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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of Case No.
04-B-15739

QUIGLEY COMPANY, INC.,

Debtor.

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November 1, 2004

United States Customs House
One Bowling Green
New York, New York 10004

Motion of Quigley Company, Inc. For an
order confirming application of the
automatic stay and granting a preliminary
injunction and a temporary restraining
order, et al.

B E F O R E:

HON. PRUDENCE C. BEATTY,

Bankruptcy Judge.

1 QUIGLEY COMPANY, INC.

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

3

4 CAPLIN & DRYSDALE, Chartered
5 Attorneys for Unsecured
6 Creditors Committee
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9 BY: ELIHU INSELBUCH, ESQ.
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11 of Counsel

12 -and-

13 RITA C. TOBIN, ESQ.,

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33 BY: ANTHONY GALLUCCI, ESQ.,
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1 QUIGLEY COMPANY, INC.

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

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QUIGLEY COMPANY, INC.

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

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1 QUIGLEY COMPANY, INC.

2 P R O C E E D I N G S.

3

4 THE COURT: I would like to
5 take the recusal motion first. It is not
6 my practice to -- we have this new calendar
7 which says we are taking the TRO first, but
8 I don't know which one we are taking
9 because the old calendar had it listed
10 first. It is not my practice to take oral
11 argument on motions that have been fully
12 briefed. So unless someone has something
13 extra they want to say. I don't feel the
14 need to hear from anybody.

15 The creditors committee made a
16 motion for recusal under 28 U.S.C. Section
17 455, and I believe they intended it to be
18 for 455(a). The motion states in the
19 first paragraph that it seeks my recusal
20 from further participation because of
21 personal bias and prejudice against the
22 committee's constituency as well as the
23 appearance of bias.

24 Quigley filed a response,
25 Pfizer filed a response. The creditors

1 QUIGLEY COMPANY, INC.
2 committee filed a further response and that
3 further response did not seem to -- it
4 seems to have altered the theory on which
5 the committee was proceeding by somehow
6 enlarging the assertion.

7 It does not say they are
8 alleging that I have personal knowledge of
9 disputed facts, but they still allege that
10 I have a personal bias or prejudice.

11 On page 2, they say, for
12 example, my disparaging remarks about the
13 asbestos plaintiff's bar have a uniform
14 thrust -- her belief that these lawyers
15 have recruited plaintiffs who are not sick,
16 then filed bogus claims against Quigley and
17 other asbestos defendants.

18 The next statement in its
19 entirety is incorrect and can almost be
20 said to be false. In the first place that
21 is wrong. I did speak of certain
22 claimants who were not necessarily sick
23 although it did not imply that they had
24 bogus claims.

25 As I understand the tort law,

1 QUIGLEY COMPANY, INC.
2 just to confirm this, section 7 says "It is
3 basic tort law that wrong without damage
4 does not constitute a good cause of
5 action."

6 I believe that it would be a
7 theory of what I am saying at that point
8 that these claimants did not necessarily
9 have an injury for which they could
10 commence an action, in other words, their
11 claims were contingent and unliquidated.
12 They are contingent on the future course of
13 their health. If they happen to get run
14 over by a truck next year there would be no
15 claim because whatever it is they have
16 today is not sufficient necessarily to be
17 considered an illness.

18 In addition to which, I am
19 quite certain that the asbestos bar is
20 familiar with the Bankruptcy Code, I think,
21 and the Bankruptcy Court's jurisdiction.
22 In particular, I am certain that they are
23 aware that bankruptcy judges may not and
24 must not liquidate or estimate contingent
25 or unliquidated personal injury tort or

1 QUIGLEY COMPANY, INC.
2 wrongful death claims for the purpose of a
3 distribution in a case under Title 11. So
4 that those claims will never be fixed by
5 me. They will be fixed by being tried in
6 some court somewhere in the country or by
7 the district court or pursuant to some sort
8 of claims facility, but they will never be
9 fixed by me.

10 There is also an assertion
11 that I consider particularly convoluted,
12 that somehow when during the course of a
13 hearing, and it was about the question of
14 the number of people to whom notice needed
15 to be given, and someone -- I believe Tracy
16 Davis actually did give a number although
17 it doesn't appear in the record -- but Mr.
18 Cook shortly thereafter says 160,000. I
19 said I didn't think it was in excess of
20 100,000.

21 The second pleading by the
22 creditors committee says that "since Judge
23 Beatty has confidentially expressed the
24 opinion that the number of individuals
25 exposed to Quigley asbestos is certainly

1 QUIGLEY COMPANY, INC.
2 less than \$100,000 she is necessarily
3 expressing her view that more than
4 75 percent of the claims historically filed
5 against Quigley are invalid.

6 She is necessarily expressing
7 her opinion that at least 136,630 of the
8 claims Quigley previously resolved by
9 settlement or judgment were, in fact,
10 invalid even though Quigley paid \$1.1
11 billion to resolve such claims. And it
12 goes on.

13 And she is necessarily
14 expressing her view that at least 62,000 of
15 the claims currently pending against
16 Quigley -- the very claims that will come
17 before her in this bankruptcy -- something
18 that will never happen -- are invalid.
19 There is absolutely nothing in the record
20 of this case in the Court that could
21 possibly justify or support these
22 comments.

23 I think this is a complete
24 distortion of what I said. It was clear
25 that at that time we were talking about

1 QUIGLEY COMPANY, INC.
2 notice from the affidavit that had been
3 filed with the petition and with the motion
4 for the TRO I derived, not a terribly
5 sophisticated conclusion.

6 There were multiple defendants
7 and, therefore, of the claims which had
8 been filed against Quigley some proportion
9 of them at least would be payable by
10 another defendant which would reduce the
11 number of claims. But my opinion about
12 the number of claims is legally
13 irrelevant. I could think that only 200
14 claims could be filed in the case, and
15 there could be 3,000, or I could think
16 that's the exact opposite. Creditors
17 claims I don't determine. There is no
18 certain number of slots for which the Court
19 determines could be filled and when you get
20 past that number no one else could file.
21 It is not like that. They can file as
22 many claims as they want.

23 These comments were made
24 during the period we were still discussing
25 the notice and they were relative, they

1 QUIGLEY COMPANY, INC.
2 were relevant to, as they were made,
3 relevant to the question of what was it
4 that really existed against Quigley, and
5 was the TRO going to in some way to impact
6 them. And that was while we weren't
7 talking about it then it was, for example,
8 this comment that they quote as being
9 terribly out of line is "I don't buy into
10 the idea that you guys don't have to prove
11 source. You are going to have to prove
12 source in this. I don't believe those
13 lawsuits that are out are lawsuits there
14 where you could proof either Quigley or
15 Pfizer was the source."

16 Now I could be wrong, I could
17 have been wrong then. I think the
18 fundamental thing that I was saying that it
19 is not enough to assert an asbestos injury
20 and assert that you are owed a certain
21 amount of dollars if you can't find the
22 right defendant. If you get hit by a car
23 and the car disappears, you don't have a
24 cause of action because you can't find the
25 defendant.

1 QUIGLEY COMPANY, INC.

2 Now I am not aware of any such
3 laws, and maybe there are laws which
4 somehow make all of the asbestos
5 manufacturers liable for any asbestos
6 injury. I believe we are still at the --
7 that there needs to be a reasonable
8 likelihood stage. Now maybe you can,
9 maybe you can't. But the reason why, is
10 that this remark is actually based on
11 information that is contained in the
12 affidavits that were filed.

13 Quigley's highest annual
14 revenue, as stated in the affidavit, I
15 think it is of Mr. Keen was \$50 million.
16 I divided \$50 million into \$1 billion and I
17 got 20, which meant that Quigley has paid
18 out 20 times its annual revenue for claims.
19 Or alternatively put, Quigley has paid out
20 20 years worth of annual revenues, so that
21 it seemed to me that we were talking about
22 a number of claims where it was
23 disproportionate to the company's size.

24 Now in addition to which, if
25 you divide the 235,000 claims into 1

1 QUIGLEY COMPANY, INC.
2 billion, because I do easy math and not
3 hard math, you find that the claims were
4 paid at about \$4,450 per person. Now that
5 is an average, not a median, but that is
6 not a very high number. I mean at least
7 in New York you can't get seriously ill and
8 spend only \$4,000. You would spend a lot
9 more than \$4,000.

10 So if you look at the
11 transcript from the beginning, you would
12 find that we were talking about notice. I
13 was talking about the number of people who
14 should get notice. It seemed to me that
15 to send out 115,000 notices to the
16 claimants was not appropriate. This is
17 the explanation for the numbers that I have
18 just given you, the transcript on page 10.
19 Trust me there is no large body of claims
20 that actually exists against Quigley. They
21 have already probably paid out more than
22 they could ever be possibly exposed to.

23 When you look at the number of
24 claims, and you look at the size that
25 Quigley was, and you look at the nature of

1 QUIGLEY COMPANY, INC.
2 the product, which is it was a commercial
3 product, it was used in various
4 manufacturing processes, now I do believe
5 there is, of course, the possibility that
6 people who installed the product may have
7 been exposed but the product as described
8 in the papers sounds to me as if it was
9 what I would call a wet product and not a
10 dry product.

11 And just based on common
12 practical thinking, one concludes that the
13 problem of asbestos fibers getting into
14 your lungs is much greater when you are
15 dealing with a dry product than when you
16 are dealing with product that is wetted
17 down and is part of another compound.
18 Yes, I suppose you could but it is not
19 going to be the same.

20 Then I spoke about -- it was
21 when I spoke about, not thinking that the
22 Quigley claimants could be hurt by a
23 six-month TRO, which is where I imagined
24 the additional possibility that there were
25 claimants who might be solicited, I don't

1 QUIGLEY COMPANY, INC.
2 believe there is any negative comment on
3 the solicitation. I think the negative
4 comment is really directed to the question
5 of whether these claimants have a viable
6 tort claim. I think this is their first
7 motion where the comment, haven't I seen
8 the name of your firm on the subway print
9 ad, is completely taken out of context.

10 Mr. McNew was the only
11 asbestos attorney who chose to speak at
12 that hearing. However, the courtroom was
13 full, and there were at least a few names
14 of asbestos attorneys who are listed on the
15 transcript. I had just seen the sign and
16 I was kind of caught on I thought the sort
17 of a kind of dialogue which is if I don't
18 mention it and it comes up later, that
19 someone will say, well, you should have
20 told us because we know you are influenced
21 by it.

22 Actually I don't think that --
23 I have no negative view of attorney
24 advertising. When I got out of law school
25 one could not advertise. It was against

1 QUIGLEY COMPANY, INC.
2 all of the bar rules. And then in about
3 1977, the United States Supreme Court in a
4 divided opinion determined that it was
5 appropriate to allow attorneys to advertise
6 and that if the advertisements were
7 inappropriate they were something that the
8 local bar association could deal with.

9 That decision states that the
10 regional rule came from England where
11 gentlemen don't want to be thought to be in
12 a trade. Well, since I am not a
13 gentleman, and since when I graduated from
14 law school there were very few women, the
15 idea that we should have men's only clubs
16 and prevent advertising certainly didn't
17 appeal to me.

18 I thought then and I think now
19 that attorneys who do matters where they
20 will not get repeat business from the
21 client cannot get business unless they
22 advertise. Bankruptcy attorneys in
23 Chapter 7s and 13s advertise. I don't see
24 how they could get repeat business if they
25 did not.

1 QUIGLEY COMPANY, INC.
2 Personal injury lawyers
3 advertise. Yes, they may get large
4 judgments, but that particular claimant is
5 going to go away and may not know anyone
6 else who would need a personal injury
7 lawyer. Likewise, in the asbestos area
8 you are free to advertise, too. I don't
9 see any problem. I have no problem with
10 advertising. In fact, I think it is
11 entirely fitting that the bar was allowed
12 to move into the 20 century with
13 advertising.

14 It is not the case that firms
15 that do business, which is not of a
16 particularly repetitive sort, would be able
17 to get clients by means that don't include
18 advertising. So I have no prejudice
19 against advertising, and that was really
20 not directed at that. It was directed at
21 the fact I had seen it, and I thought I
22 better say something about it because if I
23 don't say something now someone will say
24 something to me later.

25 And I think the further

1 QUIGLEY COMPANY, INC.
2 remarks that I had with Mr. McNew are a
3 clear demonstration I have no prejudice
4 against asbestos claimants because he told
5 me that in one of the dates they take death
6 and dying cases, and he had 38 cases in one
7 of the parts. And I asked him if he could
8 tie any of those cases to Pfizer and
9 Quigley. He didn't know.

10 I said you are welcome to make
11 your motion to vacate the automatic stay
12 and have those cases tried. He said,
13 well, I could just file a letter. And I
14 said, no, because I can't tell whether the
15 letter is a motion, so you need to file a
16 motion. And I have yet to receive such a
17 motion despite the fact that the ad hoc
18 asbestos committee again talks about the
19 fact that there are seriously injured
20 people that are not being allowed to go
21 in. Let's find a way to do it. We could
22 create high-low agreements, we could do a
23 lot of things.

24 There is a statement with
25 respect to the second reply memorandum that

1 QUIGLEY COMPANY, INC.
2 Mr. Kany's affidavit does not describe how
3 refractory products cause asbestos exposure
4 or the spatial range they might be released
5 in. I don't know that. I do know,
6 however, generally speaking, factories have
7 roofs and that generally speaking that one
8 would expect the greatest exposure to be in
9 the plants themselves, but I don't know.

10 Mr. Kany does say, and I
11 discounted this in making various
12 calculations, that only 1 percent of
13 Quigley's business was this kind of
14 product. I discounted it in making the
15 calculation I referred to earlier, because
16 I thought if I included those someone would
17 tell me it was wrong.

18 I think, for example, in the
19 second one, I think I have been over there,
20 but the way these things are written is not
21 the way they happened in Court. When
22 counsel from Weitz & Luxenberg told the
23 Court that this Court recognizes 20 percent
24 of the claimants against Quigley, the judge
25 said haven't I seen the number of your firm

1 QUIGLEY COMPANY, INC.

2 on the subway trains looking for more
3 people.

4 Now, I don't think that really
5 is -- when you look at the entire thrust of
6 the conversation or dialogue I had with Mr.
7 McNew, it wasn't like that. It doesn't
8 come across that way.

9 I certainly don't have
10 anything that I would consider to be a
11 personal bias. I do not have any family
12 member who has ever worked in or around
13 asbestos. I know of no one. And
14 certainly none of them have been sickened
15 by asbestos. I know of no one who has any
16 asbestos-related disease.

17 I have been on the bench since
18 September 1, 1982, and I believe that
19 Quigley is the first asbestos case that has
20 been filed since then. Now Johns-Manville
21 was filed in August of 1982. I could be
22 wrong, but I believe that. As some of you
23 no doubt know, I was not the original judge
24 to whom this case was assigned. It was
25 originally assigned to Judge Gropper.

1 QUIGLEY COMPANY, INC.
2 Judge Gropper did ask his law clerks to
3 find some literature for him before he had
4 the hearing and before he recused. That
5 did come down to me, and the one piece of
6 literature that I did review before the
7 hearing was the written statement of Lester
8 Brickman, professor of law, Benjamin
9 Cardozo School of Law of Yeshiva University
10 before a subcommittee on commercial and
11 administrative law of the U.S. House of
12 Representatives Committee on the judiciary,
13 and it is dated July 21, 2004.

14 I take what he says with a
15 grain of salt. I think in this area one
16 has to take what anyone says with a grain
17 of salt because there seems to be a lot of
18 money floating around. I do not believe
19 that my recusal is warranted. I do not
20 believe that I am partial, and I don't
21 believe that I have created the appearance
22 of partiality, and I don't think there is a
23 reasonable question about my
24 impartiality.

25 I think if you read the

1 QUIGLEY COMPANY, INC.
2 transcript without having been at the
3 hearing you might reach certain conclusions
4 that someone who at the hearing may not
5 reach. I don't believe that the
6 transcript was actually particularly
7 good. I think it omits certain things.
8 For example, when Mr. McNew stood up, the
9 first thing he said was I am the bankruptcy
10 attorney after identifying his firm. That
11 is not in the record and I don't know
12 why.

13 As I said, I thought Tracy
14 Davis had given a number in the record, but
15 I don't see any point in arguing about
16 whether the record is correct or not. It
17 is what it is and I don't think that any of
18 the remarks that are asserted to be
19 disqualifying are mistranscribed.

20 The Second Circuit has taken
21 the view that you are supposed to take an
22 objective disinterested observer fully
23 informed of the underlying facts,
24 entertain significant doubt that justice
25 significant would be done absent recusal.

1 QUIGLEY COMPANY, INC.
2 I don't think a disinterested observer
3 would think recusal is required. I think
4 at best what could be said is that I was
5 looking out for the seriously injured
6 asbestos claimants and wished to have them
7 come forward.

8 I don't think there is
9 anything further I need to say other than
10 to deny the motion, and I would ask that
11 the Debtor's attorney prepare an
12 appropriate order.

13 MR. INSELBUCH: If it may
14 please the court, we ask that the Court
15 stay further proceedings in this case
16 pending an appeal of Your Honor's
17 decision.

18 THE COURT: I am not inclined
19 to do so since I don't believe my recusal
20 is required. Another thing I didn't talk
21 about was the ad hoc committee stating I
22 should recuse myself because it would save
23 everyone a lot of time and trouble. That
24 is not a basis for recusal. And likewise I
25 don't think this case should be held up

1 QUIGLEY COMPANY, INC.
2 during the course of any appeal you might
3 reach.

4 MR. INSELBUCH: Would the
5 Court consider staying proceedings for a
6 period of time, so we could seek a stay at
7 the district court?

8 THE COURT: No. I mean we
9 have a temporary restraining order that has
10 to be dealt with today and absolutely no
11 one, not even Mr. McNew really objected to
12 that order. He did object on behalf of
13 some seriously ill claimants, and I offered
14 him the opportunity to seek to modify, but
15 I don't believe that anyone has -- I have
16 not received papers from of any
17 significance with respect to the major
18 substance of the order with respect to what
19 I call the main idea of the order.

20 I have received papers from
21 certain people who would like it to not to
22 apply to them, but I think this case needs
23 to have an ongoing presence and I don't
24 feel that I can, in fact, stay the matter
25 pending your efforts to get a stay pending

1 QUIGLEY COMPANY, INC.

2 appeal.

3 I think, Mr. Cook, it is up to
4 you on the temporary restraining order.

5 MR. COOK: Okay, Your
6 Honor.

7 THE COURT: Unless you
8 thought there was something else.

9 MR. COOK: Well, we have a
10 status conference. We could put that off.

11 THE COURT: I think we should
12 take the temporary restraining order. How
13 big a status conference do you want to
14 have? Five minutes?

15 MR. COOK: The last time we
16 did the rehearsal was 27 minutes and 11
17 seconds. Given the time of day and given
18 the relative importance of the preliminary
19 injunction motion, we are prepared to move
20 on that.

21 THE COURT: I want to ask you
22 a question.

23 MR. COOK: Sure.

24 THE COURT: Are you going to
25 seek a permanent injunction in the near

1 QUIGLEY COMPANY, INC.

2 future?

3 MR. COOK: The only permanent
4 injunction we would seek, Your Honor, would
5 be part of the plan.

6 THE COURT: Oh, good, then we
7 are all on the same page.

8 MR. COOK: Yes.

9 THE COURT: Because it is
10 like my 304 cases, keep giving a
11 preliminary injunction until the English
12 Court gets the case confirmed. I don't
13 think you could issue a permanent
14 injunction in this case before you knew
15 what was happening.

16 MR. COOK: Just in short to
17 give you a glimpse of what we will explain
18 to you in the status conference, in terms
19 of the timing of the plan, because we
20 believe that we have sufficient
21 acceptances, that within the next few
22 months we would be filing the plan. We
23 plan to file the schedules within the next
24 week or so, and the plan process is well
25 under way.

1 QUIGLEY COMPANY, INC.

2 THE COURT: Well, I thought
3 one of the things that was a rejoinder to
4 the assertion that you could have got 75
5 percent is that actually 524(g) and (h)
6 provide for the creation of classes. And
7 it is not the case, and you only have to
8 get one class to vote in favor. It would
9 have seemed to me it was likely that you
10 would separate claimants into classes based
11 on the nature of their injury. But
12 perhaps I am wrong.

13 MR. COOK: I will leave that
14 to Mr. Zirinsky at a later time to show you
15 how it would work. There could be a
16 categorization by illness, but that is for
17 another day.

18 THE COURT: I am just saying
19 what you are suggesting is that it isn't a
20 vote of all however many people it is, it
21 is a vote of some subset of those people.
22 Yes or no?

23 MR. COOK: We don't have to
24 get into that right now. What I do want
25 to do on just the housekeeping, the

1 QUIGLEY COMPANY, INC.
2 preliminary injunction, the form of which
3 was Exhibit A to our reply papers has been
4 further refined after a dialogue with the
5 creditors committee, who has taken no
6 position on the permanent injunction
7 motion, and that is the reason we submitted
8 to you a slightly modified version today.

9 And that Exhibit A is
10 critically important to understand what it
11 is we seek, the scope of it and most
12 important, the escape hatch. The scope of
13 it would cover all claims derivative of
14 Quigley's business and all claims that
15 would affect, and the shared insurance
16 between Quigley and Pfizer.

17 THE COURT: Which presumably
18 would cover the claims that Pfizer has
19 direct liability for?

20 MR. COOK: Yes, because as we
21 explained in our reply papers, because of
22 the applicable law and settlement
23 agreements with the insurance company,
24 which require the triggering of all the
25 insurance policies held by Pfizer.

1 QUIGLEY COMPANY, INC.

2 In any event, in terms of
3 housekeeping, the opposition, the last
4 group we have is roughly five law firms.
5 This ad hoc committee consists of three law
6 firms, two of which are on the creditors
7 committee.

8 THE COURT: I don't
9 understand something.

10 MR. COOK: Sure.

11 THE COURT: There are no law
12 firms on the creditors committee on the
13 list that I saw.

14 MR. COOK: You are right.

15 THE COURT: They are all
16 individuals.

17 MR. COOK: Absolutely. They
18 represent two of the members on the
19 committee, and I don't know --

20 THE COURT: I assume that
21 they have a power of attorney, and I assume
22 that claimant has been fully informed about
23 this situation and the conflicts that those
24 persons may have in representing their
25 position on the committee.

1 QUIGLEY COMPANY, INC.

2 MR. COOK: I don't know, Your
3 Honor, because I have not been able to find
4 the names of any client in their papers,
5 either the ad hoc committee or the Reaud
6 Morgan firm. There has been filed some
7 additional opposition papers from a
8 California law firm which did identify at
9 least three claimants. So essentially it
10 is roughly five law firms, as I understand,
11 whose support -- as I understand it has
12 come in support of the preliminary
13 injunction. I believe the future claims
14 representative supports it.

15 We received today joinders
16 from a firm in Mississippi called Aloff &
17 Porter, an entity called the Maritime
18 Asbestos Clinic, the Simmons & Cooper firm,
19 the Kelly & Feraro firm, a firm of Kahl
20 Jacques, and as I understand it the
21 Goldberg Persky firm. The creditors
22 committee has taken no position. As I
23 understand it, if asked, the Center for
24 Claims Resolution, CCR, which is
25 represented in Court today will if

1 QUIGLEY COMPANY, INC.

2 necessary take a position. But --

3 THE COURT: Wait. What they
4 are doing is running off claims that you
5 left them with.

6 MR. COOK: You are absolutely
7 right.

8 THE COURT: Are they pro or
9 con or it doesn't matter? How many claims
10 are they still running off.

11 MR. COOK: I believe Mr.
12 Richman is in Court and he could address
13 that question. I don't know.

14 MR. RICHMAN: Your Honor, we
15 don't have the exact number.

16 THE COURT: Could you give me
17 the magnitude?

18 MR. RICHMAN: One second,
19 Your Honor.

20 MR. RICHMAN: Best guess is
21 10,000 claims, in that ballpark.

22 MR. COOK: But getting to the
23 main event, the late, lengthy objections
24 filed by Reaud Morgan and the so-called ad
25 hoc committee, these are essentially legal

1 QUIGLEY COMPANY, INC.
2 objections. The fact issues are
3 premature. For example, the head count,
4 how many claims they represent, the nature
5 of Quigley's business and what it is going
6 to be doing and how it should be dealt with
7 --

8 THE COURT: I think that, as
9 you said in your papers, I don't need at
10 this point to determine whether you are
11 going to be able to meet the requirements
12 of 524(g) and (h) because it would
13 certainly be possible to put forward a plan
14 that met -- like it was an ordinary Chapter
15 11 plan. It wouldn't be the normal way we
16 would do this, but it would be possible.

17 MR. COOK: That is our
18 point. These are just premature
19 objections, and to say Pfizer has
20 independent liability really sort of begs
21 the question here. The question is
22 whether the insurance is going to be --

23 THE COURT: I kind of
24 disagree with you, Mr. Cook. I think, for
25 example, if Pfizer had issued a guarantee I

1 QUIGLEY COMPANY, INC.
2 might not be prepared to issue this kind of
3 an injunction because they would have a
4 plain source of independent liability.
5 But all anyone has told me here is, well,
6 Quigley is a subsidiary of Pfizer and,
7 therefore, Pfizer is liable. That is not
8 necessarily so because we know that people
9 incorporate, precisely so that they don't
10 have the liabilities that are those of
11 another corporation.

12 Then there has sort of been a
13 vague assertion that maybe Pfizer is an
14 alter ego of Quigley, but that has never
15 been developed in the courtroom to any
16 degree that seems to be worth being
17 concerned about, and the fact is the
18 claimants are only entitled to one
19 satisfaction. They can't get paid by
20 Quigley and also get paid by Pfizer.

21 MR. COOK: And that is what
22 the plan is all about, dealing with this
23 vast body of claims. As we read these
24 objections there is really no hard evidence
25 to rebut the affidavit of Messrs. Kany and

1 QUIGLEY COMPANY, INC.
2 Streep, both of whom are in Court again
3 today as they were on September 7,
4 available for cross-examination on their
5 affidavits.

6 The fact of the matter is one
7 of the factual allegations. The only
8 really substantive one I have seen that is
9 relevant here is in Kany's affidavit
10 paragraph where he spells out exactly in
11 terms how much has been in place and how
12 much is still in place, the number \$637
13 million. It is all there.

14 Now they also talk about the
15 TRO has affected a substantial number of
16 trials against Pfizer. Again, we have
17 seen no affidavit to that effect and, in
18 fact, as Your Honor noted earlier today, on
19 September 7, at least the Weitz & Luxenberg
20 firm and everyone else as provided in the
21 TRO.

22 THE COURT: I certainly
23 believe there must have been asbestos
24 attorneys here whose names were not put on
25 the record. And the papers filed by the

1 QUIGLEY COMPANY, INC.
2 unsecured creditors committee misstated one
3 point, that the TRO is only aimed at Weitz
4 & Luxemburg's clients, which is certainly
5 not true, it is aimed at everyone's
6 clients.

7 MR. COOK: And our point is
8 everyone in the Court's order of September
9 7 has an escape hatch to come back here and
10 seek a modification. Nobody did it.

11 They talk about this harm.
12 There are many other defendants in these
13 suits. If you look at just one of the
14 form complaints attached to our reply, it's
15 the first 27 pages listed other defendants
16 other than Pfizer and Quigley. And so no
17 one has come in the two months. No one
18 has taken discovery. And the ad hoc
19 committee says it needs time to take
20 discovery.

21 I don't know what has been
22 going on in the past two months, but to my
23 knowledge no one has done that. The fact
24 of the matter is that there is no hard
25 evidence. We will continue with this

1 QUIGLEY COMPANY, INC.
2 preliminary injunction, which is not a
3 permanent injunction, until we get a plan
4 in place to protect the insurance and
5 nothing more than the insurance and this is
6 hardly new relief in asbestos cases.

7 Third parties in similar
8 situations, we talked about Grace, we
9 talked about Combustion Engineering, we
10 cited all these cases, this has been done
11 all the time.

12 THE COURT: I actually have a
13 different theory about why to do it. I
14 know are you not going to like it. You
15 don't like me being inventive. If you
16 look at 105, 105 says that the Court may
17 issue any order, process or judgment that
18 is necessary or appropriate to carry out
19 the provisions of this title.

20 If I don't issue this
21 injunction, Quigley doesn't get the benefit
22 of its 362 stay because all of Quigley's
23 creditors, which Quigley has the right to
24 deal with, will have suddenly jumped ship
25 and gone across the road.

1 QUIGLEY COMPANY, INC.

2 And that to my mind by the
3 facts of this case I have to reserve
4 Quigley's right to the 362 stay as well as
5 Quigley's rights to deal with its creditors
6 by preventing those creditors from deciding
7 they want to go over to Pfizer and not deal
8 with who they thought, really thought was
9 their defendant, in addition to dealing
10 with and protecting this joint asset of
11 insurance.

12 I don't really view it as
13 extending the stay to Pfizer. I view it
14 as an injunction that is designed to make
15 the stay that is against Quigley
16 effective. It is really six of one and a
17 half a dozen of the other, but I think that
18 105 gives me the jurisdiction to issue
19 orders that are necessary to deal with
20 people who violate the automatic stay. And
21 one could view the possibility that all
22 these suits will suddenly disappear against
23 Quigley and reappear against Pfizer as a
24 violation of automatic stay. It is kind
25 of a sole distinction, but --

1 QUIGLEY COMPANY, INC.

2 MR. COOK: We may not have
3 stated it as eloquently, but it is one of
4 the two statutory bases that we relied on in
5 this motion. We have not seen any
6 evidence submitted in opposition to the
7 motion other than legal argument. And we
8 think there are lots of good reasons for
9 granting the preliminary injunction,
10 continuing the TRO that has been in effect
11 for two months for the next few months
12 until we get this plan knocked out.

13 THE COURT: Why are we not
14 just going to convert it into a preliminary
15 injunction now?

16 MR. COOK: I think that is
17 what we would continue to do.

18 THE COURT: No, you just said
19 we will continue the TRO.

20 MR. COOK: I meant that
21 that's the thrust of the TRO. But I think
22 there are lots of good reasons to grant the
23 motion.

24 THE COURT: Who would like to
25 be heard?

1 QUIGLEY COMPANY, INC.

2 MR. WEISFELNER: Ed
3 Weisfelner, from the law firm of Brown
4 Rudnick Berlack Israels, on behalf of the
5 ad hoc asbestos committee.

6 If I might?

7 THE COURT: Be my guest.

8 MR. WEISFELNER: Just by way
9 of information, in 1994 my firm was counsel
10 of record to Keene Corporation, an asbestos
11 debtor, that confirmed before Judge
12 Bernstein and a district court sitting
13 simultaneously. We were the first
14 asbestos debtor to utilize 524(g) of the
15 Bankruptcy Code.

16 THE COURT: It has past out
17 of my memory.

18 MR. WEISFELNER: Not out of
19 mine. I thought I would reference it.

20 THE COURT: Okay.

21 MR. WEISFELNER: As I
22 understand, the relief being sought today
23 is a preliminary injunction in which we all
24 know that the Second Circuit court refers
25 to as extraordinary and a drastic remedy,

1 QUIGLEY COMPANY, INC.
2 the Debtor or moving party needs to bear
3 the burden of proof on three points.

4 One, irreparable harm. Two,
5 and here you have a choice, the likelihood
6 of success on the merits or you have to
7 raise a fair ground for litigation. But
8 that you then have to show that the balance
9 of hardship tipping slightly in the
10 movant's favor. And lastly, you need to
11 demonstrate that the granting of relief
12 will serve the public interest.

13 And, again, Your Honor I point
14 out that the Debtor has the burden of proof
15 on each element. We were not in Court on
16 the TRO, we are here today on behalf of our
17 clients, Weitz & Luxenberg, the law firm of
18 Peter G. Ingles (phonetic) and the law firm
19 of Cooney & Conway.

20 We do have a witness present
21 whose testimony I could proffer on the
22 issue that I think is relevant, and we
23 would like an opportunity to --

24 THE COURT: If you have
25 witnesses, why don't we just wait and see

1 QUIGLEY COMPANY, INC.
2 who else wants to say something. Before I
3 take any witnesses, I at least will hear
4 from them.

5 MR. WEISFELNER: Before I get
6 to my witnesses I want to outline what my
7 arguments are, and then I will pass the
8 baton to the other parties.

9 I want to focus on the second
10 criteria, you have to show the likelihood
11 of success on the merits and the balance of
12 hardship tipping decidedly in your favor.

13 As the Debtor admitted in its
14 own papers, it would intend to demonstrate
15 the likelihood of success on the merits and
16 that is why I am so confused. The
17 likelihood of success on the merits goes to
18 the issue of whether or not you will have a
19 successful reorganization, not your typical
20 kind under Chapter 11, because there Your
21 Honor would be right. You could have a
22 plan under Chapter 11 and you could have a
23 reorganized entity. Or we could have a
24 plan under Chapter 11 and have a
25 liquidating entity and a plan of

1 QUIGLEY COMPANY, INC.
2 reorganization that does or does not
3 include a contribution from Pfizer. That
4 is not the type of Chapter 11 case present
5 today, Your Honor.

6 The kind of Chapter 11 case
7 presented to Your Honor is a 524(g) Chapter
8 11 case which does require as a statute
9 indicates a contribution from Pfizer and
10 that is the sine qua non of the likelihood
11 of success on the merits, we need to
12 preserve these insurance policies because
13 they are the critical component part of
14 what gets dedicated to an asbestos trust
15 because it is all Quigley has. So unless
16 we will have a 524(g) style of
17 reorganization --

18 THE COURT: I don't
19 understand why it is mandatory that it be a
20 524(g) style situation.

21 MR. WEISFELNER: Neither do
22 I, but it is their allegation, it is not
23 ours.

24 THE COURT: If you have a
25 grievance with a large percentage of the

1 QUIGLEY COMPANY, INC.
2 attorneys, what grievance I don't know, but
3 if that is the case we somehow should be
4 able to hammer something together.

5 MR. WEISFELNER: The whole
6 point, if we are able to hammer something
7 together that doesn't include a Pfizer
8 contribution then we need to really focus
9 on that no one is complaining about an
10 automatic stay that prevents any further
11 lawsuits against Quigley. And as a matter
12 of fact there is no one from my
13 perspective, my client is suggesting that
14 you don't protect under 362 an asset of
15 the Quigley estate under 541 and that is
16 their insurance policy, shared or not
17 shared --

18 THE COURT: But do you want
19 to go after Pfizer and say we could get
20 anything we want from Pfizer because they
21 are so big?

22 MR. WEISFELNER: Your Honor,
23 and with all due deference, I think that is
24 the sort of commentary that suggests the
25 asbestos plaintiff bar and the victims of

1 QUIGLEY COMPANY, INC.
2 asbestos that are represented by bar that
3 there is a problem with the perception of
4 this Court in terms of what the issues
5 are.

6 THE COURT: No, I have no
7 problem. My problem is that I want you
8 guys to be making motions with respect to
9 your seriously ill claimants.

10 MR. WEISFELNER: That is not
11 our burden.

12 THE COURT: For two months no
13 one has done that.

14 MR. WEISFELNER: That is not
15 our burden. The Debtor's burden is to
16 come forward.

17 THE COURT: I am saying to
18 you if you would make those motions, I
19 would allow them to go to trial.

20 MR. WEISFELNER: That being
21 the case, I understand that. If a TRO is
22 in place one has two choices as a matter of
23 law and procedure. One could either mount
24 a very expensive challenge to the TRO or
25 for a carveout where it is your burden of

1 QUIGLEY COMPANY, INC.

2 proof, and it is your expense --

3 THE COURT: Trust me, we are
4 not talking about a real expensive
5 challenge. That is not the way -- I am
6 not going to have a five-day trial over.

7 MR. WEISFELNER: Sure, but --

8 THE COURT: But the problem
9 is --

10 MR. WEISFELNER: I agree with
11 you. The point is the TRO expires
12 today. The Debtor has the burden in order
13 to be entitled to a preliminary injunction.
14 We are here today with the kind of evidence
15 you were waiting for. Why get a carveout
16 of the TRO when we think the preliminary
17 injunction will go forward. We are here
18 today to show you we have death cases, the
19 mesothelioma cases that were scheduled for
20 trial against Pfizer for a Pfizer-only
21 product.

22 THE COURT: Fine. Fine.
23 Be my guest.

24 MR. WEISFELNER: Your Honor,
25 my point is the Debtor's motion. The

1 QUIGLEY COMPANY, INC.

2 Debtor's motion by its breadth --

3 THE COURT: What I am trying
4 to tell you is essentially when I have
5 entered these injunctions in 304 cases, the
6 first one was there was 6 to \$8 billion of
7 potential insurance claims. There were
8 literally hundreds of actions in this
9 country and I issued the injunction. I
10 got a few motions to modify and we looked
11 at them and we either modified or we did
12 not. What we were doing was protecting
13 the right, actually, because it was not
14 clear there would be enough insurance.

15 Well, if you really think that
16 you really have a claim that is really a
17 Pfizer-only claim, there may be a situation
18 that requires a different treatment. But
19 at the last hearing even though the issue
20 of a Pfizer-only claim was discussed, no
21 one was prepared to get up and say, well,
22 why don't we make a carveout. It doesn't
23 happen.

24 MR. WEISFELNER: I understand
25 that, Your Honor, but I guess here is the

1 QUIGLEY COMPANY, INC.
2 point. The affidavit submitted by the
3 Debtor on behalf of the TRO, and which they
4 relied on today to support their
5 preliminary injunction by their own terms,
6 acknowledged there are cases pending
7 against Pfizer alone for Pfizer-produced
8 products.

9 THE COURT: I don't disagree
10 with you.

11 MR. WEISFELNER: How could we
12 contemplate an injunction then --

13 THE COURT: How can we decide
14 how to liquidate them? How can we figure
15 out to fix a fair way to liquidate them?

16 MR. WEISFELNER: I think that
17 is a fair question. Let me suggest
18 something that we think is much more
19 equitable than allowing a \$200 billion
20 solvent corporation to walk into Court
21 behind Quigley and seek to get a blanket
22 injunction not only against Quigley
23 related liability, but anything it could
24 have possibly done in the tort community.
25 That is the right way to have done it it

1 QUIGLEY COMPANY, INC.

2 seems to us --

3 THE COURT: Let's not talk
4 about the right way.

5 MR. WEISFELNER: We would
6 respectfully submit that it would be the
7 following, that the insurance policies
8 under 541 are property of the Quigley
9 estate and --

10 THE COURT: They are property
11 of the Pfizer estate and property of the
12 Quigley estate. They are jointly -- at
13 best they are jointly owned assets. At
14 worst they are only Pfizer's asset. They
15 are Pfizer's policies and Quigley is a
16 named insured apparently. They are
17 Pfizer's policies.

18 MR. WEISFELNER: Your Honor,
19 as of seven days before the filing of the
20 petition, and when you think about issues
21 that you would think would come to the
22 Court's attention and deserve additional
23 consideration before such a blanket
24 injunction for Pfizer's benefit gets
25 issued, seven days before the bankruptcy is

1 QUIGLEY COMPANY, INC.
2 commenced, the insurance, be it shared or
3 individually belonging to Quigley in the
4 first instance or Pfizer in the first
5 instance, we don't know, it gets lumped
6 together, goes in a treaty and a whole
7 bunch of new documents get signed seven
8 days before the bankruptcy filing.

9 THE COURT: You know
10 something? This is the problem I have.
11 No one can get paid anything until the
12 claims are fixed. I can't fix claims.

13 MR. WEISFELNER: I am not
14 asking you --

15 THE COURT: So unless you
16 will decide on a method by which we could
17 start to fix the seriously ill claims, all
18 we will have is someone sitting up saying,
19 Judge, you are not sympathetic to asbestos
20 claimants.

21 I am very sympathetic to
22 them. I think they ought to be able to
23 get their claims fixed. I think if they
24 got their claims fixed, we might well
25 figure out how to get them paid because

1 QUIGLEY COMPANY, INC.
2 they are probably under a prior tort claims
3 in wherever someone already filed claims.

4 MR. WEISFELNER: I know Your
5 Honor is not suggesting that we are adverse
6 to fixing the claims in the most
7 expeditious way possible.

8 THE COURT: I don't
9 understand enough to know who it is that is
10 prosecuting and who it is that is defending
11 the asbestos claims. Honestly, I don't
12 know. I assume that Quigley has attorneys
13 who are defending these claims. Since you
14 can't practice law in a state that you are
15 not licensed in, I doubt most judges would
16 allow a plaintiff to be represented by an
17 out-of-the-state attorney. There must be
18 at least 50 firms or 51 firms because we
19 have 50 states. So what I am saying is
20 there is a lot of problem with numeracity
21 here
22 and --

23 MR. WEISFELNER: I could
24 assure you this is not the first asbestos
25 bankruptcy proceeding where we have dealt

1 QUIGLEY COMPANY, INC.
2 with both issues of numeracity and how one
3 achieves a 75 percent threshold that is
4 qualifying under the statute.

5 My point is this, and Your
6 Honor asked the practical question, and if
7 I could take a deep breath to give you the
8 right answer to what we think is the right
9 way, not the overly broad preliminary
10 injunction.

11 The answer is that at a
12 minimum, carveout from this injunction, any
13 cases against Pfizer that are related by
14 Pfizer's own admission to its own asbestos
15 product, and we have in their own admission
16 from their own interrogatories that are
17 served in the underlying cases where a
18 Pfizer defense attorney with offices in
19 San Francisco --

20 THE COURT: I don't disagree
21 with you that they say Pfizer produced an
22 asbestos product.

23 MR. WEISFELNER: Yes.
24 Pfizer came to manufacturer, Kilinoise
25 (phonetic), as part of Pfizer's acquisition

1 QUIGLEY COMPANY, INC.
2 of a line company. They manufactured from
3 January of 1965 through December of '72.

4 THE COURT: I don't disagree
5 with you. It says it. It is right
6 there.

7 What we concluded at the last
8 hearing was there was not really any way to
9 separate them out and, moreover, the
10 problem was if we did separate them out it
11 was going to diminish the amount of
12 insurance potentially as to a whole.

13 MR. WEISFELNER: Let me get
14 to that point. Our proposition is that
15 Pfizer, while it has rights in that group
16 of insurance policies, which are now part
17 of the insurance, a week or so before the
18 hearing, when I say it was part of the
19 Quigley estate, I was not saying in
20 contravention of whatever rights Pfizer
21 has. But under 541, clearly the insurance
22 policy --

23 THE COURT: No. If it is
24 Pfizer's policy and Quigley is only a named
25 insured, it is still a Pfizer policy.

1 QUIGLEY COMPANY, INC.

2 MR. WEISFELNER: But what we
3 are told in the Debtor's papers, whatever
4 the characteristics of the policies were,
5 they have been converted to what the Debtor
6 itself characterizes as shared policies.
7 It doesn't suggest it is Pfizer's policy.

8 THE COURT: I don't want to
9 argue about it because we could find out
10 the facts too easily. All I could tell
11 you is that they came out of Lloyds of
12 London. Lloyds of London creates
13 syndicates and syndicates and syndicates.
14 So the question of even finding out who
15 really issued the insurance is really also
16 a problem. And then we have this lawsuit
17 in which Allstate wants to join Pfizer, for
18 some reason I couldn't figure out.

19 MR. WEISFELNER: I guess here
20 is my point, Judge. I think a more
21 practical resolution would be the
22 following. If Pfizer tomorrow were to
23 agree to a settlement, which it could do
24 solitarily or it gets a judgment against it
25 at trial, which means it is lost in a Court

1 QUIGLEY COMPANY, INC.
2 of competent jurisdiction then Pfizer has
3 two choices.

4 One, it could attempt to
5 access the insurance coverage which would
6 be bad for the Quigley estate and we are
7 not suggesting that be the result.
8 Alternatively, Pfizer, which is a \$200
9 billion company can --

10 THE COURT: Please, please.

11 MR. WEISFELNER: I am not
12 sure what "please" means.

13 THE COURT: I understand what
14 please means. They should spend it for
15 your creditors committee.

16 MR. WEISFELNER: It is not my
17 creditors claims, it is a universe of
18 creditor claims.

19 THE COURT: Fine. Do you
20 represent any of the Pfizer-only
21 claimants?

22 MR. WEISFELNER: Yes.

23 THE COURT: How many of
24 them?

25 MR. WEISFELNER: Your Honor,

1 QUIGLEY COMPANY, INC.
2 I don't know the exact numbers but my
3 witness also will know the exact numbers.
4 But my point is this, Your Honor, it is not
5 my burden of proof to show you a more
6 reasonable remedy. Pfizer by definition,
7 by market cap is a \$200 billion company.

8 THE COURT: I know, and they
9 have paid out \$1 billion on these claims.

10 MR. WEISFELNER: They paid
11 out a billion dollars on these claims
12 either because they settled or because they
13 had jury verdicts and, Your Honor, I don't
14 know any correlation between how much money
15 you make and how much damage you cause.

16 THE COURT: I didn't say
17 there is some correlation. I think there
18 is not with respect to oil spills where it
19 seems like you could make a huge mess more
20 than it was worth. But at this point
21 no one has really explained to me why the
22 things that Quigley was producing were
23 somehow huge distributors of asbestos.

24 MR. WEISFELNER: Your Honor,
25 you have already indicated -- I guess my

1 QUIGLEY COMPANY, INC.
2 point is you can't have it two ways. You
3 can't say someone needs to prove it, and by
4 the same token say you are never going to
5 fix claims.

6 THE COURT: You don't
7 understand something. How can I rule on
8 these motions without having some knowledge
9 about the likelihood of success on the
10 merits of claimants against one person or
11 the other?

12 MR. WEISFELNER: That is not
13 the standard on a preliminary injunction,
14 with all due respect. The likelihood of
15 success on the merits is their likelihood
16 of succeeding on the merits which they
17 acknowledge. They told you in the papers
18 in order to get a preliminary injunction
19 here today, they need to demonstrate the
20 likelihood of success on the merits which
21 they define as an --

22 THE COURT: You know
23 something? It would be a lot easier, Mr.
24 Cook, if we went with what you said and we
25 just extended the TRO.

1 QUIGLEY COMPANY, INC.

2 MR. COOK: We could do that.

3 THE COURT: Seriously, I am
4 not going to run much past 5:00, the
5 problem is we will run out of time. I am
6 sorry I started late but still, I think the
7 problem that you don't really understand is
8 that from my perspective there is a
9 fundamental issue of fairness that is
10 involved in issuing this order because it
11 starts with the 362 stay, whether it is
12 because the 362 stay is extended in a way
13 that Mr. Cook has proposed or whether
14 it is because the 105(a) allows me it to
15 surround the other side of it in order to
16 preserve Quigley's 362 stay really makes
17 no difference. But the 362 stay issue
18 is fundamental to this motion because
19 if you can't preserve the 362 stay or
20 wouldn't be able to preserve it, then why
21 should I continue whatever injunction it is
22 here. So the question of what is at issue
23 is kind of mushy.

24 MR. WEISFELNER: Yes, but the
25 fundamental fairness concept which I adopt

1 QUIGLEY COMPANY, INC.
2 full heartedly, fundamentally, as I
3 understand Your Honor's concern about
4 fairness you want to protect and preserve
5 the Quigley estate under 362, hence, the
6 ability to sort of put this in a 105 sort
7 of situation.

8 THE COURT: I think what it
9 is I want to protect, I want to protect the
10 rights of the claimants.

11 MR. WEISFELNER: Sure.

12 THE COURT: And I think those
13 rights are dependent on, for the most part,
14 my protecting the insurance since the
15 overwhelming number of these claims are
16 against both Quigley and Pfizer with no
17 distinction as to why one or the other, and
18 then in order to protect the claimants, in
19 order to preserve money so the claimants
20 can get payment I need to do this, and as I
21 say, look at individual situations the same
22 way as you would with respect to the
23 automatic stay, which is PI injuries with
24 respect to the automatic stay. If there
25 is insurance, you say go out and in the

1 QUIGLEY COMPANY, INC.
2 order it says you could collect them at the
3 level of the insurance.

4 MR. WEISFELNER: We think it
5 is distinguishable for a number of
6 reasons. Your Honor was concerned about
7 people jumping ship from suing Quigley and
8 if there is no stay against Pfizer they go
9 ahead and sue Pfizer.

10 THE COURT: Right.

11 MR. WEISFELNER: And here is
12 where the logic we think breaks down.
13 Pfizer accesses the insurance policies that
14 are for the benefit of Quigley. Either
15 you tell Pfizer, we think Judge Bernstein
16 In re: Granite Partners, we had had an
17 identical situation. We had two parties
18 claiming benefit of one pooled insurance.
19 The Debtor asked for the automatic stay to
20 be extended so that the non-Debtor party
21 who shared in the insurance would not have
22 suits against it so it wouldn't be able to
23 tap into the insurance policy. I could
24 read you Judge Bernstein's quote.

25 THE COURT: You have to

1 QUIGLEY COMPANY, INC.
2 understand something. I think it is a
3 combination in my mind of the insurance and
4 the fact that these claims are filed
5 against both companies. And the fact that
6 the complaints I have seen so far also sue
7 30 or 40 other defendants, which makes it
8 difficult to know whether or not these
9 claims are rightfully sought against this
10 company.

11 MR. WEISFELNER: Well, Your
12 Honor --

13 THE COURT: On either of
14 these --

15 MR. WEISFELNER: I understand
16 the issues and the concerns that you
17 have. But at the end of the day the
18 parties we are protecting, because of the
19 inability to sort through those issues, is
20 not Quigley or the Quigley claimants, it is
21 Pfizer.

22 THE COURT: I know you think
23 it is Pfizer. What I am saying to you is
24 tell me why you can't get to us all of the
25 mesothelioma cases. Tell me why we can't

1 QUIGLEY COMPANY, INC.
2 figure out where they are and figure out
3 how to --

4 MR. WEISFELNER: Let me
5 address that, Your Honor. I think what
6 you are suggesting is that we take a
7 Bankruptcy Court that is concerned with
8 the financial wherewithal of the
9 debtors-in-possession and we stop a lot of
10 what you do for a living and instead what
11 we will now do is have trials or mini
12 trials in terms of getting relief from the
13 automatic stay to demonstrate, number 1,
14 that we have a client that has a disease.

15 THE COURT: You will have to
16 demonstrate that at some point in the
17 future anyway.

18 MR. WEISFELNER: If I
19 demonstrate it to you by your own
20 definition you can't fix the claim.

21 THE COURT: You are making a
22 motion to lift the stay.

23 MR. WEISFELNER: Yes, but I
24 am going through it in an effort to get to
25 a court of competent jurisdiction.

1 QUIGLEY COMPANY, INC.

2 THE COURT: That is what I am
3 saying, that is what you have to do if you
4 want to modify the automatic stay. And
5 what I am saying to you, the question is
6 what standard would govern these cases and
7 I think that the biggest question is
8 presumably that mesothelioma cases have
9 medical evidence of some sort that support
10 the claim, and that is day one of the
11 trial.

12 MR. WEISFELNER: Day two of
13 the trial or day ten, now we will have
14 product identification and we are going to
15 have to trot in evidence, over a four, five
16 or six-week period intending to demonstrate
17 to your satisfaction that the product --

18 THE COURT: No no. You know
19 something. You don't get it. I don't
20 have big five-week trials. I have been
21 here for 22 years. I have never had a
22 five-week trial. It is not our way of
23 thinking.

24 MR. WEISFELNER: How do we
25 protect the rights of claimants, when we

1 QUIGLEY COMPANY, INC.

2 are balance --

3 THE COURT: What I am saying
4 to you, you have to figure out to show me
5 you have a mesothelioma case, and for some
6 reason you think that you might be able
7 to prove that it was Quigley or Pfizer,
8 like maybe they worked in a factory where
9 there was a refractory, I mean something
10 that remotely suggests that they were
11 standing near --

12 MR. WEISFELNER: How about
13 that I have one client that is ripping out
14 raw asbestos from a Pfizer plant. Your
15 Honor, you have read affidavits --

16 THE COURT: Fine. There you
17 have your case.

18 MR. WEISFELNER: Your Honor,
19 I would love to hear Pfizer acknowledge it
20 is my case or will I be put through a
21 trial?

22 THE COURT: I am trying to
23 tell you it is not the way I run Court to
24 do these things in that way. I find that
25 way too tedious. I find it way too time

1 QUIGLEY COMPANY, INC.
2 consuming for the parties involved, and I
3 would not expect that we would be doing
4 much more than trying to make sure there
5 was some remote or, hopefully, some
6 connection and you are going to have to
7 figure it out. I don't know why you think
8 there is a connection.

9 MR. WEISFELNER: Here is the
10 other issue viewed academically from a
11 Bankruptcy Court. If I have Pfizer out
12 there, and they are well capitalized --

13 THE COURT: Why should you
14 have to go against Quigley?

15 MR. WEISFELNER: There is the
16 concept of marshalling.

17 THE COURT: And I am saying
18 that concept would put you over here. I
19 don't agree with you that marshalling puts
20 you there. I think marshalling puts you
21 here. So I don't see --

22 MR. WEISFELNER: I have an
23 entity, namely Pfizer, who has an
24 opportunity to pay its exposure, its
25 liability, and I am not talking about new

1 QUIGLEY COMPANY, INC.
2 cases that get filed tomorrow based on your
3 ruling. I am talking about the cases that
4 existed as of the date of filing.

5 THE COURT: And I am trying
6 to say something to you that doesn't seem
7 to be getting through.

8 Yes, it would be a huge burden
9 to have to go through all of these cases,
10 and I know the Debtor will tell me they are
11 worried about a runaway jury, because that
12 is what people tell me. But I think you
13 could have a high-low agreement, and if you
14 have a high-low agreement they wouldn't
15 worry about a runaway jury because they
16 would fix it at a number that was within a
17 range they felt they could tolerate.

18 MR. WEISFELNER: With all due
19 respect, a high-low agreement --

20 THE COURT: Do you know what
21 a high-low agreement is? A high-low
22 agreement is an agreement in a personal
23 injury case which you enter into when the
24 jury is out where the plaintiff agrees no
25 matter what the verdict is they will

1 QUIGLEY COMPANY, INC.
2 reduce it to the high number and the
3 defendant agrees no matter what the verdict
4 is even if it is zero they will pay the low
5 number.

6 MR. WEISFELNER: With respect
7 to Quigley it would be either the asbestos
8 lawyers either represented by a committee
9 whether individually they wanted to enter
10 into high-low agreements with Quigley or
11 not. We are talking about Pfizer --

12 THE COURT: Are you guys
13 trying to move this case forward or trying
14 to keep it from going forward?

15 MR. WEISFELNER: What my
16 client wants is for this Debtor to meet the
17 standard of a preliminary injunction.

18 THE COURT: And I am saying
19 to you that I will just keep the TRO in
20 place until Friday when we have more time
21 and we could talk about this even longer
22 because, frankly, this is exactly what I
23 was saying. What do we have? We have a
24 level boat and suddenly it tilts, because
25 everybody from this side, which is the

1 QUIGLEY COMPANY, INC.
2 Quigley side, is really where they thought
3 the money was and suddenly runs over to the
4 Pfizer side and says, that is where the
5 money is.

6 MR. WEISFELNER: Your Honor,
7 I must tell you I am not suggesting that
8 anyone who decides to file a claim tomorrow
9 against Pfizer is in the same boat that I
10 am arguing for. I am arguing on behalf of
11 the --

12 THE COURT: I don't
13 understand why because we will have to in
14 some way deal with future asbestos claims.
15 I think --

16 MR. WEISFELNER: Here is the
17 point, I think if we roll forward and we
18 want this case to move more quickly, let's
19 take it from --

20 THE COURT: If we want to
21 move this case more quickly, frankly,
22 whining about who has what percentage of
23 the asbestos claims, and who could block
24 the vote and who can't is really
25 childish.

1 QUIGLEY COMPANY, INC.

2 MR. WEISFELNER: With all due
3 respect, we are not whining when we are
4 representing mesothelioma claimants who
5 have current claims, and don't feel that
6 what is being offered is not even a
7 fraction of the plan negotiations --

8 THE COURT: I don't really
9 know what they are telling us.

10 MR. WEISFELNER: I suggest
11 you do not characterize our position as
12 whining because it is insulting.

13 THE COURT: It had nothing to
14 do with that and you know I wasn't talking
15 about that. Your committee comes in and
16 because you have this percentage and they
17 have that percentage, and they can't block
18 because you can block and what I am saying
19 is that it has nothing to do with the
20 claimants. And that is what I want to talk
21 about, which is the claimants, and I have
22 not heard any viable proposal other than
23 why don't we sue Pfizer when we have
24 already apparently enough insurance to deal
25 with these serious cases now.

1 QUIGLEY COMPANY, INC.

2 MR. WEISFELNER: Your Honor,
3 if that was the case, if there was enough
4 insurance to deal with the seriously ill
5 cases, now a lot us would not be here.
6 The fundamental theory -- Your Honor, if I
7 could just get to the end --

8 THE COURT: Wait. I want to
9 ask you a question. Do you have any
10 number which you would propose to me is the
11 number that would have to be paid to deal
12 appropriately in your mind for the
13 seriously ill cases?

14 MR. WEISFELNER: I am not
15 proficient now to define seriously ill and
16 what those cases are and in what
17 jurisdiction to guess at a number.

18 THE COURT: How do we know
19 what is on the table?

20 MR. WEISFELNER: Here is what
21 we know. We know there is not enough. By
22 definition, that's the whole point of
23 Chapter 11.

24 THE COURT: What do you mean
25 by definition?

1 QUIGLEY COMPANY, INC.

2 MR. WEISFELNER: By
3 definition the Debtor is acknowledging
4 there is not enough insurance proceeds for
5 it to be able to continue to satisfy
6 judgments or settlement.

7 THE COURT: I have never
8 heard that.

9 MR. WEISFELNER: In their
10 affidavit, it is in both affidavits. They
11 don't have enough in the \$637 million face
12 amount of shared insurance which, by the
13 way, may ultimately pay less and in other
14 parts of their affidavit they talk about
15 \$330 million, we are don't know which, but
16 they have already acknowledged that the
17 amount of insurance proceeds is not enough
18 based on statistical evidence of their
19 prior claims to deal with the 132,000
20 claims that remain.

21 The whole theory of this case,
22 the whole fundamental theory of this case,
23 the agreement that was reached prepetition
24 allegedly --

25 THE COURT: I know nothing

1 QUIGLEY COMPANY, INC.

2 about those agreements.

3 MR. WEISFELNER: In the
4 affidavits, I am reciting what is in the
5 affidavits.

6 THE COURT: I don't think the
7 content of the agreement is in the
8 affidavits.

9 MR. WEISFELNER: I am not
10 getting into that. I am saying the theory
11 of the agreement is there would be a
12 channeling injunction --

13 THE COURT: I understand
14 that.

15 MR. WEISFELNER: Who benefits
16 from the ultimate channeling injunction?

17 THE COURT: We know it is
18 Pfizer.

19 MR. WEISFELNER: If it is an
20 ordinary Chapter 11 and Quigley would with
21 Quigley insurance, there would be a filing
22 of an automatic stay. If Pfizer was out
23 there saying you know what, I am defending
24 myself against asbestos liability every
25 place it comes and every time it shows up,

1 QUIGLEY COMPANY, INC.
2 and that is my insurance policy, too, and I
3 will claim it every time and I am not
4 contributing and I don't want an asbestos
5 get out of jail card.

6 What we would be in front of
7 the bankruptcy law 362 automatic stay, and
8 when they get sued they could reach into
9 their \$200 billion capital market cap and
10 pay the judgment and assert a claim against
11 the Quigley estate. That is what ought to
12 be happening.

13 But this is bankruptcy on its
14 head. This is bankruptcy for the benefit
15 of Pfizer. Pfizer wants a channeling
16 injunction. If Pfizer will ever get that,
17 they will have to make a contribution.

18 THE COURT: I understand what
19 you are saying. I do not believe that the
20 present situation necessarily insures that
21 any channeling injunction or any permanent
22 injunction will ever be issued in Pfizer's
23 favor. It may not be. I think what you
24 are doing is taking what the Debtor and/or
25 Pfizer are telling you out of Court, and

1 QUIGLEY COMPANY, INC.
2 somehow making it into something that I
3 don't even know about it. So it is really
4 difficult for me to deal with what it is
5 you think someone has done that is the
6 wrong thing when what it is is something I
7 don't know about.

8 MR. WEISFELNER: With all due
9 respect, Your Honor, I think the only
10 appropriate thing to do is by all means
11 extend the TRO, but by all means extend the
12 TRO past Friday, give them more time than
13 that because you need an evidentiary
14 hearing.

15 You need to understand, with
16 all due respect, how many claims are
17 pending, how much insurance is out there,
18 how much insurance is left, whether or not
19 the whole sinc qua non of this bankruptcy
20 filing was to affect one kind of
21 restructure and one kind only. And the
22 524(g) restructuring where Pfizer will make
23 a contribution, and here is the amazing
24 thing. By their own admission they say
25 the only reason they are entitled to an

1 QUIGLEY COMPANY, INC.
2 injunction is because they are going to
3 have a 524(g) bankruptcy proceeding. But
4 you know what --

5 THE COURT: I don't
6 understand that.

7 MR. WEISFELNER: They say in
8 their own papers that the only reason they
9 are entitled to convert a TRO into a
10 preliminary injunction is because they are
11 going to successfully consummate a 524(g)
12 case.

13 Now, the amazing thing about
14 that assertion, Your Honor, they claim they
15 have negotiated the essential terms of a
16 plan outside a court and they have 80
17 percent -- they are the ones that started
18 with numbers, Judge, not me. They claim
19 to have 80 percent --

20 THE COURT: I consider the
21 whole thing to be like kids arguing over
22 who will play with the blocks today. I
23 would like to figure out how we are going
24 to deal with claimants and how we are going
25 to get started from the most seriously

1 QUIGLEY COMPANY, INC.

2 injured and go down.

3 MR. WEISFELNER: I agree.

4 And the sad fact is that once Quigley feels
5 then the curtain comes down and people who
6 are on line for trials whether they are on
7 death's doorstep or not, accept relief from
8 the stay, they will have to wait. That is
9 the unfortunate thing about a bankruptcy
10 filing, they will have to wait a long time
11 before --

12 THE COURT: I am trying to
13 say something to you. I realize that the
14 code actually talks about the district
15 court estimating all these claims. It is
16 not feasible. And so the question is can
17 they be fixed presumably by the State Court
18 since there is no federal law of contracts,
19 so that we start with some pool of
20 seriously injured claimants whose claims
21 have been fixed.

22 MR. WEISFELNER: No one is
23 running on a clean slate.

24 On this side of the bar you
25 have people with decades of experience

1 QUIGLEY COMPANY, INC.
2 dealing with asbestos and bar, and where
3 those two intersect and this case would not
4 be complicated except for one very unique
5 unusual, unprecedented factor.

6 THE COURT: Pfizer?

7 MR. WEISFELNER: Pfizer wants
8 an absolute bar against all claims against
9 it by piggybacking --

10 THE COURT: They may want
11 that, but what I have to tell you is I
12 don't think you should assume that I per se
13 will grant it. I don't necessarily see
14 things always the way other people see
15 things, and I don't want this to end up
16 being a situation in which the 235,000
17 claims, which have been paid by Quigley,
18 the average is \$4,405. I don't know
19 whether medians are higher or lower than
20 averages, but I think they are generally
21 higher. I still think that there has to
22 be an awful lots of claims that are being
23 paid at numbers where you want to say --
24 you know, it is what I would call or what
25 we sometimes call funny money. It is just

1 QUIGLEY COMPANY, INC.
2 lucky money. It just comes into your
3 hands lucky.

4 MR. WEISFELNER: It is
5 funny. I knew the Professor Cardoza
6 (phonetic) whose paper you read. I
7 retained him in the Keene Corporation when
8 I was counsel for the debtor in order to
9 demonstrate that some people get lucky and
10 hit an asbestos lottery, and Your Honor it
11 gets back to the theory of who is actually
12 going to fix these case numbers.

13 THE COURT: I will tell you
14 something.

15 MR. WEISFELNER: I will tell
16 you something, I don't believe you want to
17 do it as a trier of the facts.

18 THE COURT: I can't.

19 MR. WEISFELNER: Nor will a
20 district court if the previous asbestos
21 cases or history -- what will happen there
22 will be a bunch of value thrown over a
23 fence, to put it simply, and the futures
24 representative and the creditors committee
25 will figure out how to appropriately and

1 QUIGLEY COMPANY, INC.
2 apportion that value consistent with prior
3 cases. What does that have to do with
4 giving Pfizer a get out of jail free
5 card?

6 THE COURT: And I am saying
7 to you in my judgment, doing it for six
8 months to see what we could do here is,
9 obviously, not as to anyone other than the
10 seriously injured really a huge
11 difference. As to the seriously injured,
12 yes, it is. And this is why I have a
13 drive towards trying to figure out what it
14 is to do that would be constructive with
15 respect to the seriously injured and
16 getting that to go ahead and proceed
17 because I would assume that any order of
18 payment priority would put the seriously
19 injured first.

20 I would hope it would not just
21 be in the order of judgment obtained.

22 MR. WEISFELNER: Your Honor,
23 I guess all I am saying is the Debtor walks
24 into Court with a certain burden of
25 proof. It asks you for a certain

1 QUIGLEY COMPANY, INC.
2 remedy. The remedy it asks for has some
3 very clear-cut standard under the Second
4 Circuit law.

5 THE COURT: I am trying to
6 say to you in my judgment without any more
7 than what I already know they could meet
8 that standard, which is that these claims
9 which have been filed against Quigley
10 and Pfizer. And no one has any reason why
11 they were filed against Quigley and Pfizer
12 except that is what is what happened and
13 predominantly Quigley has been paying
14 claims and so, therefore, we should presume
15 these claims are predominantly against
16 Quigley and that because of the insurance
17 gradually disappearing, because we spent
18 the money, we need to at least stop, look
19 and listen in order to preserve the rights
20 of claimants to whatever insurance there
21 is.

22 MR. WEISFELNER: The sad
23 point is you and I don't disagree with
24 theory. But what we disagree about is
25 that you are working on this under

1 QUIGLEY COMPANY, INC.
2 fundamentally flawed statements of fact
3 and, I think, Your Honor, if you afford us
4 two weeks, to direct the Debtor to produce
5 a handful of information fast, and don't
6 give us this 30 day -- to give us a notice
7 and take 30 days to deliver it, give us
8 copies of insurance policies, give us
9 copies of the insurance treaty agreement
10 they entered into a week before bankruptcy,
11 give us access to a person who knows the
12 number of cases that are filed, the
13 depositions and the insurance policies, and
14 we could be back here in two weeks and
15 dispel Your Honor of the fundamental facts
16 you just recited because they are wrong.
17 There are 10,000 cases that are pending
18 against Pfizer, not Quigley.

19 THE COURT: I do understand
20 that, and it was brought up at the TRO
21 hearing. And there was no one who asked
22 for a carveout. Right now it seems to be
23 difficult to figure out how to put a
24 carveout in, but part of the problem is
25 these complaints are not realistic as to

1 QUIGLEY COMPANY, INC.
2 defendants and so it is very difficult to
3 know which lawsuits are ones -- maybe the
4 ones against Pfizer is really the X, Y Z
5 corporation problem.

6 MR. WEISFELNER: I guess my
7 question is given that difficulty, you have
8 complaints that name ten or 15 different
9 defendants.

10 THE COURT: Ten or 15? I
11 could imagine. 30, 40 or 50.

12 MR. WEISFELNER: Whatever the
13 number is without any clear indication on
14 the face of the complaint as to whose
15 product the plaintiff suffers from. The
16 question really is in terms of a balance,
17 should we let Pfizer escape or should we
18 force the plaintiff now to go back and
19 prove a case before a Court that can't fix
20 the claim.

21 THE COURT: I think you are
22 misstating what I what I said about proving
23 the claim. When you move to lift the
24 automatic stay, that is not what you are
25 doing. And, frankly, right now I think

1 QUIGLEY COMPANY, INC.
2 for a few months we need to hold this in
3 abeyance against Pfizer until we could at
4 least get some understanding about what the
5 facts are and there is some possibility
6 that the parties, in fact, will agree to an
7 asbestos trust.

8 MR. WEISFELNER: Let me ask
9 you this, Your Honor. Typically -- and I
10 know I am not telling Your Honor anything
11 that Your Honor doesn't know, the Debtors
12 by possession by statute have 120 days of
13 exclusivity subject, of course, to
14 appropriate extensions.

15 THE COURT: I have never
16 shoved one off unless it was a bit of a
17 dingbat.

18 MR. WEISFELNER: That is what
19 scares me. Here is a Debtor that tells you
20 they are in bankruptcy with an agreement.

21 THE COURT: What I am trying
22 to tell you is that in the last two months
23 no one has given me anything
24 constructive. Yes, they gave me a motion
25 to recuse myself. But nothing else.

1 QUIGLEY COMPANY, INC.
2 They have not done anything that would give
3 me any more information, provide me with
4 any more real understanding what the claims
5 were.

6 MR. WEISFELNER: What has the
7 Debtor done that is productive other than
8 ask for an injunction on behalf of its
9 client?

10 THE COURT: It seems to be
11 talking to you behind the scenes.

12 MR. WEISFELNER: There has
13 been no prospect to us since --

14 THE COURT: The question is
15 at what point do you figure whether or not
16 their proposal is right, will work or will
17 not work? I don't know.

18 MR. WEISFELNER: When are
19 they required to put the proposal on the
20 table? It is sort of like a circle. They
21 tell you they have a deal and then they say
22 they have a deal in principle in all the
23 critical points.

24 Mr. Cook then tells us that
25 they are going to file a plan in the next

1 QUIGLEY COMPANY, INC.
2 few months. Now that boggles the
3 imagination. Talk about fairness. They
4 are in here telling you that they have an
5 agreement with 80 percent of all of the
6 people on all the essential elements of the
7 plan.

8 THE COURT: I don't want to
9 really argue about that because it is too
10 late in the day. I think I need to say if
11 there is anyone else who wants to tell me
12 if I adjourn the hearing until Friday they
13 would like to be heard on Friday.

14 MR. WEISFELNER: Again, for
15 the record, I do have witnesses.

16 THE COURT: I understand
17 that. I would be delighted to hear your
18 witnesses and would be deleted to hear them
19 on Friday. I would like someone else to
20 have the opportunity to tell me they are
21 here.

22 MR. WEISFELNER: Thank you,
23 Judge.

24 MR. FRIEDMAN: May it please
25 the Court, I am Edward Friedman, with the

1 QUIGLEY COMPANY, INC.
2 law firm of Friedman, Kaplan Seiler &
3 Adelman. We represent the law firm of
4 Reaud Morgan and Quigley and the asbestos
5 plaintiffs who are represented by that
6 firm.

7 We are here because we are
8 opposed to the motion for a preliminary
9 injunction and I would be happy, Your
10 Honor, to make my argument now or make it
11 on Friday.

12 THE COURT: Let me find out
13 who is here or who is here and has
14 something they want to say.

15 MR. CUDDY: Kevin Cuddy, from
16 the law firm of Ropes & Gray on behalf of
17 the London insurers. This is the --

18 THE COURT: That one I have
19 to tell you I didn't get any response from
20 Pfizer with respect to the London insurers
21 motion.

22 Mr. Zirinsky, how come
23 Allstate came in with another thing and
24 wants to join you?

25 MR. ZIRINSKY: It is our

1 QUIGLEY COMPANY, INC.

2 position it is a dispute between the two
3 insurance carriers.

4 THE COURT: Someone ought to
5 file a response by Friday, so I could sit
6 down and see why you shouldn't be joined.
7 After all the lawsuit is three years old.
8 I am just saying I don't know. I don't
9 know. I understand. I saw it in those
10 papers.

11 MR. CALOGERO: Stefano
12 Calogero, from the law firm of Cuyler
13 Burk. I represent Allstate Insurance
14 Company.

15 Pfizer is part of the New York
16 action presently, and at that time in the
17 Court --

18 THE COURT: Let me understand
19 something. They are already part of it?

20 MR. CALOGERO: Yes.

21 THE COURT: How long have
22 they been part of it.

23 MR. CALOGERO: It has to be
24 over the year. The firm of Dickstein &
25 Shapiro, the last time this case was in New

1 QUIGLEY COMPANY, INC.
2 York County Court, went in and told the
3 Judge, as far as Pfizer was concerned the
4 temporary restraining order that you had
5 instituted --

6 THE COURT: I understand
7 that. But I don't understand, and I don't
8 have time to find out because I have to
9 leave in ten minutes what it is, I don't
10 understand what it is, the various
11 positions, and it would clearly take 20
12 minutes or a half hour to get this thing
13 sorted out. And this, Mr. Zirinsky, you
14 will have to give me a response on because
15 I am not likely to buy into it because it
16 was not intended to be tied into the TRO or
17 within the scope of things people were
18 discussing with you.

19 MR. CALOGERO: Certainly this
20 issue never came up last time.

21 THE COURT: That is what I am
22 telling you.

23 Do I have anyone else who
24 wants to say something?

25 MR. ZIRINSKY: Since I am

1 QUIGLEY COMPANY, INC.

2 here, Bruce Zirinsky, on behalf of
3 Pfizer.

4 I just want to note for the
5 record that I will be here on Friday to
6 respond to anything we need to respond
7 to. But I do want to state on the record
8 today it is not clear to us who Mr.
9 Weisfelner represents other than three law
10 firms.

11 There is a Rule 2019 which
12 requires a statement of the parties, not
13 the law firms that represent those
14 parties. I would also like the Court to
15 understand that Mr. Weisfelner's comments,
16 just in a very broad view, are totally
17 outrageous, misstate the factual record of
18 this case and we will address them on
19 Friday. But I don't want to leave those
20 statements standing out there on the record
21 between now and Friday.

22 THE COURT: Okay. What are
23 you doing about the 2019 problem?

24 MR. WEISFELNER: Ours was
25 filed this morning.

1 QUIGLEY COMPANY, INC.

2 MR. ZIRINSKY: Do you
3 represent the three individuals' client?

4 MR. WEISFELNER: The three
5 law firms.

6 MR. ZIRINSKY: That is the
7 problem.

8 THE COURT: Who are you? Are
9 you not claimants?

10 MR. WEISFELNER: Your Honor,
11 we will deal with Mr. Zirinsky in
12 attempting to satisfy him.

13 THE COURT: What I am saying
14 is three attorneys don't make an ad hoc
15 committee of claimants. They make an ad
16 hoc committee of attorneys.

17 MR. WEISFELNER: Your Honor,
18 my clients all have clients themselves and
19 the powers of attorney to represent them in
20 this and other related matters, and we will
21 have all the appropriate documentation.

22 THE COURT: Please don't show
23 it to me.

24 MR. ZIRINSKY: Specifically,
25 I would like to understand from that

1 QUIGLEY COMPANY, INC.
2 filing, and I assume Mr. Weisfelner will do
3 so, but we would like to understand which
4 of those clients are Pfizer only plaintiffs
5 who have no claims against Quigley and no
6 claims against a multiple of other
7 defendants because that is the gist of his
8 argument.

9 MR. WEISFELNER: It is
10 outrageous, to convert the burden of
11 proof.

12 THE COURT: I am sorry that
13 it will be converted to you. I am sorry
14 that is going to be converted to you
15 because after all you need to be shown both
16 that you suffered an injury and who caused
17 it.

18 MR. WEISFELNER: Right.

19 THE COURT: Who caused it is
20 what he is asking about.

21 MR. WEISFELNER: Your Honor,
22 can we likewise be assured that we get in a
23 timely fashion the insurance policies and
24 the treaty that was entered a week before
25 bankruptcy?

1 QUIGLEY COMPANY, INC.
2 THE COURT: I think you have
3 to take that up with Mr. Cook and Mr.
4 Zirinsky, and if there is a problem we will
5 discuss it on Friday. Okay. Thank
6 you.
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