

2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
-----X
4 In the Matter of Chapter 11
5 QUIGLEY COMPANY, INC., Case No. 04-15739
6 Debtor.
7 -----X
8 QUIGLEY COMPANY, INC., Adv.
Proc. No. 04-04262
9 Plaintiff,
10 -against-
11
12 A.C. COLEMAN, The Other Parties
13 Listed On Exhibit "A" To The
Complaint, JOHN DOES 1-1000,
and JANE DOES 1-1000,
14 Defendants.

15 -----X
16 September 7, 2004
17 United States Custom House
18 One Bowling Green
New York, New York 10004

19 Motion of Quigley Company, Inc., for an order pursuant
20 to sections 105(a) and 362(a) of the Bankruptcy Code and
21 Bankruptcy Rule 7065, confirming the application of the
22 automatic stay, and granting a preliminary injunction and
a temporary restraining order (Adv. Proc. Docket Entry #2)

23 B E F O R E :
24 HON. PRUDENCE CARTER BEATTY,
25 Bankruptcy Judge

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1 QUIGLEY COMPANY, INC.

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3 Quigley - 09-07-04.txt
A P P E A R A N C E S :

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QUIGLEY COMPANY, INC.

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A P P E A R A N C E S : (Continued)

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QUIGLEY COMPANY, INC.

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1 QUIGLEY COMPANY, INC.

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3 P R O C E E D I N G S

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THE COURT: You may be seated. This is in
6 "re" Quigley.

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MR. COOK: Good afternoon, Your Honor.

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Michael Cook from Schulte, Roth and Zabel, on behalf
9 of Quigley. I want to thank you for accommodating us
10 on such short notice.

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We have two substantive matters, and three
12 straight-forward, procedural, housekeeping matters.

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And I'd like to dispose of the housekeeping
14 matters first, because they all go to notice.

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I may add that the substantive matters'
16 notices went out on Friday, both telephonically
17 and in writing, to the major claims' Counsel.

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So, they have had it since Friday, at the
19 latest. The three noticing orders are: Number one,
20 to have Trumbull Associates to facilitate the whole

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21 Quigley - 09-07-04.txt
process.

22 THE COURT: Okay. Are they going to give
23 notices, or just receive claims?

24 MR. COOK: Primarily, they will give notices,
25 and receive claims, Your Honor.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: Okay. I understand Kathleen
3 Farrell. There is docketing that she would like
4 to have them do. For example, the noticing of
5 appearances. They do have a web site. Someone could
6 be forwarding to the web site, to see such material.

7 And, I think it's something that we have to
8 talk about. As it goes by exactly what they're going
9 to do. But the Docket, "E.C.F." could be impossibly
10 large. If we put three hundred notices of appearance
11 on it, or whatever.

12 MR. COOK: I think that the object of the
13 exercise is to have them coordinate with the Court.

14 THE COURT: If that's the process, then they
15 will coordinate, and we won't bother with it. We'll
16 just coordinate.

17 MR. COOK: They do have to be appointed; and
18 we have the appropriate order.

19 THE COURT: There didn't seem to be a price.

20 MR. COOK: I believe it's a \$25,000 dollar
21 retainer. Something like that was spelled-out in
22 the papers.

23 THE COURT: But, it's not three cents per
24 copy; or sixteen cents per mailing. It's not quite
25 worded that way, in other words.

1 QUIGLEY COMPANY, INC.
2 MR. COOK: We will supplement it.
3 THE COURT: Just tell me if that's the way
4 it is. I'm not clear whether there was supposed
5 to be a schedule, or just a flat fee.
6 MR. COOK: My understanding was that it's
7 based on what they do, and how much they do it.
8 THE COURT: If that's the case, then that
9 schedule was not in my copy. Okay?
10 MR. COOK: Yes, Your Honor.
11 THE COURT: What's your third point?
12 MR. COOK: The notice of the procedural order
13 is providing a master-list to the Committee's U.S.
14 Trustee's Office. Any future claims representative
15 is on the Pfizer 2002 list.
16 THE COURT: I have some serious questions
17 about the Pfizer 2002 list.
18 I know that's what the Code says. If it's
19 five or ten people, it's not a big deal.
20 But, if it gets to be more than ten, then I
21 don't think there's any real interest in that
22 particular motion.
23 They just want to collect papers; and I don't
24 think the state should have to pay for all the time
25 and energy it takes for them to collect papers.

1 QUIGLEY COMPANY, INC.
2 THE COURT: They can go to the web site, and
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3 Quigley - 09-07-04.txt
4 they can look at the Docket "E.C.F." system, and
5 collect them that way. I don't know how many notices
6 we'll get here, but it could be a lot.

7 There may be some other people you know of
8 that should be getting the noticing. While we are
9 going to put anybody else on the list, I would put
10 the attorneys for the groups with whom you settle.

11 They would be a more meaningful group of
12 people to give papers to. But, that may not interest
13 them. We print them and send them out to people who
14 look at them and then file them in the garbage can.

15 MS. DAVIS: Tracy Davis from the Office of the
16 United States Trustee. Your Honor, one of the things
17 we discussed with the Debtor's Counsel, prior to the
18 start of today's hearing, was the importance of the
19 notice. There will be a publication notice, and that
20 is going to be in "U.S.A. Today."

21 THE COURT: I have no problem with the notice.
22 My problem is with those people that are filing the
23 notices of appearance, because (1) they don't put
24 down who they represent, and (2) they sometimes
25 represent a group of people who don't need to get
 notices.

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1 QUIGLEY COMPANY, INC.

2 MS. DAVIS: One of the reasons that I think
3 this case is here is for the purpose of resolving
4 the asbestos cases.

5 THE COURT: Trust me. There is no large body
6 of claims that actually exists against Quigley.

7 You tell me how many of these people were

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8 within six feet of a monolithic factory, and I'll
9 tell you that it's just not Manville, in terms of its
10 product. They have already probably paid more than
11 there could possibly be that were ever exposed to it.

12 It was a totally commercial product. It was
13 not a household product. And it was used in a
14 specialized, manufacturing process, during which you
15 needed a high-heat barrier.

16 I don't actually think that going out and
17 trying to get more people is what you should be
18 doing. I don't think they have legitimate claims.
19 If they were near Quigley's refractories, then okay.
20 But this is not Manville.

21 This is a company making a product. I don't
22 know how many units they made. Only those people at
23 Quigley's facility that were making these units; or
24 the people at the facility, where these units were
25 put in place, are likely to have had any exposure.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: That number is certainly less than
3 one hundred thousand people. I don't see any purpose
4 to putting a notice out, to figure out how to get
5 more claims that barely meet any standard for injury.
6 And where they can't meet the standard for injury,
7 coming from this Defendant, I mean, this is not --

8 I'm really not concerned about notice. I'm
9 really not concerned today, because we're not getting
10 any notice today that's of any significance to any
11 actual claimant.

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MS. DAVIS: Understood, Your Honor.

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THE COURT: When we get to the point of the claims, then maybe we will have to know something like that. But, we haven't gotten to the point of the claims yet. Certainly, I think you ought to include the notices of appearance.

But I think you have to watch the number added to the list, and not let it grow to five hundred thousand that would have to be served every single time. If you're going to do that, I'll sign an order, directing that it not be done.

Providing that this is the way they get their notices. If there is a particular group you feel should get notice, then we'll look at that group.

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MR. COOK: We are required to give notice to Counsel for Claimants. We can't communicate directly with the Claimants who have Counsel. There are 160,000 Claimants. We think that the notices ought to be sufficient, in the ordinary course of events.

THE COURT: The only question I have is, the degree to which the attorney should be required to include in their address the name of the case they're involved with. So that they don't say I couldn't pair it up with whatever case I was involved with.

Because, if they put it in the second line, then when they got to the envelope, they wouldn't know what case to relate it to.

In addition to which, the other thing we could do is to allow the claims to double up. We sometimes

17 get notices of appearance from three to four people.
18 It depends on how the notices come in, and how many
19 there really are. Okay, so we settled all of those.

20 MR. COOK: Regarding the two substantive
21 matters, in terms of the cash collateral, we have,
22 over the weekend, scrubbed and refined the budget.
23 It uses the cash collateral. Essentially, the amount
24 according to the budget is the cash collateral order
25 being circulated to the appropriate parties.

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1 QUIGLEY COMPANY, INC.

2 MR. COOK: This was provided for on the
3 consent of the Secured Lender. There was \$363,600
4 dollars for items such as pay-roll, employee-related
5 matters, and essential supplies.

6 THE COURT: There are almost entirely payroll
7 employee benefits of \$32,000 dollars, and temporary
8 labor of \$80,000 dollars.

9 I don't know whether the data processing is
10 the cost of the computers, or the cost of the people.
11 It doesn't really matter. But I'm just saying that,
12 I want to ask you a question.

13 MR. COOK: Yes, Your Honor.

14 THE COURT: The cash collateral reflects that
15 there is a loan in excess of \$40 million dollars,
16 from Pfizer to Quigley.

17 I would have thought that it was hard for
18 Quigley to spend \$40,000 dollars for operating
19 expenses. I'm assuming that a significant portion
20 of that \$40 million dollars was money by Pfizer

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claims received.

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MR. COOK: It's a bridge loan facility, in place for 15 months, after Pfizer's contributed. It's to bridge the payments of the claims; and insurance proceeds that do not come in quickly.

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QUIGLEY COMPANY, INC.

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THE COURT: I have never known an insurance carrier to pay quickly.

MR. COOK: Yes, sorry to be redundant. If there are any further comments on the cash collateral, we'll get them to you.

THE COURT: The cash collateral order is really simple. Either the insurance proceeds received are sufficient to pay the money, or they're not. Because Quigley was not earning any money.

MR. COOK: At the moment, Your Honor, Quigley has about \$150,000 dollars.

THE COURT: I'm saying that it doesn't have a business, which is earning any money. So its only source of funds are the insurance, and whatever Pfizer's willing to lend it.

MR. COOK: Looking at the details of the D.I.P. loan. If you want to set a date for a final hearing, either now, or with your Law Clerk later.

THE COURT: I prefer to set them at the end of the afternoon, so that way, we knew what we needed, and I still don't know. Pick a hearing date where I will only need a little bit of time for this, and then, another hearing. I prefer to keep the Quigley matters on a "Quigley day."

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QUIGLEY COMPANY, INC.

MR. COOK: Okay, the main substantive matter today is the matter of --

THE COURT: Today it's T.R.O.

MR. COOK: And, as I mentioned earlier, we gave notices on Friday to the 32 representatives.

To cut to the chase, Your Honor picked up very quickly that, aside from the 162,000 claims against Quigley, the insurance is the only income here. It is a shared insurance, along with Pfizer.

The legal premise, and the reason we need to have a T.R.O. is the judgment against Pfizer. A judgment against Pfizer would be a judgment against Quigley, because of their shared insurance.

If Pfizer is left hanging out, they are entitled to draw on that insurance; and that would erode Quigley's only assets.

To put this in perspective, there are a thousand cases set for October and November. The whole rationale for this case is, to protect the insurance, and to maximize and preserve the value of the insurance. This is the relief we're seeking.

T.R.O. relief is hardly novel. We cited that we're, in fact, virtually identical; and three other courts have granted the same sort of relief.

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QUIGLEY COMPANY, INC.

MR. COOK: I say, it's important to know that

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3 here is a large percentage, about 80 percent, that
4 have already settled, in principle, with Pfizer and
5 Quigley. This insurance is essential to make that
6 happen. We are continuing to negotiate with Pfizer.

7 To get that done, we need to have some time.
8 We can show you the case in detail at the preliminary
9 injunction. In Court today the Chief Executive
10 officer of Quigley is here and Mr. Kany's response.

11 They are prepared to testify as to the
12 substance of their affidavits. But they are also
13 prepared to answer any questions that The Court may
14 have. The underlying facts are a melting ice-cube
15 here. We have to protect it.

16 There will be complete notice and opportunity
17 for everybody else to be heard.

18 There are lots of good reasons for granting a
19 temporary restraining order.

20 We will be prepared to proceed as to the
21 merits of the Complaint, and the pending outcome of
22 this case.

23 THE COURT: Does anyone here wish to ask any
24 question, or make any statement, with regard to the
25 request for a temporary restraining order?

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1 QUIGLEY COMPANY, INC.

2 MR. MCNEW: Sanders McNew, with the law firm
3 of Luxenberg and Weitz.

4 THE COURT: You're one of them?

5 MR. MCNEW: Yes Ma'am, I am.

6 THE COURT: What would you like to say?

7 MR. MCNEW: I'll try and speak loudly, Your
Page 14

8 Honor. First of all, as a matter of procedure, I
9 don't know what time they sent out the package, but,
10 I didn't receive it until 9:00 AM this morning. And
11 I am responding as best I can.

12 THE COURT: Honestly, I don't really feel that
13 sorry for you. You can read those papers in about
14 three hours, and know what you're going to say,
15 because it isn't like it's "new news." I mean, I'm
16 not saying that these papers weren't "new news," but
17 the type of relief being sought is not.

18 MR. MCNEW: The point that the Debtor's
19 Counsel makes is that a judgment against Pfizer is
20 also a judgment against Quigley, and that's wrong.

21 A judgment against Pfizer is against Pfizer.
22 They allege that they have a shared insurance.

23 But Pfizer, in the tort system, has no right
24 to claim Quigley, because Quigley is an asset of the
25 Estate.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: They actually aren't Quigley's
3 insurance policies. They are Pfizer's insurance
4 policies. Quigley has a right to share.

5 MR. MCNEW: Quigley's right is an asset of
6 the Estate.

7 THE COURT: That's the whole point.

8 MR. MCNEW: Under section 362 of the
9 Bankruptcy Code, Pfizer is barred from that asset.

10 THE COURT: But it's a joint asset. It
11 belongs to both of them. And, as a consequence,

12 they both have rights. There is nothing that
13 precludes parties from having joint ownership.

14 MR. MCNEW: But a Non-Debtor can no longer
15 reach that asset.

16 THE COURT: It's still jointly held. I
17 could be wrong. I have been doing this 22 years.
18 I believe that when you have jointly held assets
19 that both parties will get their share.

20 MR. MCNEW: Assuming that you're right and
21 I'm wrong, there are still many more fitting, and
22 more tailored responses.

23 You can enter a stay, barring Pfizer from
24 reaching that asset. You don't have to remove
25 Pfizer from the Court system.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: It's your client who is going to
3 attack the insurance on Pfizer's side. That's why
4 you need the injunction. If it were just Pfizer,
5 then it wouldn't matter. Everyone who thinks that
6 they can sue Pfizer will take a shot.

7 MR. MCNEW: Your Honor, the Debtor's Counsel
8 makes the assumption that a lawsuit against Pfizer
9 is a lawsuit against Quigley.

10 THE COURT: No, he never said that.
11 Mr. Cook, did you say that?

12 MR. COOK: No, Your Honor.

13 MR. MCNEW: In my reading of the papers --

14 THE COURT: It's a joint asset. If you allow
15 parties to attack the asset, you will be unable to
16 use that asset. And if Quigley planned against all
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17 of the complaints, in a decision, Pfizer intends to
18 make a substantial cash contribution.

19 MR. MCNEW: In fact, Pfizer has direct
20 liability, in asbestos tort litigation.

21 THE COURT: If you can't prove that any of
22 the claims relate to anything they ever produced.

23 MR. MCNEW: They are from the years 1962 to
24 1972. In 1962, Pfizer made Apprao, which is an
25 asbestos product.

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1 QUIGLEY COMPANY, INC.

2 MR. MCNEW: It was used for fire-proofing.
3 And it was Pfizer, not Quigley, that made this
4 product.

5 THE COURT: I don't buy into the idea that
6 you guys don't have to prove source. You're going
7 to have to prove source on this.

8 I don't believe those lawsuits that are out
9 there are lawsuits where you can prove that either
10 Quigley or Pfizer was the source. And I'm not saying
11 that there wasn't asbestos coming from them.

12 But, I don't believe that 600,000 people were
13 injured by asbestos from these two sources.

14 MR. MCNEW: Pfizer has direct liability, not
15 only for the products that it made, but also for the
16 products that it distributed. And that is what makes
17 Pfizer liable.

18 THE COURT: Somebody has direct liability.
19 This may not strike you as what you'd like me to say.

20 I don't think any more companies need to be

21 destroyed, for having a minor liability, in the
22 asbestos business.

23 I would agree that Pfizer has not had very
24 good success in acquiring good subsidiaries; and
25 I'm talking about Quigley.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: But they also have Pharmacia,
3 with its environmental problems, and its employee
4 problems. But I'm saying that Pfizer's business
5 doesn't really involve these products, and it never
6 really did. They were a minor side-line.

7 And I see no reason why, I can't, at least
8 at this stage, enjoin the parties from proceeding
9 against Pfizer, in order to protect the insurance,
10 which is needed, to deal with the claims against
11 Quigley, and what you say are claims against Pfizer.

12 MR. MCNEW: Then, Your Honor is extending the
13 benefit of Title 11?

14 THE COURT: I'm extending Rule 65 by 7065 of
15 the Bankruptcy Rules, okay. And the fact is that
16 you seem to like to see Pfizer file. And I would
17 not like to see Pfizer file. And I would not like
18 to see you going out and trying to get judgments
19 against "Mr. Big Bucks."

20 MR. MCNEW: Pfizer 362 of the Bankruptcy Code.
21 It's not going to file any asbestos claims.

22 THE COURT: I don't think your guys can be
23 hurt by my issuing a temporary restraining order
24 that precludes them from suing. The insurance is
25 adequate.

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QUIGLEY COMPANY, INC.

THE COURT: And frankly, if they get held up for six months, I don't see where it's the biggest deal in the world. Whereas, right now, we have a mess out there, in the land of asbestos attorneys.

They are going out and soliciting complaints from people who just barely, if they breathe just right, and to the left, then they might catch a wisp of something.

MR. MCNEW: In the next six months, my firm will be representing people who will be dead. To suggest that those people who are going to die are feigning illness is frankly Your Honor offensive.

THE COURT: I wasn't talking about those people, was I? I was talking about people that weren't really sick.

MR. MCNEW: You make the assumption that all tort victims are not sick.

THE COURT: We keep getting ever increasing numbers of people that are being solicited, to file asbestos claims.

Are any of your clients in a position to assert that either Pfizer or Quigley has been the source of their exposure to asbestos? And how are they able to do that?

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QUIGLEY COMPANY, INC.

MR. MCNEW: I know that my attorneys prepare

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3 the cases properly. We take cases to trial and win
4 judgments.

5 THE COURT: I asked you a question and you
6 don't know the answer.

7 MR. MCNEW: I didn't have time to prepare
8 examples.

9 THE COURT: You're saying to me that, with
10 the group of really sick people that you have, that
11 there were people in that group that were exposed to
12 either Quigley or Pfizer? You say you can know that
13 even though you didn't have time to prepare examples?

14 MR. MCNEW: I am told that by our chief trial
15 lawyer. I don't have personal knowledge of that.
16 Pfizer is going to end up with an injunction that
17 is protecting it, with direct claims. And I believe
18 362 already does enjoin Pfizer.

19 THE COURT: Unfortunately, the problem isn't
20 with Pfizer's accessing of the policies. The problem
21 is with those actions accessing Pfizer, when they
22 have their claims against Quigley.

23 You're not in a position to make a Motion
24 seeking relief, because you do not have the facts to
25 permit a modification to the T.R.O.

24

1 QUIGLEY COMPANY, INC.

2 THE COURT: I assume you're aware that T.R.O.'s
3 can be modified? Sir, based on what you're telling
4 me, it would not be adequate to warrant anything more
5 than your little class of 32 people.

6 I don't have enough information to exclude
7 them. And we have to figure out how to deal with

8 that. I have very little information, except you
9 say that these people on the Court calendar are very
10 sick and dying.

11 MR. MCNEW: I didn't say there are 32 people,
12 Your Honor. I said there are 32,000 people.

13 THE COURT: How many are on there?

14 MR. MCNEW: Somewhere between 50 and 80. I'll
15 have to check.

16 THE COURT: What I'm saying to you is, if you
17 issue a T.R.O. against a lot of people, sometimes
18 one person, or two people, are able to have it
19 modified in their favor.

20 But right now, I don't think you understand
21 that it's necessary to protect Pfizer, from having
22 judgments entered against it.

23 This is in order to protect the insurance,
24 and, in order to protect the Quigley Claimants,
25 many of whom have also sued Pfizer.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: The number of actions in which
3 Pfizer was sued alone is miniscule, in comparison to
4 the total number of actions.

5 Why should a lawsuit go forward against one of
6 them, and not against the other one? It seems to me
7 at this point, that I don't have any actual papers,
8 that would identify who you're talking about.

9 We could make an agreement, as to whether or
10 not a number could be reached, or whether litigation
11 is a better option. But I feel reasonably confident

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12 that Pfizer and Quigley are not the only entrants.

13 MR. MCNEW: This is suggesting to me that the
14 cases are on the trial calendar. We can come back,
15 and seek a modification hearing, in the next ten
16 days, with a preliminary injunction.

17 THE COURT: Sooner or later, all of the claims
18 have to get fixed. I think the question I have is:
19 who are you trying to get them fixed against?

20 And why are Quigley and Pfizer particularly
21 hot targets? Neither of the products you mentioned
22 are products that Quigley produced.

23 MR. MCNEW: Spray-on asbestos insulation is
24 a very large problem. These refractory products are
25 used in boilers.

26

1 QUIGLEY COMPANY, INC.

2 THE COURT: I didn't say they weren't. I just
3 said that they are not that accessible to the general
4 public; and that it was a fairly small period of time
5 that Quigley used asbestos-based products.

6 MR. MCNEW: You're absolutely right. It's not
7 a silitext. And not a lot of products were exposed
8 to the general public. But refractory products were
9 exposed to lots of people, including many
10 construction workers.

11 THE COURT: I think what's not in the record
12 is how many asbestos refractories were involved, as
13 opposed to the ones that were insulated, with the
14 high heat ceramics.

15 MR. MCNEW: Before the 1970's, there was no
16 other material being used in these products. It is
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17 hundreds of thousands of people affected.

18 THE COURT: I have yet to see that. But at
19 this point, I have not just yet determined to enter
20 a temporary restraining order. We have not heard
21 anything from you. You might as well make an
22 application to modify it.

23 It's the kind of application that gets made
24 in cases of automobile accidents. And there is some
25 insurance to cover it.

27

1 QUIGLEY COMPANY, INC.

2 THE COURT: But in your case, I think the
3 question becomes whether it's going to be enough
4 money to pay. We'll have to see.

5 MR. MCNEW: Your Honor, I feel I'm at some
6 disadvantage. I didn't have the opportunity to put
7 in a written paper. I believe we have answers to
8 the questions you're raising today.

9 THE COURT: I don't think they would have
10 been in your papers. I don't think you would have
11 thought that way. I'm looking for what's happening
12 in Court. Why we got this thing or that thing.

13 You're making a representation that all these
14 cases involve Pfizer's and Quigley's products. If
15 that were the case, we would have to consider if we
16 wanted those claims to be liquidated in Bankruptcy
17 Court, or to await the claims facility.

18 MR. MCNEW: Your Honor, if you would set a
19 date? I believe we should set a date, and return
20 with the papers, and be properly prepared, to argue

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21 for an injunction.

22 THE COURT: It can be extended.

23 MR. MCNEW: We didn't agree to an extension.

24 THE COURT: I didn't ask you to. I don't need
25 your permission.

28

1 QUIGLEY COMPANY, INC.

2 THE COURT: You were giving out a hundred
3 thousand notices. But they have not been situated
4 in New York, so that even ten days notice is too
5 little notice.

6 MR. MCNEW: Yes, I agree with Your Honor.
7 You don't need to serve every single individual.
8 I can guarantee you that I can get the notice.

9 The Debtor's representation is simply not
10 true. We haven't agreed; Goldman and Spitzer haven't
11 agreed. My firm itself represents twenty percent.

12 THE COURT: Haven't I seen the name of your
13 firm on subway train ads, looking for more people?

14 MR. MCNEW: Advertising doesn't give someone
15 a claim. You have to prove the claim.

16 THE COURT: I don't think that -- within ten
17 days -- I don't think that you can get the notices
18 out, and give these people enough time.

19 And I don't see the harm in issuing a
20 temporary restraining order, to see what we can do,
21 to put this case in order. Okay, are there any other
22 people here that would like to speak?

23 MR. COOK: Let me just wrap up, Your Honor.
24 In terms of very quickly pointing out a couple of
25 flaws. We know Pfizer is entitled.

1 QUIGLEY COMPANY, INC.

2 MR. COOK: Is Quigley entitled to share the
3 insurance that Pfizer brought in?

4 Even if Pfizer were precluded from it, they
5 would still be entitled to draw on those proceeds,
6 because it's a first billion dollar policy.

7 And it's also covered by the same insurance
8 policy, in order to protect this ice cube, at least
9 for the next few weeks. Still, we want to get a
10 preliminary injunction.

11 I think there are plenty of good reasons to
12 have the T.R.O. And I haven't heard a good one
13 against it. We are prepared to submit the
14 appropriate draft order.

15 THE COURT: Okay. Well, this is the question
16 I have for you.

17 Next week, September 15th and 16th are Rosh
18 Hashanah, which begins on the evening of the 15th.
19 And then the following week, Yom Kippur is on the
20 evening of September 24th.

21 So, I could give you September 23rd, which is
22 the day before Yom Kippur begins, and the day after
23 autumn begins. Or, I could give you the 27th,
24 which is a Monday, and it's the Monday after the
25 Yom Kippur weekend.

1 QUIGLEY COMPANY, INC.

2 MR. COOK: I can tell you that we can do

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3 either one, Your Honor. We prefer the 23rd, but
4 to be absolutely fair, we have no problem with
5 the 27th either.

6 THE COURT: Shall I go for a show of hands?
7 The 23? The 27? Okay, the 27th wins. It's always
8 hard to tell how much time we'll need. Do you think
9 the afternoon will be enough time?

10 MR. COOK: I think so. I'll step aside now,
11 in case anybody else wants to be heard.

12 THE COURT: The reason I'm asking is because
13 I could start at 10:30 and go all day.

14 MR. MCNEW: 10:30 Your Honor.

15 THE COURT: From what I have heard, the
16 objection of Weitz and Luxenberg is to the entry of
17 the temporary restraining order.

18 I have pointed out that they're afraid to
19 move, to modify the restraining order, depending on
20 what they produced, and that it's not much different
21 than modifying the automatic stay.

22 I'll look for a cross basis. I recognize that
23 the objection was made. This is protecting Pfizer.
24 I think it's protecting the insurance, which is
25 Pfizer's insurance, which Quigley has the benefit of.

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1 QUIGLEY COMPANY, INC.

2 THE COURT: And therefore, it is protecting
3 the Claimants against Pfizer, who have also sued
4 Quigley. And presumably, any other claims against
5 Pfizer would be parcelled in.

6 And the amount is substantial, when you
7 consider how much money has already been paid out.

8 And for these reasons, I will grant a temporary
9 restraining order.

10 MR. MCNEW: I apologize, because I spoke
11 from a position of ignorance.

12 THE COURT: It's not a question of whether
13 it's the next two weeks. Even if it's the next two
14 or three months, it would still be the same thing.

15 The question is a more generalized question,
16 which is: Is it enough to decide to go?

17 Because obviously, all of the cases being
18 enjoined are against Quigley. And T.R.O. has
19 enjoined them against Pfizer.

20 So, the only question is whether some category
21 is closer to trial, and/or has other characteristics
22 which would make it one where you decide to go.

23 MR. MCNEW: I had said two weeks.

24 THE COURT: You people always want to make
25 things look quicker than they are.

32

1 QUIGLEY COMPANY, INC.

2 MR. MCNEW: Your Honor, when somebody is
3 dying, they have a right to be heard.

4 THE COURT: I understand exactly what you're
5 saying.

6 MR. MCNEW: All I'm asking is, can we make
7 the application by letter?

8 THE COURT: No, because if I don't see the
9 underlying facts, which show me if it's against
10 Quigley or Pfizer, then I won't know.

11 MR. MCNEW: We can include that.

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12 THE COURT: Sir, can I ask you why I should
13 allow you to get around the ordinary practice of
14 putting in an affidavit? It's very easy: Quigley
15 is attached herewith to the documents.

16 MR. MCNEW: Of course, I don't mean to suggest
17 otherwise, if I have a case that's going to trial, in
18 ten days.

19 THE COURT: I mean, it takes you so much less
20 time, to just go ahead and do it the way you're
21 supposed to do it. And think about how difficult it
22 is for me, to have to figure out whether a letter is
23 seeking relief or not.

24 MR. MCNEW: Very well, Your Honor. I didn't
25 mean to trouble you with frivolous papers.

33

1 QUIGLEY COMPANY, INC.

2 THE COURT: You can always call up somebody.
3 Their life is probably full of little problems they
4 have to solve. Mr. Togut is going to be the future
5 Claims Representative; he supposedly knows everything
6 there is to know about the claims at this point.

7 MR. TOGUT: Thank you, Your Honor.

8 MR. COOK: I've covered the most substantive
9 matters. Now, we have four other less important
10 housekeeping matters. We can submit them to you, so
11 that I don't have to clutter-up the record, and waste
12 everybody's time.

13 THE COURT: I don't understand why you thought
14 you would be able to get your schedule in that soon.
15 I thought that it was a little bit overly optimistic,
16 but that's okay.

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17 MR. COOK: Most of them were paid.
18 THE COURT: What's the maximum?
19 MR. COOK: I believe, Your Honor, that there
20 is one person whose check didn't get drawn out.
21 THE COURT: Okay. Somebody decided to write
22 a check for \$165,000 dollars?
23 MR. COOK: That's why I wanted you to know
24 that \$13,000 dollars was the biggest check.
25 THE COURT: Mr. Togut?

34

1 QUIGLEY COMPANY, INC.
2 MR. COOK: For his retention, and my firm's
3 interim retention order.
4 THE COURT: I'd like to go to Mr. Togut for
5 a minute. Mr. Togut, do you want to retain somebody
6 that does multiplication? Because it's a lot more
7 complicated than that.
8 They specialize in these sorts of cases. You
9 just have to remind them that we're not evaluating
10 claims against other companies, just these companies.
11 MR. TOGUT: I have said that, and I will say
12 it again, Your Honor.
13 MR. COOK: I think we've covered everything
14 that was on our plate for today; the administrative
15 and the substantive.
16 THE COURT: I don't know that I've covered
17 everything. This Court has a dress code.
18 And that requires that all of the men wear
19 blue suits on the same day, and otherwise wear gray
20 suits on every other day.

21 Quigley - 09-07-04.txt
22 So everybody wears gray that day. And if your
23 tie has a little bit of red in it, then there is a
24 strong suggestion that you feel that you're a strong
25 player. I don't understand how men can figure out
 when to have a gray suit day.

35

1 QUIGLEY COMPANY, INC.
2 THE COURT: And it will turn out that on
3 that one day they will just all come in in gray
4 suits. Okay, that was just a joke.
5 But, this is actually not a joke. It is
6 difficult for the court reporter to work off of the
7 little scrawled pieces of paper when you don't have
8 a business card.
9 So please, go out and buy a thousand business
10 cards, so that you can give a business card to the
11 court reporter, because it will make things easier
12 for the court reporter.
13 It used to be that business cards were
14 engraved, and they came from Tiffany's, and they
15 took six weeks to get delivered.
16 But I think that those are out of fashion now,
17 and I think that we can use the modern printing
18 method, and not request anything too elaborate.
19 It will be easier for the court reporter and
20 for everybody else you work with. You can hand them
21 out for everything. Well, I think that's about it.
22 MR. COOK: I also got a notice, Your Honor.
23 I think we covered it. But maybe I misunderstood.
24 I wanted to make sure that we were not just trying
25 to figure out how many claims there were.

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QUIGLEY COMPANY, INC.

MR. COOK: All of the other companies in the whole world.

THE COURT: Now, Mr. Zirinsky, you represent Pfizer, right?

MR. ZIRINSKY: That's correct, Your Honor.

THE COURT: It's just not two documents that they have?

MR. ZIRINSKY: There are well over a hundred subsidiaries.

THE COURT: I was a little worried that their acquisition might be not quite worth it.

MR. ZIRINSKY: We live in a very litigious world, Your Honor.

THE COURT: we'll be seeing you in solutia.

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QUIGLEY COMPANY, INC.

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STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, VERONICA SOKOL, a Shorthand Reporter
and Notary Public within and for the State of New York,
do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within transcript
is a true record of such proceedings.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this ____ day of _____, 2004.

VERONICA SOKOL