

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 . Chapter 11
4 IN RE: . Case No. 04-15739 (SMB)
5 .
6 QUIGLEY COMPANY, INC. . New York, New York
7 . Friday, May 23, 2008
8 Debtors. . 10:04 a.m.
9

7 TRANSCRIPT OF SCHEDULING CONFERENCE
8 BEFORE THE HONORABLE STUART M. BERNSTEIN
9 CHIEF UNITED STATES BANKRUPTCY JUDGE

9 APPEARANCES:

10 For the Debtors: Michael L. Cook, Esq.
11 Lawrence V. Gelber, Esq.
12 Jessica L. Fainman, Esq.
13 SCHULTE, ROTH & ZABEL, LLP
14 919 Third Avenue
15 New York, New York 10022

16 For the Ad Hoc Committee
17 of Tort Victims: Gregory T. Arnold, Esq.
18 Edward S. Weisfelner, Esq.
19 BROWN, RUDNICK, BERLACK
20 ISRAELS, LLP
21 Seven Times Square
22 New York, New York 10036

18 (Appearances Continued)

19 Audio Operator: Electronically Recorded
20 by Chantel Greene, ECRO

21 Transcription Company: Rand Reporting & Transcription, LLC
22 80 Broad Street, Fifth Floor
23 New York, New York 10004
24 (212) 504-2919
25 www.randreporting.com

24 Proceedings recorded by electronic sound recording,
25 transcript produced by transcription service.

1 APPEARANCES: (Continued)

2 For Albert Togut,
3 as Future Claims
4 Representative: Scott E. Ratner, Esq.
5 TOGUT, SEGAL & SEGAL, LLP
6 One Penn Plaza
7 New York, New York 10119

8 For The U.S. Trustee: Greg M. Zipes, Esq.
9 OFFICE OF THE U.S. TRUSTEE
10 33 Whitehall Street, 21st Floor
11 New York, New York 10004

12 For Pfizer, Inc.: John H. Bae, Esq.
13 CADWALADER, WICKERSHAM & TAFT, LLP
14 One World Financial Center
15 New York, New York 10281

16 David B. Killalea, Esq.
17 GILBERT RANDOLPH, LLP
18 1100 New York Avenue, NW, Ste. 700
19 Washington, D.C. 20005

20 For Allianz: Karel S. Karpe, Esq.
21 James S. Yoder, Esq.
22 WHITE AND WILLIAMS, LLP
23 One Penn Plaza, 18th Fl., Ste. 1801
24 New York, New York 10119

25 For One Beacon
America Insurance Co.: Mark D. Plevin, Esq.
CROWELL MORING
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004-2595

For Continental Casualty
and The Continental
Insurance Co.: Robert W. Dremluk, Esq.
SEYFARTH SHAW, LLP
620 Eighth Avenue
New York, New York 10018-1405

Also appearing: Eric B. Stern, Esq.
RIVKIN RADLER
926 Reckson Plaza
Uniondale, New York 11556-0926

1 APPEARANCES: (Continued)

2 Also appearing: Rita C. Tobin, Esq.
CAPLIN & DRYSDALE
3 375 Park Avenue, 35th Floor
New York, New York 10152-3500
4
5 Elit R. Felix, II, Esq.
MARGOLIS EDELSTEIN
6 The Curtis Center, Fourth Floor
Independence Square West
Philadelphia, Pennsylvania 19106
7
8 Nancy I. Manzer, Esq.
WILMER, CUTLER, PICKERING, HALE
AND DORR, LLP
9 1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
10
11 Via Telephone: Andrea L. Niedermeyer
12
13 Sharla Frost
14
15 Paul S. Jasper
16
17
18
19
20
21
22
23
24
25

1 (Proceedings commence at 10:04 a.m.)

2 THE COURT: Please be seated.

3 The purpose of this conference -- it's not really a
4 hearing -- is to consider how the confirmation order -- how
5 the confirmation hearing is going to proceed, given 524G and
6 the issues that come up in asbestos bankruptcies.

7 I had consulted with Judge Presca, as her order
8 indicated. I'll consult with her afterwards, so what is said
9 may or may not affect whether she withdraws the reference in
10 whole or in part. In essence, I'll probably make a
11 recommendation to her as a result of this conference or as a
12 result of conferences to follow.

13 So I'll hear from the debtor.

14 MR. COOK: Your Honor, I have to say that I must be
15 doing something wrong, but we did talk amongst ourselves and
16 other people can correct any damage I do, but I think we have
17 a consensus that Your Honor can conduct a hearing on -- the
18 entire hearing on confirmation 524 G and, consistent with the
19 statute, Judge Presca can affirm or modify if she wants.

20 THE COURT: How do you get -- I know we had this
21 issue in Keenan a long time ago. How do you -- if no one
22 appeals, in the unlikely event, how does Judge Presca affirm
23 it? I know that's what the statute says. I don't know what
24 it means. I'm not sure anybody really knows what it means.
25 Procedurally, how does she do that?

1 MR. COOK: You know, I thought about it and at least
2 my take on it is that she would -- the word "firm" is hardly
3 new. She could follow the procedure in the statute if there
4 are fact findings. She can use the same standard on review
5 if there are legal issues. I know of no other way.

6 And I think that's the fairest to everybody, unless
7 somebody wants to make an alternative proposal.

8 MR. WEISFELNER: Look, we're going to appeal Your
9 Honor's 524G decision as it relates to the injunction and my
10 guess is that goes up to Judge Presca in any event.

11 And depending on the timing of her consideration of
12 that appeal, you know, I think that ought to color, you know,
13 how we deal with confirmation hearing.

14 THE COURT: But that whole issue is moot if the plan
15 doesn't get confirmed.

16 MR. WEISFELNER: Well, I understand that, but, you
17 know, to us it's a critical legal issue and one that we think
18 we're entitled to appellate review on.

19 THE COURT: You may be. How does that affect,
20 though, the timing or the conduct of confirmation?

21 MR. WEISFELNER: Well, because, again, if -- what
22 the judge has to consider --

23 THE COURT: By the way, I'm not sure it will go to
24 Judge Presca. It will go to whoever is on the wheel.

25 MR. WEISFELNER: It seems to me that if -- what the

1 statute requires is district court. And I agree with you, I
2 don't know what the language necessarily means, but this
3 report has to consider 524G and the appeal is focused on 524G
4 in its scope, then, you know, I don't necessarily want to be
5 in front of district court on a record that is less than what
6 the statute and our appellate rights anticipate we're
7 entitled to in front of a district court.

8 THE COURT: I don't know what that means.

9 MR. WEISFELNER: Well, it means that I want an
10 opportunity to argue my appeal, as opposed to having the
11 Court consider under some procedure that no one is really
12 sure of what an affirmance of Your Honor's decision may
13 ultimately be. I mean, I'm presuming that Your Honor will be
14 consistent between your decision on the scope of the
15 injunction and what's proper for 524G purposes.

16 If the only consideration I get on Your Honor's
17 interpretation of 524G and the appropriate precedent is, you
18 know, some sort of affirmance consideration or review, then I
19 think I've been short changed. I want my full appellate
20 rights. I know what those are.

21 THE COURT: Well, maybe you go right to the circuit.
22 In other words, maybe -- and I know in other cases, it was
23 just a little paragraph at the end in which the district
24 court says, I affirm, at the bottom, then presumably it's a
25 decision of the district court.

1 I assume you don't want two levels of the same
2 argument. That's why they have direct appeals, or the
3 possibility of direct appeals.

4 MR. WEISFELNER: And again, Your Honor, you know,
5 we're in sort of uncharted territory here, but, you know, I'm
6 loathe to give up, you know, our appellate rights.

7 THE COURT: Look, the question really is how does
8 the hearing proceed? The statute seems to require the
9 district court to put its pen on that order in some sense.
10 And for example, when we had Keenan, it was essentially a
11 consensual confirmation hearing. We did everything in one
12 day. Both of us sat together and --

13 MR. WEISFELNER: Right.

14 THE COURT: That was not a problem, but that's not
15 this case. So for example, my question is if the district
16 court would have to decide the issues relating to the
17 settlement in order to issue the injunction. Does she have
18 to hear it? Or are there just a very finite number of issues
19 that she would have to decide in order to issue that
20 injunction?

21 MR. WEISFELNER: Yeah. I mean, look, you know, the
22 more I think about it, and the more, you know, the question
23 of good faith tinges the 524G issue, you know, one wonders
24 whether or not the district court, in effect, shouldn't
25 withdraw the reference.

1 I mean, look. I think Your Honor's expertise and
2 knowledge of the case and its background would probably be
3 very useful to the district court. In that regard, I sort of
4 see, you know, the benefit of having Your Honor and Judge
5 Presca presiding, but --

6 THE COURT: Yeah, but in a multi-day trial it's just
7 -- it's really not a very efficient way. I mean, another
8 possibility is for me to simply do it and then you can argue
9 before the district court what's a recommendation and what's,
10 you know, what I heard and determined and what I reported and
11 recommended.

12 MR. WEISFELNER: Right.

13 THE COURT: Which has been done, I know, in other
14 cases.

15 MR. WEISFELNER: But in any event, and one of the
16 other things I would ask Your Honor to consider -- I know
17 this is a status conference -- I guess our time to lodge a
18 notice of appeal would expire on Tuesday. And given the
19 holiday, under the authority of I guess Rule 803C -- 802C,
20 Your Honor is entitled to grant us an extension of time to
21 file the notice of appeal. And we were hoping for a couple
22 of days beyond Tuesday.

23 MR. WEISFELNER: Is there any objection from Pfizer?

24 MR. BAE: Your Honor, it's a two-page piece of paper
25 to file a notice of appeal. I'm not sure why Mr. Weisfelner

1 needs more than today or even Tuesday to file a notice of
2 appeal.

3 THE COURT: What's the showing that's required under

4 --

5 MR. WEISFELNER: Well, again, our understanding is
6 what we'd be obligated to file is a notice of appeal. And if
7 counsel is prepared to concede that we have a right to
8 appeal, then that's all I need to file.

9 THE COURT: But I thought if you filed a notice of
10 appeal and it was an interlocutory order, then it's treated
11 as leave to appeal.

12 MR. WEISFELNER: Well, you have to file a motion for
13 leave to appeal, and what I'm really looking for is some time
14 on the motion for leave to appeal.

15 MR. BAE: Your Honor, the way I think this would
16 play out is if Mr. Weisfelner were to file a notice of
17 appeal, we likely will move to dismiss the appeal on the
18 grounds that it's interlocutory. We've been down this road
19 before.

20 The original time the PI order was entered, the
21 district court already rejected the right of the Ad Hoc
22 Committee to appeal the PI order. He's trying to do it
23 again. It's a waste of time. We will file a motion to
24 dismiss the appeal.

25 But I don't see why Mr. Weisfelner needs more time

1 to file a two-page notice of appeal and we can follow the
2 proper procedures.

3 THE COURT: He's saying he's going to make a motion
4 for leave to appeal also, on the possibility that it's an
5 interlocutory order.

6 MR. WEISFELNER: Right. And the difference,
7 obviously, between the first appeal in the preliminary and
8 the appeal on this one is -- and argue this decides, for all
9 practical purposes, 524G issues.

10 THE COURT: You know, I don't really think it pays
11 to argue about this extensively. I'll give you until Friday.

12 MR. WEISFELNER: Great. Thank you, Judge.

13 THE COURT: The record is so ordered.

14 MR. PLEVIN: Your Honor, Mark Plevin from Crowell
15 Moring on behalf of One Beacon America Insurance Company.

16 When the debtors filed their motion to withdraw in
17 the district court, we filed an objection to that, which
18 other insurers later joined, and we explained the legal basis
19 for our objection. Our position was essentially that we
20 didn't have a preference as to whether the confirmation
21 hearing went forward in this court before Your Honor or in
22 the district court before a district judge, but that there's
23 no statutory or other basis for a hearing before two judges
24 at two different levels at the same time.

25 And that remains our position, and so we're

1 gratified to hear Mr. Cook say that the debtors are now
2 prepared to do the confirmation hearing entirely before Your
3 Honor with any subsequent proceedings going up to the
4 district court as appropriate.

5 What I wanted to just point out is I've been through
6 a number of these things and the way they've worked when
7 we've had -- just before a bankruptcy court is that in many
8 cases there were appeals and that's how it got to the
9 district court. In a couple of other instances where there
10 were no parties appealing, either the debtor or the
11 bankruptcy judge brought it to the attention of the district
12 court and said in order to get 524G protection, you the
13 district court needs to put your hand on the order and sign
14 it and --

15 THE COURT: To affirm it in the absence of an
16 appeal?

17 MR. PLEVIN: Yes. And that's how the proceeding
18 went forward. So -- and of course, in those instances, there
19 were no appeals so that no one was objecting to the procedure
20 and --

21 THE COURT: Well, there was an appeal in Combustion
22 Engineering. How was it?

23 MR. PLEVIN: In Combustion Engineering what happened
24 is we had the --

25 THE COURT: Oh, the district court withdrew their

1 reference to that, didn't they?

2 MR. PLEVIN: No. No. We had a hearing before Judge
3 Fitzgerald in the bankruptcy court. We went up before Judge
4 Wolin who --

5 THE COURT: But she decided every -- all of the
6 issues?

7 MR. PLEVIN: She decided all the issues sitting all
8 by herself.

9 THE COURT: So she issued either a ruling or a
10 report and recommendation and sent it up to the district
11 court to figure out which was which?

12 MR. PLEVIN: I think it was actually both.

13 THE COURT: Okay.

14 MR. PLEVIN: She characterized it as both a final
15 order and a report and recommendation. We had briefing and a
16 full-day argument before Judge Wolin, who then issued a
17 ruling based on that hearing and his review of the record.

18 THE COURT: What review did he give? Could it be
19 erroneous on all factual issues?

20 MR. PLEVIN: You know, I don't recall, Your Honor.
21 And I don't know that Judge Wolin specified the standard of
22 review either, because he found that everything the
23 bankruptcy judge did was correct. And that was the posture
24 when we went up to the Third Circuit.

25 In the federal Mobil hearing, for example, before

1 Judge Fitzgerald, that, too, was done just by Judge
2 Fitzgerald in the bankruptcy court, and that's the way it has
3 gone. I -- you know, from the papers we filed in the
4 district court on this, I also mentioned the JT Thorpe case
5 in Houston, which I did in 2003.

6 That one was presided over by a bankruptcy judge and
7 a district judge, and I can just tell Your Honor it was utter
8 chaos afterwards because the bankruptcy judge and the
9 district judge issued two separate opinions. We appealed the
10 bankruptcy judge's opinion to the district court, where it
11 was assigned to the same district judge who had already sat
12 on the hearing, and therefore, she would in effect be
13 reviewing her own evidentiary rulings.

14 We moved to recuse her and we also sought mandamus
15 in the Fifth Circuit because at the same time the district
16 judge issued an order and we had appealed her order to the
17 Fifth Circuit. We ended up getting the whole thing before
18 the Fifth Circuit, but only because the Fifth Circuit reached
19 down and pulled the bankruptcy court ruling up. There's no
20 procedure, as you know, for appealing from the bankruptcy
21 court, or at least then there wasn't a procedure for
22 appealing from the bankruptcy court to the circuit court.
23 And the new statute I don't think applies in this case, so --

24 THE COURT: It doesn't.

25 MR. PLEVIN: -- so you couldn't do it here either.

1 THE COURT: Okay.

2 MR. PLEVIN: So that's a long-winded way of saying
3 that we agree with the debtor that having the hearing
4 completely before Your Honor is the appropriate thing to do
5 under the law and if you want the legal background for our
6 position, as I said, we've filed a brief in the district
7 court in response to their motion and it's set forth in that
8 paper.

9 THE COURT: Well, the legal background is more of a
10 concern to Judge Presca if, you know, depending on how she
11 considers the motion. I'm just trying to figure out a way to
12 do this in an expeditious manner, which obviously runs with
13 the statute. It just sounds like the easiest thing may be
14 for me to try everything and then you can argue about what's
15 subject clearly erroneous and what's de novo and up in the
16 district court.

17 Now, in terms of the hearing, how do you foresee it
18 going forward? Because there are a lot of issues which I
19 assume are not disputed, like the 1123 issues. I can look at
20 the plan and determine whether it contains the information
21 that's necessary. I don't know if the -- the issues that are
22 necessary to actually issue the 524G injunction are disputed
23 in terms of the debtor being subject to claims. Those are
24 disputed?

25 MR. WEISFELNER: Well, I mean, the biggest dispute