bartram
10 from the Bankruptcy Regulatory Section and also in my
11 office, Your Honor, is Steven (indiscernible), who is the
12 Deputy Division Chief in the Center of Medicare Fraud
13 Division.

14 Your Honor, before I speak, can the Court advise
15 me, are the acoustics such that Your Honor can hear me?
16 We've had problems in the past and if I need to, I can
17 change telephones.

18 THE COURT: No. I can hear you fine, and if you
19 want me to start with where I am, I'll need you to get
20 online because there's an audio visual I'm going to show --
21 or a visual I'm going to show.

22 MR. MORRIS: Your Honor, because I'm still
23 recuperating from cornea transplant surgery, I won't be able
24 to see that. Ms. Bartram can certainly look at it and she
25 can jump online in her office, which is just down the hall,

1 but Your Honor, we would prefer that Your Honor start from
2 where you're coming from. If the Court would hear me for
3 just a moment, I'd like to go one step farther from where
4 Your Honor is coming from and suggest sort of something
5 additional then we start from scratch? If I may be heard?

6 THE COURT: Go ahead.

7 MR. MORRIS: Your Honor, because of the disparity
8 in the division of the parties, and I can attest, you know,
9 in my wide-eyed optimism I would hope that we could try this
10 on stipulated facts and obviously that optimism was widely
11 misplaced.

12 Your Honor, it seems to me that, you know, the
13 positions of the parties have been set out in the briefs and
14 is wildly apart. We can certainly make whatever arguments
15 Your Honor would like to hear this afternoon, but we would
16 suggest for the Court's consideration that rather than Your
17 Honor ruling today, that since there seems to fill the open
18 issues between Dr. Rohi and the Debtor as to whether they're
19 even in agreement, and I think that our pleading you got
20 yesterday and Your Honor, we think there are also material
21 facts that Your Honor doesn't have before you, which arise
22 out of the fee agreement that we only saw for the first time
23 yesterday afternoon, and that's no one's fault.

24 Your Honor is aware that there was a Protective
25 Order submitted a week ago. Your Honor was out of town and

1 we, of course, understand that. And because Your Honor
2 hasn't seen those fee agreements, we think those are
3 extremely material to Your Honor's ruling on this issue as
4 to what exactly Dr. Rohi agreed to with Mr. Brewer and what
5 Mr. Brewer and Mr. Long agreed to because Mr. Long's
6 contract is actually with Mr. Brewer's firm.

7 We think you need to see those before you could
8 rule. So Your Honor, what we would suggest for the Court's
9 consideration -- and we can make whatever argument today you
10 want to get Your Honor to delay ruling on this until after
11 an evidentiary hearing.

12 And we would suggest for the Court's consideration
13 that that evidentiary hearing take place immediately at the
14 conclusion of Confirmation. That won't in any way delay the
15 Debtor or impact the Debtor, but it would give the parties,
16 Your Honor, what we hope would be one last chance to see if
17 we can reach an amicable agreement and we'd like that
18 opportunity.

19 But for example, Your Honor, some other issues
20 have arisen in the briefing and so we think now that the
21 Office of Inspector General would need to testify. They
22 thought their issues were resolved. If the hearing is next
23 week, they're going to have to come live. We were hoping we
24 could just take them by deposition, you know, and submit it
25 for the Court.

1 So Your Honor, our suggestion is in response to
2 the Court's inquiry, we'd like to hear where Your Honor is
3 coming from, but then we would ask you not rule on it, give
4 us one more chance to see if we can amicably resolve this.

5 Again, it has no impact on the Debtor and then
6 just take this up at the conclusion of Confirmation in
7 December.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Mr. Long?

11 MR. LONG: I guess I'll start off with the easiest
12 one first, which is there is an agreement between the
13 Debtor, the Defendants and the Debtors, and Dr. Rohi and
14 there is no reason to question that. There's nothing in the
15 briefing that would indicate otherwise.

16 Mr. Morris has been wrong in the past. He was
17 wrong about the stipulations. We spent dozens of hours
18 chasing that down and nothing came of it because the State
19 was unwilling to stipulate to anything.

20 We have exchanged documents. We have provided
21 time records. We have given them everything they want and
22 the only thing that we didn't want to do is have our fee
23 agreements with our clients become a public record, so we
24 told them weeks ago that they needed to get a Protective
25 Order so we could keep them confidential.

1 Nothing prohibited the State months ago from
2 asking us what was in the fee agreements or asking us
3 anything and I still haven't heard a declaration of what's
4 in the fee agreements that's so earth-shattering or
5 earth-moving that they would change the timeline you put us
6 on.

7 All I hear now is another request for delay.

8 THE COURT: What do you think of me telling you
9 where I walk out on or whether you want to start with your
10 arguments?

11 MR. LONG: I think that's a great idea.

12 THE COURT: Yeah. Mr. Morris, if I can get
13 someone from your office and if you need to go to someone
14 else's office, you can talk directly to them quietly while
15 I'm showing you this. Go to a website called "join.me" so
16 Ms. Bartram, I'll give those directions to you and maybe
17 Mr. Morris can come down to your office.

18 MALE VOICE: It will appear here.

19 MR. MORRIS: We will, Your Honor.

20 THE COURT: All right. It's join.me.

21 MR. MORRIS: Join.me.

22 THE COURT: Hold on. It's j-o-i-n dot me, dot
23 m-e.

24 MS. BARTRAM: Okay.

25 THE COURT: And when you're there, it's going to

1 ask if you want to join a meeting or if you want to start a
2 meeting and what you want to do is join a meeting.

3 MS. BARTRAM: Okay.

4 THE COURT: The meeting you want to join will be
5 called, one work, judgeisgur.

6 It's going to be on your screen. You-all don't
7 need to be typing this in. You can, but.

8 MS. BARTRAM: Okay.

9 MR. MORRIS: Okay.

10 THE COURT: And then I'm going to --

11 MS. BARTRAM: Okay. Yeah.

12 THE COURT: So I've got actual numbers on here, so
13 I'm going to do this based on assumptions, but a lot of
14 times the numbers that I'm sending, the answer I come to
15 isn't very sensitive to what the numbers are. So when
16 Ms. Bartram is ready, I'm going to show it to everybody at
17 the same time first.

18 You tell me when you're online, Ms. Bartram.

19 (Pause in the proceedings.)

20 THE COURT: Ms. Bartram, are you there?

21 (No audible response.)

22 THE COURT: Do we have anyone from the AG's Office
23 on the phone?

24 (No audible response.)

25 THE COURT: Ms. Bartram, are you there?

1 MS. BARTRAM: Judge Isgur, this is Ashley Bartram.
2 It's asking for a code to join a meeting.

3 THE COURT: Are you on a desktop?

4 MS. BARTRAM: Yes, Your Honor.

5 THE COURT: Okay. It's "judgeisgur,"
6 J-U-D-G-E-I-S-G-U-R, one work.

7 Did that work?

8 MS. BARTRAM: It appears -- yes. Yes, Your Honor.

9 THE COURT: Great. Okay. Here's my spreadsheet.
10 And I'm just going to try and talk slowly through what I've
11 done.

12 First of all, I largely believe that the State is
13 right that when the Proofs of Claim get filed, then there
14 are three different ones, POC-1, then it should say POC-2,
15 and POC-3 got filed, one of them ends the other. They break
16 out Dr. Rohi's claim into different categories.

17 The breach of contract claim everybody has agreed
18 is that amount and so that's adjusted these numbers a little
19 bit, but the claims without attorney's fees in total range
20 between 37.9 and 38.9 million dollars. And it turns out, as
21 you'll see towards the end, the outcome of what I'm doing
22 isn't very sensitive to whether it's Proof of Claim-1 or
23 Proof of Claim-3.

24 Most of the claim is always the *qui tam* claim
25 here. There's a retaliation claim that changes some and I

1 know that there's a dispute about the interest calculation
2 and that stuff. This is fairly not sensitive to that.

3 There's an attorney's fee claim that I take out
4 because I'm going to go back in and add attorney's fees in
5 later.

6 We know the one number stays the same, which is
7 there's four million dollars of available settlement
8 proceeds. Out of that four million, the contract and
9 retaliation claims that belong to Dr. Rohi are not part of a
10 common fund. There is no real sharing of that with the
11 State. And so I simply prorated, using as the numerator the
12 sum of the retaliation and breach of contract claims, the
13 denominator the total claim without attorney's fees. And I
14 multiplied that by the four million dollars. And you can
15 see that that proration of Dr. Rohi would range between 215
16 and 309 that I take off the top.

17 The State overpayment also comes off the top
18 without any calculation just because that's the deal.

19 And that leaves me somewhere between 3.47 and 3.37
20 million dollars that I need to allocate out.

21 The attorney's fees and expenses need to be
22 calculated. I think it's fair to calculate them not against
23 the net remaining funds, but against the net remaining funds
24 after subtraction of Dr. Rohi's contract and retaliation
25 claim.

1 And those net proceeds range between 3.78 and 3.69
2 million dollars. Applying a common fund figure into that,
3 because I think it would be inappropriate for -- to take the
4 route taken by the State.

5 I fully understand and appreciate that the statute
6 says that first you do an award and then the Defendant owes
7 an additional amount equal to the attorney's fees. That, of
8 course, doesn't really fit when the parties settle and they
9 don't allocate out what's supposed to be for attorney's fees
10 to that amount.

11 And I think it's best to think of this as we now
12 have a four million dollar fund or a 3.7 million dollar
13 fund, and we need to figure out what are the fair attorney's
14 fees to pay on it.

15 So I took 45 percent on a common fund theory and
16 then I also took the expenses. You'll see in a minute that
17 these numbers aren't going to matter much what they are, but
18 I'm telling you what I did initially. I took 25 percent off
19 the expenses, given some of the challenges made by the
20 State, not knowing whether those are going to be valid or
21 not, but in the end this is not going to be sensitive to
22 that. And I had between a 1,080,000 and \$1,029,000 left to
23 allocate. I did that 70 percent to the State and 30 percent
24 to Dr. Rohi.

25 So if I didn't do anything else, that would tell

1 you some of the numbers; however, I thought it was not
2 reasonable as a Court of Equity, when I'm looking into a
3 common fund theory that the attorneys and the attorney fee
4 expenses would exceed 50 percent of the common fund.

5 MR. LONG: Your Honor, may I make an inquiry?

6 THE COURT: Uh-huh.

7 MR. LONG: Did you use the expenses in our
8 original brief?

9 THE COURT: I used the 985.

10 MR. LONG: Okay. We had a colossal mathematical
11 error.

12 THE COURT: Okay.

13 MR. LONG: Which we corrected this morning and
14 it's just still wrong. Our expenses are --

15 FEMALE VOICE: 81,000.

16 MR. LONG: -- 81,000.

17 THE COURT: They're only 81,000?

18 MR. LONG: That's all. That is just what happens
19 when two law firms are doing a brief.

20 THE COURT: Well, I think that -- that may all
21 just work out fine and not even change the bottom line, but
22 I'm going to stick that in there.

23 MR. LONG: It won't change the methodology, but
24 it'll improve the State's position.

25 THE COURT: I don't think it will because of some

1 of the things they did, but we'll see.

2 MR. LONG: Okay. I just wanted to give you that.

3 THE COURT: Thank you.

4 So actually it does. No, it doesn't. Let's see.

5 It does change what I've done.

6 It will turn out not to change my bottom line very
7 much because I've reduced the attorney's fees to keep them
8 below 50 percent of the total, which is pretty well what
9 that changed to the \$81,000 does.

10 Let's see.

11 (Pause in the proceedings.)

12 THE COURT: So I was going to redistribute some of
13 that money to keep it below 50 percent. That's no longer
14 required. That would mean the State of Texas would get
15 somewhere between a 1,494,000 in total, which would be its
16 312 overpayment, plus between 1,181,000 and 1,145,000.
17 That's a result of somewhere between 1,494,000 and
18 1,458,000. You'll see a very narrow range there.

19 Dr. Rohi would get his retaliation claim. He
20 would need to pay out his attorney's fees on the retaliation
21 claim because I hadn't awarded attorney's fees. I took that
22 out before I did an attorney's fee calculation.

23 I did that at 45 percent. He would also get
24 30 percent of the net *qui tam* proceeds and he would get
25 somewhere between 624 and 660. The attorneys would get

1 1,881,000 for all of their attorney's fees and expenses.

2 That number stays constant throughout.

3 I looked at that comparing it to a 33 percent fee
4 with all of these expenses because the expenses were so
5 high. I think that now becomes irrelevant.

6 In summary the State would get between 1,500,000
7 and 1,458,000; Dr. Rohi between 624 and 660, and the
8 attorneys 1,881,000. The numbers are very minimally
9 different and obviously these numbers are going to go up
10 some because of the change in the expenses, but if we call
11 this essentially 1,465,000 to the State, Dr. Rohi's would
12 now go up to about 650-ish, the lawyers would be at
13 1,881,000.

14 So bottom line, given sort of the approach that I
15 thought I ought to take, the State would get 1,467,000;
16 Dr. Rohi, 652; and the attorneys 1,881,000.

17 You-all tell me if you want to argue against that
18 or if you-all want to talk about what's fair now at this
19 point, but it turns out things aren't sensitive to how we
20 allocate. They're not very sensitive to anything other than
21 at this point they would be sensitive as to whether the
22 45 percent is a reasonable amount.

23 Mr. Long.

24 MR. LONG: Your Honor, may we have ten minutes to
25 consult with the client?

1 THE COURT: Sure. Let me ask Mr. Morris.

2 MR. MORRIS: Your Honor, before Mr. Long consults,
3 can I just raise two issues?

4 THE COURT: Absolutely.

5 MR. MORRIS: We'll obviously need an opportunity
6 to consult with our management and I appreciate very much
7 all the thought that the Court has put into this.

8 Your Honor, one issue that came up yesterday after
9 the briefing was submitted, you know, I'm not here to apply
10 blame as to when we got the fee agreements, but we think the
11 fee agreements quite frankly under the original ruling do
12 not talk about 45 percent, we think they talk about
13 40 percent.

14 If Your Honor had the fee agreement, you can read
15 it. You can interpret it, and make your -- you know, your
16 own calculation.

17 Your Honor, I'm reluctant to argue that because
18 under the Protective Order we talked about this was going to
19 be preserved to questioning at trial, rather than --

20 THE COURT: Right.

21 MR. MORRIS: -- you know, arguments or things that
22 would be in camera, et cetera.

23 THE COURT: No, let me see -- let me see the fee
24 agreement because I do want to -- if I've got that mistake
25 in there, I should fix it. Let me see it, if I could.

1 MR. MORRIS: It was either --

2 THE COURT: We can pull it up on --

3 MR. MORRIS: Your Honor, do any of the Counsel in
4 the courtroom have it?

5 FEMALE VOICE: I can pull it up on my computer for
6 you.

7 THE COURT: Thank you.

8 MR. MORRIS: If not, we can email it to someone.

9 THE COURT: She's going to pull it up on her
10 computer. We do have other people online and so I don't
11 know who all is there, so I don't really want to broadcast
12 it to them, but you can broadcast it to me only and then
13 they're looking at it there, so that will work.

14 MR. LONG: My firm gets paid on an hourly basis,
15 mine and Mr. Brewer's firm. We are part of 45 percent in
16 terms of their ability to recover. We're not separate
17 expense or a separate line item.

18 THE COURT: Okay.

19 MR. LONG: If we were doing a loadstar analysis,
20 of course, we would submit these, but.

21 THE COURT: If your computer plugged into that
22 cable there?

23 FEMALE VOICE: Yes, but if I unplug it, I can --
24 it will have enough power.

25 THE COURT: No. Is it plugged into the external

1 display?

2 FEMALE VOICE: No, but I can.

3 THE COURT: There's a cable right in that drawer.

4 MR. LONG: (Indiscernible)

5 THE COURT: You're looking at the fee agreement,
6 right? Plus you've got --

7 FEMALE VOICE: I am.

8 (Parties confer.)

9 MR. MORRIS: Your Honor, would it be all right if
10 she just handed you the laptop?

11 THE COURT: What's that?

12 MR. MORRIS: Could she just hand you her computer.

13 THE COURT: If it's okay by you-all.

14 MR. MORRIS: I've seen it, Your Honor, provided if
15 there's a question about specific language, if I could join
16 you, but I'm familiar with the language.

17 THE COURT: Thank you.

18 FEMALE VOICE: Your Honor, may I approach?

19 THE COURT: Yes, ma'am. Does that have a USB on
20 it?

21 FEMALE VOICE: It does have a USB.

22 THE COURT: We can maybe stick it on a USB as
23 well, but.

24 FEMALE VOICE: It's right here, Exhibits 35 and
25 36.

1 THE COURT: Thank you.

2 FEMALE VOICE: In PDFs.

3 THE COURT: Thank you.

4 MR. MORRIS: Your Honor, while you're looking at
5 that, the second issue -- and this is not to quarrel to the
6 concept that Your Honor has laid out, but the actual
7 attorney's fees -- well, let's take a look at this first.
8 I'm going to hold that until we all caucus privately.

9 THE COURT: Okay. Thank you.

10 MR. MORRIS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MALE VOICE: Are we going to recess, Your Honor?

13 THE COURT: No. Why don't we stay here and let me
14 try and read this for a minute.

15 MR. MORRIS: And Your Honor, if I can call to the
16 Court's attention, it talks about a 40 percent -- I don't
17 have it in front of me, I'm doing this from memory, Your
18 Honor will see the language and it goes to 45 percent if
19 within -- if called to trial, Your Honor, in consulting the
20 Texas Rules of Civil Procedure, we think the definition of
21 "called to trial" is very specific and that that event never
22 occurred here.

23 And so as a result, you know, taking the --
24 Dr. Rohi at the bargain he made with his lawyers, we think
25 it, in fact, as we present. Again Your Honor will draw Your

1 Honor's conclusion.

2 THE COURT: First of all, I want to see what that
3 does to the numbers. I perfectly understand your argument
4 as to whether we have "gone to trial" in some sense, we'll
5 deal with that in a moment. I want to see what this does to
6 the numbers.

7 (Pause in the proceedings.)

8 MR. MOORE: Your Honor?

9 THE COURT: Yes, sir.

10 MR. MOORE: I don't know if this is for everyone,
11 but it's no longer on the screen. If that was your
12 intention, that's fine. Thank you very much.

13 THE COURT: No. Thank you.

14 MR. LONG: Your Honor, in terms of your
15 methodology, this is not going to change much, so we'll live
16 by whatever you interpret the Plea Agreement as. It's
17 either 40 or 45 percent.

18 THE COURT: So it would change the totals to the
19 State to 1,513,000 to 1,476,000 -- I'm sorry. I'm on the
20 wrong place.

21 The State for 1,626,000 down to 1,587,000.

22 It would -- Dr. Rohi would be 681 to 716 and the
23 lawyers 1,691,000 to 1,696,000, but that's because of an
24 error here. Let me fix that.

25 (Pause in the proceedings.)

1 MR. MORRIS: Your Honor, this is Hal Morris again.
2 May I be heard?

3 THE COURT: Let me do one more thing here 'cause I
4 really want to get to the bottom line numbers. If I change
5 it down to a 40 percent fee, the State would get between
6 1,626,000 and 1,587,000; Dr. Rohi between 692 and 731; and
7 the lawyers would get 1,681,000.

8 If we just rounded those into something rational?
9 (Pause in the proceedings.)

10 THE COURT: It would be 1,599,000 to the State,
11 720 for Dr. Rohi, and 1,681,000 to the attorneys.

12 What did you want to add to that, Mr. Morris?

13 MR. MORRIS: Your Honor, what I was prepared to
14 tell the Court is that neither I nor any of my colleagues,
15 you know, present have the authority to accept that, but we
16 would be prepared to recommend it to our executive
17 management.

18 THE COURT: I think that, in fact, I'm supposed to
19 make a decision today, though. And so I don't think I need
20 your executive management to approve it, and I appreciate
21 your comment. I think I'm hearing the same thing, however,
22 from Mr. Long, which is they're not going to accept it, but
23 they're not going to argue against it.

24 MR. LONG: I think given 10 minutes' time with the
25 client, we will accept it.

1 THE COURT: Why don't we -- why I don't let both
2 sides -- I mean, I told you-all what findings I'm going to
3 make, unless you want to argue against it, but I want people
4 to be free to argue against it. And so you can either --
5 I'm going to do what I committed to do today, which is to
6 make only oral findings, which I've partially made.

7 The parties get to argue against it and feel free.

8 I do think the better reading of the agreement is
9 we haven't gone to trial, so I think 40 percent is more
10 likely than 45. I think there's some arguments that we've
11 gone to trial by virtue of the fact that we're here today.
12 And I understand that and I would want to hear that argument
13 if we don't have a complete agreement, but in general, I
14 think 40 may be more fair than 45.

15 So I'll give you back this.

16 MR. LONG: We just need authority.

17 THE COURT: Right. So I will ask, how long do
18 you-all need to decide whether you want to argue against
19 what I've done, Mr. Moore and Mr. Morris?

20 MR. MOORE: I'd like the opportunity to call
21 Mr. Morris, Your Honor, but whatever he suspects is
22 necessary --

23 MR. MORRIS: Your Honor, this is Hal Morris.
24 While we're on recess, we'll see if we can reach executive
25 management because as I said, even if I can't, Your Honor,

1 you know, I'm prepared to recommend it. My colleague,
2 Ms. Miller, is the Deputy Chief of the Division of Fraud is
3 prepared to recommend it, and Your Honor, based on my
4 23 years with the agency, I'm cautiously optimistic and I
5 underscore really optimistic. I do not have authority that
6 that would be approved, but that's the best I could do. We
7 can try to get authority while we're on a recess, Your
8 Honor.

9 THE COURT: That sounds good, but just to be
10 clear, I thought that the deal was that you-all announced
11 was that if you-all didn't reach an agreement, which you may
12 very well reach in the next few minutes, that you-all would
13 be bound by whatever decision we made.

14 Isn't that the deal?

15 MR. MORRIS: Your Honor, that is the deal, but the
16 difference was we understood Your Honor would today announce
17 the methodology, which you've done and we'll obviously live
18 by that, but we had understood that next week there was an
19 evidentiary hearing at which we would be able to take
20 specific shots, for example, at why certain, you know, fees
21 are unreasonable and should not be allowed, and you know, --

22 THE COURT: I agree -- No, I agree with that.

23 MR. MORRIS: -- Your Honor, so --

24 THE COURT: Yeah, I agree with that. I just think
25 that the range that's going to contest is so tiny, it may

1 not be worth the fees, but I do think that that was the
2 deal.

3 MR. MORRIS: Well, and Your Honor, I fully agree
4 and that's why again I'm prepared to fully recommend this to
5 my management and I'm going to try to get authority. If
6 Your Honor decides to change the rules, that's Your Honor's
7 prerogative. I'm not going to quarrel with it. If Your
8 Honor decides today to tell us this is the number, we thank
9 Your Honor for your time and your courtesies and we'll
10 report that to management.

11 THE COURT: I will not change the rules on you.
12 That's not what your management signed up for. So the rules
13 will be what they are. You can argue against this today.
14 You do have the right to challenge on an evidentiary record,
15 factual disputes. From my having run the numbers, those
16 aren't going to change these numbers in any material way,
17 particularly given the fact that I've got sort of a range of
18 reasonableness and I'm kind of picking a middle of the
19 range. It's hard for me to imagine factual disputes.

20 And I know you're in agreement with that.

21 Let's take ten minutes. If we have a deal in
22 ten minutes, that's great. If not, we'll move ahead then
23 and to taking objections to the methodology today and then
24 we'll have the evidentiary hearing at the end of the
25 Confirmation.

1 I think you want to have your Disclosure Statement
2 approved. Do you need these other parties here for that, or
3 do you want to do that without them?

4 MR. ALANIZ: I think we're substantially signed
5 off on Disclosure Statement, Your Honor, that comes from
6 both.

7 THE COURT: Why don't you-all take a break, unless
8 you-all -- do you want to be here while he's doing this?
9 Anybody care about what he's doing?

10 MR. MORRIS: Your Honor, I'll sit on the line.
11 Ms. Miller is in the process of trying to reach executive
12 management, so I'll listen to the Disclosure Statement
13 issue. We spoke with Mr. Alaniz earlier today, you know.
14 We preserved any issues we would have for Confirmation and
15 we voice no objections to the Disclosure Statement being
16 approved.

17 Thank you.

18 THE COURT: Thank you.

19 And how did you want to proceed on your Disclosure
20 Statement Hearing, Mr. Alaniz?

21 MR. ALANIZ: Well, Your Honor --

22 MR. LONG: May I be excused, Your Honor?

23 THE COURT: Sure. Unless you need to be here for
24 this, but it sounds like Mr. Morris is going to stay for
25 that.

1 MR. LONG: Yes, Your Honor, I just wanted to
2 confirm that I'm excused until --

3 THE COURT: Absolutely. Thank you. We'll see you
4 in ten minutes.

5 MR. LONG: Thank you, Your Honor.

6 MR. ALANIZ: Hopefully this will just take about
7 five minutes, Your Honor.

8 THE COURT: You have nine.

9 MR. ALANIZ: Huh?

10 THE COURT: You have nine.

11 MR. ALANIZ: Yes. As you may have seen, we have
12 filed our Second Amended Disclosure Statement and Plan.
13 What I did to streamline this process, I emailed both
14 Dr. Rohi's side and the State's side independently before
15 even filing the document. I did receive comments from both
16 sides, incorporated all the comments from both sides. What
17 was filed is after receiving and incorporating comments from
18 both sides and that's what we filed on October 6th.

19 The Plan contemplates, Your Honor, that we would
20 make the settlement payments, the \$4 million aggregate
21 payments through the end of 2022 and I think there was some
22 discussion earlier from Mr. Morris about some disputes.

23 I don't think that there are any disputes between
24 us and Dr. Rohi, except for we're still finalizing a
25 security agreement, but as to the State, the only

1 outstanding issue is finalizing the release agreement, but I
2 think we're substantially there now.

3 I'm pleased to report that I think both parties
4 have made substantial concessions to get to what I now
5 believe are non-material items that I'm very confident we'll
6 resolve, which was not the case at the last hearing.

7 So I know that we'll have that done. It'll be a
8 separate Plan document, but that'll be ready to go.

9 For purposes of Disclosure Statement, though, we
10 didn't receive any objections. We served all of the
11 creditors under the rules. We filed a Certificate of
12 Service evidencing that with the objection deadline of
13 November 3rd.

14 As Mr. Morris said, we did receive an informal
15 request from him to include in the Disclosure Statement and
16 Order a sentence that I can walk through with the Court, but
17 that was in the redline that we filed yesterday. It
18 basically says that we're still finalizing the agreement.
19 They can still challenge Confirmation if we don't finalize
20 the agreement.

21 But other than that, Your Honor, I think we should
22 be completely signed off. We did file a Second Amended
23 Solicitation Motion yesterday and that's just to add a
24 couple of things: One, to clarify that the Debtor could
25 solicit the Plan and Disclosure Statement by electronic

1 means. To confirm, second, that we wouldn't have to send
2 the solicitation package to non-voting creditors like
3 convenience class, but we will send them a notice of
4 confirmation and the objection deadline, and of course,
5 we'll send it to anyone who requests it.

6 We added the executory contract and confirmation
7 notice just for belt and suspenders and those are all the
8 material changes to the motion we filed yesterday.

9 THE COURT: Tell me what you mean by electronic
10 service.

11 MR. ALANIZ: It would just be a CD, Your Honor,
12 and it would have the Disclosure Statement and Order, Plan
13 and Disclosure Statement.

14 THE COURT: But they would actually get the CD?

15 MR. ALANIZ: Yes. They could get the CD and then
16 they would get the paper ballot. But the Plan --

17 THE COURT: I've had some people ask if they can
18 just send the link and I don't know that that's yet allowed
19 by the Rules. I'm hoping we get there soon, but you're
20 talking about mailing everyone a CD, --

21 MR. ALANIZ: Agreed. A CD.

22 THE COURT: -- I think that is allowed.

23 Mr. Morris, do you have anything you want to add
24 on the Disclosure Statement?

25 MR. MORRIS: Sorry, Your Honor. I'm having

1 trouble with the phone buttons. Nothing to add, Your Honor,
2 again, subject to the protective language reserving certain
3 rights. We voice no objection to the Disclosure Statement
4 being approved today. Thank you.

5 THE COURT: Thank you.

6 (Pause in the proceedings.)

7 THE COURT: Paragraph 12 is someone who's filed a
8 claim different than your Schedules, is this saying that
9 they don't get their filed claim, they only get their
10 scheduled claim?

11 MR. ALANIZ: Your Honor, I actually noticed that
12 right before I came to the hearing. I will represent to the
13 Court that there are no such claims. We did have a couple
14 of claim disputes that we have already resolved, so there is
15 nothing on the claims register that's different than the
16 scheduled claims, but we can add language there.

17 THE COURT: Why don't I just take that out?

18 MR. ALANIZ: Sure.

19 THE COURT: I may have to open this in a different
20 way 'cause I can't modify it there, but I can --

21 (Pause in the proceedings.)

22 THE COURT: So I'm talking about taking out
23 paragraph 12, Mr. Morris, which is the paragraph that says
24 that claims are allowed as scheduled, and might have
25 overridden the effective of timely filed unobjected to Proof

1 of Claim, which I think Mr. Alaniz is saying there are none
2 of those. I'm just going to take out the paragraph.

3 MR. ALANIZ: Your Honor, before we delete it, let
4 me just think through just one issue. On the ballot there
5 is a blank that says claim amount and I think one of the
6 reasons why we had that paragraph in there was just so that
7 it was clear that what -- you know, if a creditor files --
8 or submits a ballot and accepts it, we know the claim amount
9 because we can look at the Schedules and this paragraph
10 gives us the ability to do that.

11 But if the Court is going to pull out that
12 paragraph --

13 THE COURT: Well, I don't mind changing it to say:
14 In an amount equal to the amount of such claim as set forth
15 in (1) the Debtor's Schedules or claims for which no Proof
16 of Claim has been filed, except that claims listed as zero
17 amount should not be entitled to vote, or (2) a timely filed
18 Proof of Claim to which no objection has been filed, or
19 (3) as authorized by subsequent Court Order.

20 And then I think I'm fine leaving it in, if that
21 works for you?

22 MR. ALANIZ: Yes, Your Honor. Of course, I don't
23 think it matters for Dr. Rohi's claim. We didn't object to
24 Dr. Rohi's claim, but he's in a class of his own and this --

25 THE COURT: I will just tell you we aren't messing

1 with what we're doing with Dr. Rohi, so we're leaving that
2 alone.

3 MR. ALANIZ: Okay. That's fine, Your Honor.

4 THE COURT: I'm going to cross out your
5 paragraph C. It sort of creates an assumption of
6 acceptance, which I don't think is fair.

7 MR. ALANIZ: Okay.

8 THE COURT: Does this set a Confirmation hearing?

9 MR. ALANIZ: Yes, Your Honor. It's should set
10 December 13th as a Confirmation date.

11 THE COURT: Where does it do that?

12 MR. ALANIZ: We certainly have it in the motion
13 that we filed yesterday, but it might be nice to have it
14 clear in the Order, as well.

15 THE COURT: I think it should be in here. I'll
16 just make it the last paragraph.

17 MR. ALANIZ: Okay.

18 THE COURT: And you've got a date for that already
19 from Ms. Dolezel?

20 MR. ALANIZ: We do, Your Honor.

21 THE COURT: December 13th, you said?

22 MR. ALANIZ: December 13th, I believe at --

23 THE COURT: It's there at 1:30.

24 MR. ALANIZ: -- 1:30. Yes, 1:30.

25 THE COURT: Actually.

1 (Pause in the proceedings.)

2 THE COURT: Okay. I have zero problem with the
3 Disclosure Statement or with the Order as we've changed it.

4 Did you want to put any evidence on in support of
5 this?

6 MR. ALANIZ: No, Your Honor.

7 THE COURT: All right. What else do we need to
8 do?

9 MR. ALANIZ: That's it for the Disclosure
10 Statement and Order, Your Honor.

11 THE COURT: Thank you.

12 MR. ALANIZ: Thank you.

13 THE COURT: Is that the only other thing we had on
14 the ballot besides the oral arguments that we didn't do?

15 MR. ALANIZ: Your Honor, we did have, I believe I
16 checked the Docket before coming here and there was an
17 objection to the State's claim that we can continue to the
18 Confirmation Hearing.

19 THE COURT: All right. We'll continue ECF #252 to
20 December 13th at 1:30 in the afternoon.

21 (Pause in the proceedings.)

22 THE COURT: Mr. Moore, are you ready to proceed?

23 MR. MOORE: Your Honor, I believe that my
24 colleagues are still attempting to reach executive
25 management.

1 THE COURT: Okay.

2 MR. MOORE: But they will inform us when they've
3 exhausted their efforts.

4 THE COURT: All right. There may be one.

5 Ms. Bartram, did you have something you wanted to
6 say at this point?

7 MR. MORRIS: Your Honor, this is Hal Morris. Has
8 Mr. Long come back in the courtroom?

9 THE COURT: No, but I was going to send
10 Mr. Alaniz, if he wouldn't mind, to go out and get him.

11 MR. MORRIS: Okay. Your Honor, we'd like to hear
12 Mr. Long's views on Your Honor's proposal and then we'll be
13 prepared to respond.

14 And I say that, Your Honor, because we think it
15 obviously has something mutual.

16 THE COURT: Right.

17 (Pause in the proceedings.)

18 THE COURT: All right. We'll go back now into the
19 Court's Oral Ruling on the determination of the allocation
20 of the \$4 million settlement monies.

21 Mr. Long, does your client wish to object or
22 accept or be neutral with respect to what we --

23 MR. LONG: We're not going to argue against it,
24 Your Honor.

25 THE COURT: So you will accept it if that's what I

1 order without contest?

2 MR. LONG: I would prefer to say that we're not
3 going to argue against it. We're not going to --

4 THE COURT: But what I don't want to do is --
5 seriously, I don't want to end up with an appeal. If we're
6 going to have an appeal, I want to give you a chance --

7 MR. LONG: We've already waived our right to
8 appeal.

9 THE COURT: You're not going to argue against it.
10 The State?

11 MR. MORRIS: Your Honor, this is Hal Morris. In
12 light of Mr. Long's agreement not to argue against it, the
13 State is also willing not to argue against it and as soon as
14 Your Honor's Order in lines of what you said a few minutes
15 ago, the State would waive its right to a contested
16 evidentiary hearing at Confirmation, which as I read things,
17 Your Honor means that this dispute would now be over.

18 THE COURT: I am ordering for the reasons
19 previously announced orally on the Record, which reasons the
20 parties have asked not to commit to writing, but which are
21 part of the oral Record of the Court.

22 Based on the reasons that I've previously given,
23 out of the \$4 million of settlement proceeds, \$1,599,000
24 will be allocated to the State of Texas, \$720,000 will be
25 allocated to Dr. Rohi, and \$1,681,000 will be allocated to

1 the attorneys to be divided in accordance with their private
2 agreements.

3 Does anyone need any further declaration by me, or
4 do you-all want that conclusion in a written Order?

5 MR. LONG: No, Your Honor.

6 MR. MORRIS: Your Honor, we would -- could we have
7 just a minute to confer, Your Honor?

8 THE COURT: Yes, sir.

9 (Pause in the proceedings.)

10 MR. MORRIS: Your Honor, we would prefer not to
11 have that in the written Order and if there's ever a
12 dispute, we can obviously order the transcript and I'm sure
13 Your Honor will certainly remember it, so we would prefer
14 that the Order just simply be more neutral, instead of, you
15 know, the matters and numbers as stated on the Record.

16 THE COURT: I'm simply won't do a written Order.
17 I'm doing an Oral Order. Do you-all want the numbers in the
18 Minutes of the Court, or do you just simply want the Minutes
19 to reflect that the Court orally ordered the division of
20 proceeds?

21 MR. MORRIS: Your Honor, the Minutes could reflect
22 the Court's ruling in terms of dollar figures.

23 Thank you.

24 THE COURT: All right. Just to be sure then that
25 Mr. Rios gets that, I'm going to repeat it. Hopefully it's

1 exactly what I said before.

2 The allocation of the settlement proceeds is now
3 orally ordered for the reasons stated on the Record to be as
4 follows: The \$4 million will be allocated \$1,599,000 to the
5 State of Texas, \$720,000 to Dr. Rohi, and \$1,681,000 to the
6 attorneys representing Dr. Rohi to be divided by the
7 attorneys in accordance with their own agreements.

8 I think that concludes this hearing.

9 I just can't thank the parties enough for all of
10 the good briefing that you did and for being cooperative
11 today and listening to what I suggested as maybe being a
12 rational solution, but mainly for briefing it so that I
13 could come up with something and I'm glad that everybody was
14 cooperative.

15 MR. MORRIS: Your Honor, I speak for all the
16 parties, we appreciate it very much the Court's time and
17 attention to this matter. Thank you.

18 THE COURT: Thank you, sir.

19 All right. We'll be in adjournment until 2:30 and
20 we'll recall our *Uplift* case.

21 Thank you.

22 THE CLERK: All rise.

23 (Hearing adjourned at 2:24 p.m.)

24 * * * * *

25 I certify that the foregoing is a correct

1 transcript to the best of my ability from the electronic
2 sound recording of the proceedings in the above-entitled
3 matter.

4 /S/ MARY D. HENRY

5 CERTIFIED BY THE AMERICAN ASSOCIATION OF
6 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
7 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
8 JTT TRANSCRIPT #58933
9 DATE: JULY 1, 2018

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