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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Chapter 11
. .
. Case No. 04-15739 (SMB)
. .
QUIGLEY COMPANY, INC. .
. .
. New York, New York
Debtors. . Thursday, December 18, 2008
. 11:13 a.m.
. .
.....

TRANSCRIPT OF MOTIONS AND STATUS CONFERENCE
BEFORE THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

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Audio Operator: Electronically Recorded
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Proceedings recorded by electronic sound recording, transcript
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1 -- we just want to confirm at this time as part of a status
2 that someone is reviewing the debtor's side of the debtor's
3 fees and someone is reviewing the committee's fees from the
4 committee as well. We're doing our best to do that, but there
5 haven't been any objections, we're not aware of any issues with
6 respect to other billing in this case. And at this time,
7 because the case has been five years in pending, that we would
8 just like confirmation that someone is actually reviewing the
9 bills of the various professionals on the debtor's side and the
10 committee's side.

11 THE COURT: But do you object to the settlement?

12 MR. ZIPES: And we don't object to the settlement.

13 THE COURT: The settlement is approved.

14 MS. LEPORE: Thank you, Judge.

15 MR. COOK: Since we have lawyers from out of town,
16 I'll refer to the second -- the second motion is about the Ad
17 Hoc Committee on the future claims representatives. Their
18 motion is next.

19 MR. JONAS: Good morning, Your Honor. Jeff Jonas from
20 Brown Rudnick on behalf of the Ad Hoc Tort Claimants.

21 Your Honor, I think in just a few minutes I can keep
22 the presentation fairly brief and to the point because --

23 THE COURT: It will take a few minutes to keep it
24 brief or the presentation of a few minutes?

25 MR. JONAS: I'm going to try and keep the whole

1 presentation extremely brief because I think the issue --

2 THE COURT: Take all the time you need.

3 MR. JONAS: -- I think this issue really needs to be
4 simplified, Your Honor, and presented in a straightforward way.

5 Your Honor, Bankruptcy Code Section 524(g)(4)(B)(i)
6 provides that for a plan to include the type of injunction
7 sought in this case -- in this case benefitting Pfizer, there
8 must be a legal representative for the purpose of protecting
9 the rights of persons that might subsequently assert demands of
10 such kind. And with respect to such kind, Your Honor, what
11 that means is demands against the debtor which give rise to
12 claims against that particular third-party, in this case
13 Pfizer, by reason of among other things the third-party's
14 ownership or management of the debtor.

15 In this case, Your Honor, there will be future
16 claimants, both against Quigley -- that will have claims
17 against Quigley. There will also be future claimants with
18 claims against Pfizer. There will be derivative claims that
19 future claimants will have against Pfizer. And, Your Honor,
20 just to put some context in this, in the disclosure statement
21 at Page 9, the future claims in this case are estimated to be
22 \$4.43 billion, and that's at Page 9 of the dis -- the most
23 recent disclosure statement.

24 So, Your Honor, each of these groups of claimants, in
25 our opinion, is entitled to -- and we believe the statute

1 authorizes, it doesn't necessarily require, but authorizes
 2 representation. Then the question becomes, what type of
 3 representation. Your Honor, we think that that representation
 4 needs to be separate, needs to be non-conflicted and it needs
 5 to just fundamentally be adequate in order for the
 6 representation to make sense.

7 THE COURT: Why isn't the future representative
 8 adequate?

9 MR. JONAS: Because the -- on its face, Your Honor --
 10 and that's why we're here today, we think as a matter of law --
 11 I think there could be factual issues that are developed. For
 12 example, Your Honor, we're taking the deposition of Mr. Togut
 13 down the road, but we think today on the facts that are before
 14 the Court that are undisputed, as a matter of law, there is an
 15 inherent conflict that the Court can find, and we think should
 16 find today, that results in the fact that the single
 17 representative is not sufficient.

18 Let me tell you about the conflict, Your Honor. These
 19 two parties have fundamentally divergent interests, which --
 20 again, in our opinion, can't be represented by a single
 21 interest. The future claimants against Quigley, Your Honor,
 22 have nothing to look to except what we would argue is really a
 23 non-operating shell company, or at best a very small operating
 24 company. Future claimants against Pfizer have \$115 billion
 25 company that, despite continually asserting it has no liability

1 on account of any derivative claims, Pfizer has already paid --
2 or has agreed to pay \$450 million.

3 So the --

4 THE COURT: Can I ask you what the nature of this
5 derivative liability is?

6 MR. JONAS: Sure. To the extent --

7 THE COURT: Let me ask the question right out. Is
8 there any Quigley present or future creditor that doesn't have
9 the same derivative claim against Pfizer?

10 MR. JONAS: Your Honor, there could be.

11 THE COURT: Tell me how.

12 MR. JONAS: Are you --

13 THE COURT: What's the basis of Pfizer's liability
14 that's being released under the plan?

15 MR. JONAS: I'm sorry, Your Honor, could you just --

16 THE COURT: What is the basis of the Pfizer liability
17 that's going to be released under the plan?

18 MR. JONAS: Well, that's a little bit of subject of
19 dispute, Your Honor. As you may recall, the -- we have taken
20 an appeal of the injunction.

21 THE COURT: Okay. But if you win, you're right, so
22 that's not released. That's all.

23 MR. JONAS: Understood, Your Honor. But to answer --

24 THE COURT: But then everybody who is exposed to
25 Insulog (phonetic) has the same claim, wouldn't they?

1 MR. JONAS: They have a claim against Quigley and they
2 have a derivative claim against Pfizer.

3 THE COURT: That's my point. Everybody -- every
4 Quigley creditor should have the same derivative claim against
5 Pfizer -- without saying whether or not those claims are
6 legally valid, and if that's the case why can't one person just
7 represent everybody because everybody has got the same
8 interest?

9 MR. JONAS: Well, the answer to that, Your Honor, is
10 for purpose of this argument, I'll agree with you. Let's
11 assume there's one person, because I think that's where you're
12 going, which is one person has --

13 THE COURT: All I'm saying is every -- well, maybe
14 we're saying the same thing. What I'm saying is -- or what I'm
15 suggesting, it sounds to me, based upon what I know about the
16 case and there's nothing in your papers which indicates
17 otherwise, that every Quigley creditor -- in other words,
18 everybody who was exposed to a Quigley product, would have
19 precisely the same derivative claim against Pfizer.

20 MR. JONAS: Your Honor, you're right that the same
21 person will have both a Quigley claim and based on that a
22 derivative claim against Pfizer and I'm not arguing with you.

23 THE COURT: Okay.

24 MR. JONAS: What I'm saying is that those claims
25 deserve and need separate representation.

1 THE COURT: Why?

2 MR. JONAS: Because they're conflicting claims because

3 --

4 THE COURT: Why? If everybody has got the same claim

5 --

6 MR. JONAS: No, because the Quigley claim has --
7 they're distinct. The Quigley claim is just the claim -- what
8 can somebody with a Quigley claim do today, assuming we don't
9 have a confirmed plan? They can go after Quigley --

10 THE COURT: Right.

11 MR. JONAS: -- there's nothing there. They --

12 THE COURT: And they can sue Pfizer.

13 MR. JONAS: And they can sue Pfizer. Pfizer is a
14 solvent, significant entity and they can pursue their claims.

15 THE COURT: And every Quigley creditor who didn't
16 enter into a settlement -- and since none of the futures
17 entered into settlements by definition --

18 MR. JONAS: Correct.

19 THE COURT: -- every future could assert a claim
20 against Quigley and could bring the same derivative claim, for
21 better or worse, against Pfizer.

22 MR. JONAS: But we don't -- we don't think that a
23 single represent -- a representative, Your Honor, can
24 adequately represent -- because there's divergent interests.
25 You can't adequately represent an interest against Quigley

1 while that same person, I agree, might have a separate claim
2 against Pfizer. They're --

3 THE COURT: Why not?

4 MR. JONAS: Because they're different interests.
5 Because he might settle -- for example, Your Honor, if you were
6 in the position of the Future Claim Rep you might say well,
7 okay I've got nothing there with Pfizer -- with Quigley, so I'm
8 going to take what I can get, but that's one issue. He's got
9 to look at it in that fashion, but at the same time effectively
10 and I'm not -- by the way, Your Honor, we're not in any way
11 trying to impugn Mr. Togut, so I just want to be clear about
12 that. But, nevertheless, Your Honor we don't think that same
13 person, while settling or looking out for the interests of a
14 Quigley claim can look out for the interests of a Pfizer claim.

15 THE COURT: He's looking at the interests of the
16 future claimants, all of whom have a claim against Quigley and
17 a derivative claim against Pfizer. And in the end there's
18 going to be a pot of money, they're going to have an injury and
19 they're going to serve --

20 MR. JONAS: No, that's -- I think you're wrong there,
21 Your Honor.

22 THE COURT: Really?

23 MR. JONAS: Because the future claimant against Pfizer
24 is getting nothing under the plan. They're getting zero.
25 They're getting channeled --

1 THE COURT: That's not true.

2 MR. JONAS: No, it is true. They're getting --

3 THE COURT: So what are the present claimants who have
4 claims against Pfizer getting?

5 MR. JONAS: Well, our position, Your Honor, is most of
6 the Pfizer claimants have settled and are getting paid by
7 Pfizer.

8 THE COURT: Okay. But --

9 MR. JONAS: The other Pfizer claimants also -- they're
10 getting paid, they're going to get their seven-and-a-half cents
11 from Quigley and their Pfizer claims are going to be channeled
12 and they're not going to get anything.

13 THE COURT: Okay.

14 MR. JONAS: That's the pressure, Your Honor. It's a
15 single payout for different claims. So while I understand -- I
16 knew you were going to ask me, well isn't it the same person
17 because I've been struggling with that myself. I agree that --

18 THE COURT: It's not just the same person. It's the
19 same person and they all have the same claim.

20 MR. JONAS: They're dif -- but that -- the claims that
21 --

22 THE COURT: I mean, the same interest. They all have
23 the same interest. They all have the same claim against
24 Quigley, depending on obviously the level injury, but the
25 liability of Quigley is the same to each of them and the

1 liability, if any, to Pfizer is the same to each of them.

2 MR. JONAS: But -- and I can't argue with the way you
3 put it, Your Honor, but the point is that those claims are
4 divergent. They're different claims that have to be looked at
5 differently, they have to be analyzed differently, and we think
6 they're entitled to protection.

7 THE COURT: So we need 200 -- or --

8 MR. JONAS: No.

9 THE COURT: -- how many future claimants do you --

10 MR. JONAS: I understand the parade of horrors, Your
11 Honor, that --

12 THE COURT: Okay.

13 MR. JONAS: Okay. I'll get to that, if I could, in a
14 minute.

15 Your Honor, we have -- we've cited the Combustion
16 Engineering case, Your Honor, and have been criticized for it.
17 We've cited other cases and have been criticized for that, but
18 the point --

19 THE COURT: At least they're consistent, right?

20 MR. JONAS: At least they're consistent. Because I
21 think fundamentally what's been missed, Your Honor, is why
22 we're citing those cases.

23 The reason we've cited Combustion, Your Honor, is to
24 support our position that where -- as we think is the case,
25 there are future demands that differ in status, a separate and

1 independent representative is necessary to comply with the
2 basic notions of due process under 524(g). And Pfizer and
3 Quigley argue that in Combustion Engineering the Court made its
4 comments in the context of considering a separate future
5 claimants rep for non-derivative claims versus a non-debtor.

6 That's true, Your Honor. We're not -- I'm not citing
7 Combustion for the facts that took place in Combustion.

8 THE COURT: I have no doubt that, as a matter of
9 discretion, or maybe under certain circumstances, you have to
10 appoint an additional future representative, but what you're
11 arguing today is that as a matter of law in this case I must do
12 it, or as a matter of law am abusing my discretion if I don't
13 do it. And that's really what you're arguing today.

14 MR. JONAS: Well, I think frankly, Your Honor, you've
15 helped us because you've taken part of my argument and I don't
16 have to make it anymore. Because one of their arguments is,
17 you don't have discretion to do it. That the use of the word a
18 in the statute means a and you have no authority. I think
19 that's a little bit odd that they make the argument --

20 THE COURT: So tell me why I would -- if it's -- if
21 the correct standard is discretion --

22 MR. JONAS: Yeah.

23 THE COURT: -- tell me why, as a matter of law, I
24 would be abusing my discretion. Nobody -- no other Judge in
25 his or her right mind could refuse to do it, if that's a fair

1 way to paraphrase the test, maybe it's not, but you know what
2 I'm saying.

3 MR. JONAS: I do, Your Honor. I don't think it is --

4 THE COURT: Tell me why, as a matter of law, I'm
5 abusing my discretion.

6 MR. JONAS: This is why. Because -- and this is why
7 we cited the cases that we did -- it's why we cited the Amcan
8 (phonetic) case, it's why we cited the Ortiz case, because the
9 whole point here, Your Honor, is a due process issue. Which is
10 simply -- and I'm just going to cite the Amcan case, because I
11 think it really brings the point home, that the structural --
12 that what we're entitled to is the structural assurance of fair
13 and adequate representation for diverse groups and individuals
14 affected. That's what all of this comes down to, fundamental
15 due process.

16 THE COURT: I agree with you.

17 MR. JONAS: Okay. So our view is, it's very simple.
18 We look at 524(g), we see what it says, we think there are
19 divergent interests because we have a claim against Quigley
20 that's going to have a recovery -- we don't think a sufficient
21 recovery, but nevertheless is going to get seven-and-a-half
22 cents, and we have other claimants who are looking at getting
23 nothing on different claims. Same person, different claims,
24 one is going to get some sort of recovery on the plan. The
25 other one, that might be a very valuable claim or at least they

1 may view it as a valuable claim, is going to get zero. And
2 that's why we think those folks need to be looked out for.

3 Somebody with those interests -- only those interests
4 in mind has to look at this and decide, if I have a future
5 claim against Pfizer that they think is a good claim, that's
6 \$115 billion corporation, is this fair to me? Is it fair that
7 that claim gets channeled for zero? That's the question.

8 And I guess I would ask, Your Honor, why is it that
9 Pfizer and Quigley are so reluctant or concerned about having
10 somebody make that analysis? It's not going to be time, Your
11 Honor, we've been in this case over four years. It's not going
12 to be expense, Your Honor, we've spent I don't know how many
13 tens of millions of dollars.

14 THE COURT: How is that analysis any different from
15 what I'm going to hear presumably at the confirmation hearing,
16 that Pfizer is not paying enough money for what it's getting?
17 Isn't that the same argument?

18 MR. JONAS: Well, I don't think --

19 THE COURT: That it's not putting enough money into
20 this case, among other arguments.

21 MR. JONAS: Well, I don't want to say that you're not
22 going to hear that argument because you are, Your Honor. But
23 here's the point, this is why 520 -- in our opinion, 524(g) is
24 structured. Who is looking out for the future claimants
25 against Pfizer in that regard? Who is making that

1 determination, Your Honor? We can make an argument, but that's
2 not what those claimants are entitled to. Under 524(g) they're
3 entitled to their own representative who can do that analysis.
4 I agree with you, Your Honor. What is Pfizer getting and what
5 are they giving up?

6 Now we can stand -- and you will hear us continually
7 make the position -- take the position and make the argument
8 that it's not satisfactory, that the relationship is skewed.
9 But the future claimants, Your Honor, are entitled to that
10 analysis by a future claimant rep. That's what, in our
11 opinion, 524(g) provides.

12 I think we've already -- I just want to respond
13 briefly, Your Honor, to the principal objections and then I'll
14 be done. Number one, the singular reference. I think we've
15 talked about that. The fact that no -- you know, they say that
16 no case has had an appointment of a separate future claimants
17 rep. Similarly, Your Honor, no case has said that it's
18 prohibited. I think we're talking about a very limited
19 universe of cases frankly, Your Honor. Every case is different
20 in this context, every --

21 THE COURT: Was Combustion Engineering confirmed?

22 MR. JONAS: It ultimately was confirmed as a --
23 through a consensual resolution.

24 THE COURT: Right. How many futures were there?
25 Future representatives were there in that case?

1 MR. JONAS: I think there was one.

2 THE COURT: At the end of the day.

3 MR. JONAS: At the end of the day, there was one. But
4 as you know, the Court -- the Appeals Court raised that issue
5 in its opinion. It went back -- and as far as I know, Your
6 Honor, it was done consensually.

7 And, in fact, that's exactly one of the points I
8 wanted to make, Your Honor. I haven't studied every single
9 asbestos case on this point, but many, many, many of these
10 cases, Your Honor, get done on a consensual basis. That's how
11 they resolve, this one doesn't look like it's going to go that
12 way, and we come back to the statute and you know our view of
13 that.

14 Your Honor, the -- you've heard about the parade of
15 horrors, which you raised. I don't think that's a basis to
16 make a decision on 524(g). It is what it is. If you find you
17 have the discretion, and if you find we're right, that those
18 people are entitled to a -- their own future claimant rep --
19 you know, we'll deal with -- the parade of horrors is what it
20 is, but it's not a reason not to do it.

21 Lastly, Your Honor, is I categorize them as the
22 laches's forfeiture equitable estoppel, there's a whole bunch
23 of them. I -- personally, Your Honor, I think that's a
24 ridiculous position because what that means is, because of the
25 first thirty days of the case we didn't file an objection to

1 the future claimant rep getting appointed, we can't raise a
2 confirmation objecting? 524(g) is a confirmation objection.
3 That, to me, makes no sense. We can't look at the 524(g)
4 objection -- I'm sorry, injunction that's being granted as part
5 of a plan, a plan that was amended as recently within the last
6 few months or years and make an objection on that basis? That
7 to me makes no sense.

8 On top of that, Your Honor, we did raise -- we've
9 raised this issue before. We raised it in papers in connection
10 with the injunction, so I'm happy to spend more time on it if
11 the Court thinks I need to, but I hope I don't have to.

12 Yeah, just -- I guess the last point on the future
13 claimant rep, Your Honor, the reason -- another reason I think
14 they're entitled to a separate claim rep is, I don't think that
15 one future claims rep, in this case Mr. Togut, can consider --
16 well, okay, I've got to look out for the Quigley claim. Those
17 folks probably do want a plan because it's probably the best
18 they're going to do because there's nothing else for them,
19 versus the interest of a future claimant against Pfizer who
20 very well may say I want to take my chances in the tort system.
21 I've got a viable entity and I want to pursue that.

22 THE COURT: But wouldn't you have that in every 524(g)
23 case?

24 MR. JONAS: You very well --

25 THE COURT: Where you have -- the whole structure of

1 the statute is to enable a non-debtor to get some sort of a
2 discharge, so you would have that in every case.

3 MR. JONAS: I --

4 THE COURT: And yet the statute only talks about the
5 appointment of one future rep.

6 MR. JONAS: Your Honor, I agree with you. The issue
7 is, you have to look at every case.

8 THE COURT: Right.

9 MR. JONAS: Many of those cases -- and I was going to
10 try and do some sort of empirical analysis but I don't have it,
11 many of those cases are 100 cent cases, or very close to 100
12 cent cases. They're more than seven-and-a-half cents, I would
13 -- I strongly believe they're much more than seven-and-a-half
14 cents. Many of those cases are done on a consensual basis. I
15 don't want to make factual arguments because I don't think I
16 have to, but I think my point, Your Honor, is --

17 THE COURT: Well, this is a motion for summary
18 judgement.

19 MR. JONAS: I agree. I don't think those facts as to
20 what happened in other cases are relevant. My point, Your
21 Honor, is I think every case is different. We're here on this
22 case and on this case we think that the Pfizer future claimants
23 are entitled to separate representation.

24 Your Honor, I guess lastly we're hopeful that you'll
25 grant and certainly strongly consider our motion. If not, we

1 think we're entitled -- as I said, we're in the process of
2 doing discovery, we'll see where that takes us. There may be
3 factual bases that are determined during discovery that make it
4 relevant for us -- or reasonable for us to come back on this
5 issue. And if that arises, we want to do that.

6 THE COURT: At this point already, can't you just
7 raise it as a confirmation issue?

8 MR. JONAS: We have, Your Honor.

9 THE COURT: All right.

10 MR. JONAS: You had asked us to carve out issues we
11 thought could be dealt with, so --

12 THE COURT: All right.

13 MR. JONAS: Anyway. Thank you, Your Honor.

14 MR. COOK: Okay, Your Honor. I'll try to be as brief
15 as possible.

16 Essentially, this is a disqualification motion for Mr.
17 Togut. One fact I think that is just simply wrong on this
18 motion, the future claimants against Pfizer and against Quigley
19 are getting the same. That's exactly what Mr. Togut has been
20 doing, looking out for all future claimants. And the --

21 THE COURT: Well, the -- I think the implication of
22 the argument is that some people have -- on the liability
23 basis, stronger claims than others against Pfizer.

24 MR. COOK: Well, one thing we know on the current
25 claimants there's one committee, they're all getting the same

1 distribution, but as far as the future claimants? The
2 practical problem that we all have is nobody can tell us who's
3 got claims against Quigley, who's got claims against Pfizer,
4 and which ones are stronger. Nobody can tell -- as Mr. Togut
5 would put it, if one of my clients calls me I know he's no
6 longer a client of mine. He spends all of his time focusing on
7 future claims because he's got nobody to talk to. So that's
8 the practical problem.

9 Assuming you -- and we -- although we don't concede
10 it, if we assume for the sake of argument that you have the
11 discretion on the appropriate factual showing, which I don't
12 think there was, there is no way to determine who's in this
13 future claim constituency. People who have claims only against
14 Pfizer. There's no way of telling it. Nobody can tell it.

15 THE COURT: How could somebody only have a claim
16 against Pfizer? It's got to be derivative of the claim against
17 Quigley.

18 MR. COOK: That's exactly right because most -- the
19 only thing that gets channeled are derivative claims. The
20 direct claims are not channeled at all. The plan couldn't be
21 clearer.

22 So we don't have a separate committee for this -- one
23 creditors' committee represents the wide variety of
24 constituencies. The different types of injuries, the settlers,
25 the non-settlers, nobody has complained about that. So -- you

1 know, we don't have to repeat the statute, the precedent, it's
2 undisputed that they waited almost four years. They first
3 raised it -- they claim in the spring of 2008. We don't have
4 to talk about the prejudice, the more delay, the more fees,
5 their motivation. Frankly, it's just impractical, unworkable,
6 unnecessary and very expensive. Thank you.

7 MR. BAE: Good morning, Your Honor, John Bae. I'll be
8 very brief.

9 The statute talks about a single futures
10 representative and as Your Honor pointed out, 524(g) is
11 structured to provide the injunctive relief to third parties.
12 And nowhere in the statute, even though it contemplates
13 injunctive relief for third parties, nowhere in the statute is
14 there a reference to more than one futures representative.

15 THE COURT: But don't you think that there might be
16 situations where -- just the fact that the statute says one is
17 a starting point but it's not the end point.

18 MR. BAE: I agree, Your Honor. I was going to
19 continue on that to address that point.

20 Under Mr. Jonas' logic, every asbestos case would
21 require multiple futures rep. And the reason I say that is
22 because the facts that Mr. Jonas referred to relate to the
23 assets held by each company that is being protected by 524(g).
24 And if the debtors' assets tend to be lower than the assets
25 held by a parent company or a subsidiary that's being

1 protected, then somehow the interests diverge because they're
2 giving up their right to sue a parent company which may have
3 greater assets.

4 That probably isn't true in every single asbestos
5 case, okay. And that is the only fact that he identified as
6 distinguishing or for creating a basis to have multiple futures
7 reps in this case. And I would submit, Your Honor, that
8 distinction is a distinction that doesn't exist. These set of
9 facts and circumstances exist in every single asbestos case.
10 And in every situation where a third-party is being -- what
11 claims as a third-party is being channeled, a creditor is in
12 theory giving up their rights to sue that person and going
13 after the assets of the debtor and whatever contribution that's
14 being made by the third-party. It's the same in every single
15 case. He presented no fact to this Court that distinguishes
16 this case from any other case.

17 THE COURT: Anyone else want to be heard? Go ahead.

18 MR. JONAS: Your Honor, all I wanted to say --

19 THE COURT: Oh, wait a minute. We still have someone
20 who hasn't been heard yet.

21 MR. ESSERMAN: Your Honor, Sandy Esserman from
22 (indiscernible) Claimants, we've filed papers on this.

23 I think when you analyze the argument, really what
24 they're complaining about is Pfizer not contributing enough to
25 get rid of the derivative claim more than anything else. And

1 that argument is going to have to be made and frankly it's the
2 debtors' burden to show that the pot is accurate. And the
3 future claims representative will also have to share in that
4 burden to show that, in fact, they are discharging derivative
5 claims and direct claims against Quigley and that's adequate.

6 I did briefly want to -- I know Your Honor is very
7 familiar with a lot of these cases, but people talking about
8 C.E. for various things and about half the room was involved in
9 C.E. here today, but -- and C.E. was sort of an unusual
10 situation. They sort of -- they have two different companies,
11 the Lummus Company and the Combustion Engineering Company.
12 Lummus was a completely separate business, it was an
13 engineering business, separate employees, separate paychecks,
14 separate operations. And what Combustion Engineering tried to
15 do was sort of bolt on the Lummus case into the C.E. case with
16 the futures rep from C.E. and --

17 THE COURT: Lummus had its own products, as well.

18 MS. ESSERMAN: Lummus had its own products, they were
19 -- they were a completely separate entity in an operating
20 business that was eventually sold for nearly a billion dollars.
21 So it was -- it had its own direct claims, so it's a completely
22 different situation. I think Your Honor understands the issues
23 and has analyzed this correctly.

24 THE COURT: Okay. Thank you. Mr. Jonas, I'll give
25 you the last word on this.

1 MR. JONAS: Thank you. I appreciate that, Your Honor.

2 All I'll say is, not every case has a solvent parent,
3 has derivative claims against the parent getting wiped out for
4 nothing, and provides a seven-and-a-half cent distribution to
5 the debtors' creditors, Your Honor.

6 And, lastly, the level of Pfizer's contribution, which
7 you've hit on and which I don't disagree is an issue, my point
8 is that these future claimants, that is those that have claims
9 -- future claims against Pfizer are entitled to a future claim
10 rep to look at that issue.

11 THE COURT: Okay.

12 MR. JONAS: Thank you, Your Honor.

13 THE COURT: Yes, Mr. Ratner?

14 MR. RATNER: Your Honor, very briefly.

15 THE COURT: You're rising to defend Mr. Togut?

16 MR. RATNER: Yeah, I certainly am, and I have my
17 shield and sword, Your Honor.

18 Scott Ratner of Togut, Segal and Segal on behalf of
19 Albert Togut as the Future Claims Representative in the Quigley
20 Chapter 11 case.

21 Your Honor, the Future Claims Representative did put
22 in a brief statement concerning this motion. I didn't think it
23 was appropriate to take a position on the motion --

24 THE COURT: Which you're going to do right now?

25 MR. RATNER: Your Honor, I -- indirectly I will. I

1 will reiterate what was stated in the brief paper put in, and
2 that is that the Future Claims Rep believed that he has fully
3 carried out his duties pursuant to this Court's order of
4 appointment.

5 THE COURT: A bold position?

6 MR. RATNER: Yes. Yes. In effectively representing
7 the interest of all future claimants of Quigley who may assert
8 demands in the future against Quigley and its affiliated
9 entities based on exposure to Quigley products. And I think
10 this Court has correctly identified the issues in its early
11 questions to the Ad Hoc Committee about -- you know, there is a
12 single constituency here that is being represented.

13 THE COURT: Okay.

14 MR. RATNER: Thank you, Your Honor.

15 THE COURT: I'm going to deny the motion for summary
16 judgment. Initially -- when the motion was -- it was an issue
17 of whether -- what the statute required. It's clear that the
18 statute doesn't require the appointment of multiple futures
19 representatives. We've had the arguments and the briefs that
20 it uses the singular and the statute contemplates that there
21 will be third-party non-debtor releases, which is not to say
22 that in appropriate circumstances the Court can't or shouldn't
23 appoint an additional -- one or more additional futures
24 representatives. But, I cannot conclude as a matter of law
25 that Mr. Togut cannot adequately represent both the future

1 Quigley creditors and the future Pfizer creditors, because as I
2 see the case -- or at least I haven't been shown, that their
3 interests are any different. Every -- let me put it this way,
4 every derivative Pfizer claim by definition has a tagalong
5 direct Quigley claim, that's what makes it a derivative claim.
6 So that all of the future constituents, none of whom have
7 obviously settled with Pfizer, have the same claim against
8 Pfizer and the same claim against Quigley.

9 Sure the claims have different strengths, but that's
10 true of every -- everybody in the creditor body and a single
11 committee still represents the creditors. But the basis of the
12 liability is the same. And the current future representative
13 can represent that constituency, which all have the same
14 interest against Quigley and Pfizer, and that interest is to
15 get enough money for the futures. So the motion is denied for
16 the reasons stated on the record.

17 Next.

18 MR. BAE: Your Honor, John Bae with Cadwalader on
19 behalf of Pfizer.

20 The next item, I think it's the last item, is Pfizer's
21 motion for a protective order.

22 THE COURT: Right.

23 MR. BAE: Just by way of background, Your Honor --
24 I'll try to be brief since we've said quite a bit in our
25 papers. The genesis of this motion was never about Pfizer