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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, )  
LLC, ET AL., )  
 ) Judge Polster  
Plaintiffs, ) Cleveland, Ohio  
 )  
vs. ) Civil Action  
 ) Number 1:19CV145  
SOUTH UNIVERSITY OF OHIO, )  
LLC, )  
Defendants.

- - - - -  
TRANSCRIPT OF PROCEEDINGS HAD BEFORE  
THE HONORABLE DAN AARON POLSTER  
JUDGE OF SAID COURT,  
ON WEDNESDAY, AUGUST 18, 2021  
- - - - -

APPEARANCES:

For Dunagan Intervenors: ERIC ROTHSCHILD, ESQ.,  
For Dream Center Foundation: CRAIG MARGULIES, ESQ.,  
For Receiver: MARY WHITMER,  
HUGH BERKSON, ESQ.,  
ROBERT GLICKMAN, ESQ.,  
MARK DOTTORE, ESQ.,  
For the Dept. of Justice: JOHN KRESSE,  
Official Court Reporter: Shirle M. Perkins, RDR, CRR  
U.S. District Court  
801 West Superior, #7-189  
Cleveland, OH 44113-1829  
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

1                   WEDNESDAY SESSION, AUGUST 18, 2021, AT 12:31 P.M.

2                   DEPUTY CLERK: Judge, do you want me to do a  
3 roll call?

4                   THE COURT: We don't have time for that. We  
12:34:11 5 got everyone's names for the Court Reporter.

6                   DEPUTY CLERK: Okay.

7                   THE COURT: All right.

8                   This is a hearing in the Digital Media case, Case  
9 1:19CV145. It's a hearing on motion to approve settlement  
12:34:30 10 the Receiver has made, along with a Bar Order that was the  
11 result in payment of the first tier of insurance proceeds to  
12 the Receiver. It was \$10 million from a -- either AIG  
13 entity. There are several tiers of insurance. This is the  
14 first.

12:34:51 15                   And I just want to clarify the -- am I correct that  
16 there -- there was -- does the Receiver contend that the  
17 Directors and Officers of DCEH and members who engaged in a  
18 pattern of fraudulent activity regarding the financing of  
19 the schools, the accreditation of the schools, and the  
12:35:17 20 availability of health care coverage through employees of  
21 the schools from the time of DCEH's acquisition of the  
22 schools until the establishment of the Receivership, which  
23 was January of 2019, is that correct?

24                   MS. WHITMER: Your Honor, I believe that was  
12:35:37 25 one of the claims that we made against the insurance

1 policies.

2 THE COURT: All right. Thank you, Ms.  
3 Whitmer. And that, of course, is I'll call the Dunagan  
4 Objectors, four Objectors that filed a class action lawsuit  
12:35:53 5 in the Northern District Northern District of Illinois and  
6 been litigating it. They made similar objections. And --

7 MS. WHITMER: Yes.

8 THE COURT: They're the only significant  
9 Objectors to this settlement and Bar Order. All right.

12:36:18 10 This is the situation the Court is in. I -- this  
11 Receivership has been going for two and a half years.

12 The purpose of the Receivership was to try to maintain  
13 all of the schools, or many of the schools as possible so  
14 there could be an orderly teach out, and at least that  
12:36:47 15 semester, which is the second semester of 2019, would be  
16 complete, which would mean the students wouldn't lose their  
17 education. And since almost all the students were funded by  
18 federally secured loans, taxpayers wouldn't lose staggering  
19 amounts of money. Also the hope was some of the schools  
12:37:09 20 might be saved, might be transferred to other owners or  
21 operators.

22 Through the hard work of the Receiver, there was an  
23 orderly teach out. Many students were able to complete  
24 their semester. We actually saved the law school on the  
12:37:28 25 west coast. It was transferred to other operators and still

1 an accredited law school.

2 But for some time, the Receiver had not been operating  
3 any schools and it's time to end the Receivership. The only  
4 way to do that, however, is to have some funds. There is a  
12:37:52 5 substantial amount owing to the Receiver. The Receiver's  
6 been paid some funds, but a lot of work, there's a lot of  
7 legal work that's not been compensated. And there is  
8 approximately \$1,000,000 owed to the faculty at the Las  
9 Vegas school for teaching classes for virtually all of 2019,  
12:38:16 10 from January 2019 when the Receivership was created until I  
11 believe December of 2019 when that school ultimately closed.

12 And there's obviously no money coming in. And so the  
13 only money available to take care of that and any other  
14 outstanding debts of the Receivership are this -- the  
12:38:39 15 proceeds of the first tier of insurance, being no policy on  
16 the DCEH Directors and Officers and the first tier of \$10  
17 million, and it's being dissipated by the Dunagan litigation  
18 in the Northern District of Illinois. And this settlement  
19 would bring that money in.

12:39:01 20 There would be a substantial amount of proceeds left,  
21 and it would be available to pay pre- Receivership claims.  
22 The Dunagan litigation is pre- Receivership. None of that  
23 has to do with anything the Receiver did or anything -- the  
24 DCEH was out of the picture then. So it's all  
12:39:22 25 pre- Receivership.

1           So I respect the right of the Dunagan litigants to  
2 proceed on their claims but there's absolutely no reason why  
3 those claims had any priority over any of the other  
4 pre-Receivership claims.

12:39:41 5           I pointed out in the filing that came yesterday from  
6 the Department of Justice on behalf of the Department of  
7 Education, the Department of Education discharged over \$103  
8 million in student loans owed by 4200 borrowers. So the  
9 Department of Education and the taxpayers have a claim for  
12:40:07 10 \$103 million, which warrants the claims of the Dunagan  
11 Objectors. And I would say that although the Dunagan case  
12 was brought as a class action, the Northern District of  
13 Illinois had not certified this as a class; is that correct?

14           MR. ROTHSCHILD: Your Honor, not yet. They  
12:40:30 15 have not -- we moved for certification of the State Court.  
16 Nothing has been decided. So that's an open issue.

17           THE COURT: So at the moment, it's just four  
18 people. All right. Those four people, Mr. Rothschild, what  
19 do you think the claims of those four people are?

12:40:44 20           MR. ROTHSCHILD: The claims in the Northern  
21 District of Illinois are for the damages that have not been  
22 paid back through loan cancellation, which we've already  
23 scrupulously offset. So they have tuition and cost of  
24 living expenses that were incurred attending the school that  
12:41:02 25 gave them unaccredited credits and unaccredited degrees.

1 THE COURT: Cost of litigation, I'm not sure  
2 that's ever reimbursable but --

3 MR. ROTHSCHILD: Your Honor, may I ask a  
4 clarification? They have --

12:41:17 5 THE COURT: They've got the credits. All  
6 right? The school wasn't accredited but candidly, they knew  
7 it wasn't accredited when they signed up, right?

8 MR. ROTHSCHILD: Your Honor, I don't want -- I  
9 don't mean to interrupt.

12:41:35 10 THE COURT: Was the school accredited when  
11 your clients enrolled initially?

12 MR. ROTHSCHILD: It was accredited when they  
13 enrolled initially and then it lost accreditation and that  
14 was concealed from them.

12:41:44 15 Your Honor, could I request a clarification about  
16 something you said? Because if your Honor is saying that  
17 our cases can go forward, just that the Receiver will  
18 receive the eight and a half million or ten million that we  
19 negotiated for but our cases can proceed in the Northern  
12:42:01 20 District of Illinois against whatever resources those  
21 Defendants have to pay the claims, then if that is what your  
22 Honor is suggesting, we may be able to reach an  
23 accommodation.

24 We're not against the Receiver bringing money into the  
12:42:16 25 estate or fighting health care claims for that money. We

1 just want our claims, which the Judge had said should go  
2 forward, we ought to go forward.

3 THE COURT: Well, I believe Mr. Rothschild,  
4 the Bar Order doesn't excuse any claims but it gave  
5 exclusive right to bring the claims to the Receiver.

12:42:34

6 Is that correct? Is that the -- is that your  
7 understanding of the Receiver and Receiver's counsel?

8 MS. WHITMER: Yes, your Honor.

9 The Bar Order would end the race to the policy  
10 proceeds. Presently, the Receiver is attempting to recover  
11 the policy proceeds, not only of the first tier but of all  
12 tiers on top of the first tier.

12:42:50

13 The Receiver is trying to recover all of those  
14 proceeds on behalf of all claimants against those policies.  
15 If the Receiver is successful in doing that, they will share  
16 with all participants against the policies. The Dunagans  
17 have a claim against the policies, but they're racing to the  
18 policies so that their claim is paid first.

12:43:11

19 THE COURT: There's no -- there's no --  
20 there's no logical reason and no fair reason why any one  
21 claim should be practical than other similar claims. All  
22 right?

12:43:34

23 The Department of Education has a claim, maybe secured  
24 creditors, and maybe students like, you know, all the four  
25 Dunagan Plaintiffs and potentially if the Judge certifies

12:43:54

1 the class, there would be a whole lot of other people in  
2 that position. All right? And they all should be treated  
3 fairly.

4 And so that is very important. And I can't, unless  
12:44:13 5 the Dunagan Objectors can articulate a reason why their  
6 claim should be treated differently than anyone else's, I  
7 want to make sure they're all treated fairly.

8 MR. ROTHSCHILD: Your Honor, I would like the  
9 opportunity to articulate that.

10 A Bar Order is an extraordinary thing. It is  
11 dismissing our client's case without their consent. And  
12 it's not something that's being fixed -- used regularly just  
13 to bring money into an estate. Again, this is not about  
14 competition within the estate's claims process. This is  
12:44:29 15 just about our right to proceed with our claims.

16 And the cases that the Receiver's relying upon have  
17 only done that when the -- only issue Bar Orders when the  
18 Receiver is acting on behalf of -- always investigator  
19 cases -- acting on behalf of its investors to bring money in  
12:45:04 20 for investors. So the parties that get barred, that have  
21 their case limited are also the beneficiaries of the -- of  
22 the settlement that the Bar Order is used again but --

23 THE COURT: Here, the Receiver ordered -- I  
24 mean the other option is this gets converted into bankruptcy  
12:45:22 25 and there's a bankruptcy trustee, and he or she will go



1 after the only remaining asset, which is the second, third,  
2 fourth tiers of the P&O insurance on behalf of anyone who  
3 may have lost money or been defrauded, which would include  
4 the four named Dunagan Plaintiffs and if the Judge certifies  
5 a class, the other students of the class.

12:45:47

6 MR. ROTHSCHILD: Your Honor, just --  
7 respectfully it's not what's happening here. Ms. Whitmer  
8 talks about a race to the courthouse. I think she's  
9 misreading the case.

12:45:59 10

11 In those cases, the Receiver has always acted on  
12 behalf of a group of similarly-situated investors, not a  
13 motley collection of creditors. And what the Receivers are  
14 doing is making sure they all come to the finish line at the  
15 same time, not pick different winners and losers. The Bar  
16 parties are always the beneficiary of the settlement. The  
17 only way this could possibly be just -- I do want to come  
18 back also to this --

12:46:18

19 THE COURT: Well, the problem, sir, are you  
20 going to provide -- are you going to provide the money for  
21 post-Receivership obligations? Because this money, unless  
22 you're going to provide funds, I have to -- it's my  
23 obligation to take care of the Receivership claims. All  
24 right? That's my obligation because it's under my watch.  
25 And if you're going to provide the funds to do that, well,  
then you may have something, you know, something to discuss.

12:46:51

1 MR. ROTHSCHILD: Students and other private  
2 litigants who are non-Receivership entities cannot be the  
3 means to those ends. There's no case that stands for that  
4 proposition. And that's -- I want to address the idea the  
12:47:08 5 claims are substantially identical.

6 The Receivers' whole argument that the claims were  
7 substantially identical to ours was based on the idea that  
8 there had been an assignment of our claims to the  
9 Government, which the Government was then going to bring  
12:47:20 10 against the Receiver, and the -- and those claims were  
11 supposedly substantially identical to ours.

12 The Government has just filed a statement of interest  
13 that rejects that entirely. That is completely fatal to the  
14 Receiver's contention that these claims are substantially  
12:47:35 15 identical, and they've offered nothing else in the  
16 Receiver's declaration that would come anywhere close. All  
17 they've done in the declaration is describe our claims.  
18 They haven't described the Receiver's claims. They haven't  
19 described how the Receiver was injured by the accreditation  
12:47:51 20 misrepresentation, what's the basis for standing, what  
21 evidence that is being relied upon to demonstrate that.

22 All the things, the cases they relied upon, they  
23 cannot come nowhere close to meeting this core requirement  
24 court after court has required, and they also haven't met  
12:48:10 25 the core requirement that the money that comes in because

1 parties are barred goes to that -- those barred parties.

2 If this was a student focus, we're going to act on  
3 behalf of all thousand students who were barred, the 500  
4 guardians of Colorado, and stand in their shoes to fight  
12:48:28 5 these investors, then -- and bring it in rather than have  
6 competing cases, and they'd share that money with the group  
7 of students, then that would be consistent with the case  
8 law. This doesn't come anywhere close to that. And --

9 THE COURT: Well, let me -- I'll ask the  
10 Receiver.

11 At the moment, the only claims on this money are  
12 post-Receivership claims, and -- the Department of  
13 Education, you got the Department of Education here  
14 represented by the Department of Justice -- there's going to  
12:49:02 15 be about, I don't know, \$7 million left out of the 10. All  
16 right? It's got to go somewhere. The Department of  
17 Education, you know, made a claim for this? I mean it seems  
18 to me, you know --

19 MS. WHITMER: Your Honor, the -- there are  
12:49:23 20 various claims against the policy proceeds. So there are  
21 different claims against the policy proceeds, and they are  
22 as follows:

23 The secured lender has a misrepresentation claim  
24 against the policy proceeds. The secured lenders' claim as  
12:49:44 25 of August 12th is \$154,476,016.39.

1           The United States, the taxpayers, have a claim against  
2 the policies again for student loan discharge, closed  
3 universities, failure to run the universities properly, that  
4 is \$103 million.

12:50:10 5           The health care claimants have a claim for the failure  
6 to pay the premiums and for misrepresentation of actual  
7 coverage under the policies. Their claims have a face  
8 amount of perhaps \$14 million. We believe that they can be  
9 liquidated under the medical plan as part of the settlement  
12:50:32 10 for perhaps \$2 million.

11           And we have the Dunagan claimants. The Dunagan  
12 claimants are already part of the United States. That is  
13 what the United States said yesterday. And while I do not  
14 understand exactly what the United States is saying with  
12:50:50 15 regard to assignment, the Dunagan claims, which have been  
16 largely compensated by the United States, those Dunagan  
17 claims aren't substantially identical to claims brought by  
18 the Receiver against the policies. He -- in his  
19 declaration, he described in sufficient to detail to show  
12:51:19 20 that he pursued the Dunagan claims against the policy.

21           So what we have here is four really different classes  
22 of claimants but they all have claims against the policy.  
23 And the claims against the policy are almost \$160 million  
24 against perhaps \$50 million of coverage. So the claims  
12:51:50 25 massively exceed the amount of insurance available.

1           What this is set up is a race to the policy proceeds.  
2           There just isn't any other way to say it. The Dunagan  
3           Intervenors are racing to get ahead of the other claimants  
4           under the policies. If the Receiver wins the race to the  
5           policy proceeds, it's not fair or equitable for the Receiver  
6           to exclude the claims of the Dunagan Intervenors. But if  
7           the Dunagan Intervenors get to the policy proceeds first and  
8           also they receive, largely receive compensation for their  
9           claims, but they're racing to the policy proceeds, they,  
10           therefore, close the claim of the health care claimants, of  
11           the secured lenders, and of the 4200 students who also have  
12           closed -- you know, they really are standing in the same  
13           shoes as the -- they're all standing in the same shoes.  
14           They're all claimants against the policies.

15                           THE COURT: All right.

16           Well look, I -- this Court is not going to keep --  
17           maybe the best thing to do is just dissolve the  
18           Receivership, put all this into bankruptcy and let a  
19           Bankruptcy Court Judge decide what to do. All right? And  
20           whatever he or she does is fine. Okay?

21           I'm not a bankruptcy court, and I -- I have -- the  
22           purpose of the Receivership has long since been  
23           accomplished. All right? And maybe the best thing to do is  
24           just end it. But since the first tier, that's the Union,  
25           wants to pay the \$10 million, it seems crazy to keep

1 litigating against them. Let's take the \$10 million.

2 MS. SOUTHERN: Your Honor, I have a question.

3 THE COURT: The only way they can do that, Mr.  
4 Rothschild, is the Bar Order. Right?

12:53:52 5 MR. ROTHSCHILD: Your Honor, that's -- I mean  
6 our position is there is no authority for that Bar Order,  
7 even if it's helpful to that process. We don't have a suit  
8 against the policy. They keep saying that we're racing for  
9 the policy proceeds. We sued Defendants. How they pay, I  
12:54:09 10 understand that, you know, insurance is something that they  
11 want to avail themselves of but any disagreement about how  
12 those proceeds are being used is really between the  
13 Receiver, the insurer, and the insureds. We just want our  
14 lawsuit to keep going. If there's insurance coverage there  
12:54:25 15 to help pay a judgment, of course, or a settlement, of  
16 course that is helpful to that process but that's -- our  
17 lawsuit isn't about the policy. We haven't sued on the  
18 policy, we haven't sued the insurance company, and frankly,  
19 they are not claims in the estate against a policy; they're  
12:54:40 20 claims against the estate itself. Proceeds may come in  
21 through insurance payments, but that's -- there are not  
22 claims against the policy. We're getting distracted by  
23 that.

24 And then I would just --

12:54:51 25 THE COURT: You understand that if you were to

1 get money, it's not just going to come -- I mean there are  
2 all these other claims. I'll just put -- look. It is  
3 easier for me to say I'll just dissolve this, put it in  
4 Bankruptcy Court. If there's a bankruptcy, that will stay  
12:55:09 5 your litigation and that will be the end of it. If the  
6 Bankruptcy Court ever wants to abide it, fine; that ends  
7 your lawsuit.

8 So I can end your lawsuit like that any time I want.  
9 I'm ready to do it.

12:55:23 10 MS. SOUTHERN: Your Honor, I have a question.  
11 May I ask a question, please?

12 THE COURT: Who is this, please?

13 MS. SOUTHERN: This is Cherisse Southern, a  
14 Plaintiff before the Receivership took place.

12:55:33 15 I was a person who was suing prior to all this taking  
16 place, and then they went into bankruptcy, and then I -- we  
17 got pulled into this.

18 So our question is will our settlement be the -- be  
19 settled or will this continue to drag out as long as this  
12:55:58 20 part drags out?

21 THE COURT: You want to respond? There are  
22 two or three other -- these were all done with. All right?

23 MS. WHITMER: If I could -- if I could  
24 respond, your Honor, to the student. None of the claims  
12:56:14 25 against EDFC are barred.

1 THE COURT: Claims aren't barred. So, ma'am,  
2 you have -- whatever you claim you got, you got. I don't --  
3 you know, I don't really have anything to do with it. The  
4 doctors claims -- okay.

12:56:31 5 A VOICE: She'd have to go through the EDMC  
6 Receiver, and I believe that case is in Delaware. So that's  
7 where she would go to prosecute.

8 THE COURT: There's EDMC Receiver in Delaware  
9 who's handling that. Your claim, you know, you have your  
10 claim, you should perfect it with him or her.

11 MS. SOUTHERN: Thank you.

12 MR. ROTHSCHILD: Your Honor, you said that  
13 you're not sure whether this can occur without a Bar  
14 agreement. They won't -- the Defendants in the Dunagan  
15 litigation won't consent.

16 Our clients have not consented. They're basically the  
17 Receiver and those Defendants in the Dunagan case have,  
18 after the Dunagan Defendants failed to dismiss the case,  
19 have negotiated our dismissal without our consent.

12:57:18 20 So our clients' consent, the students' consent is as  
21 precious as any of the other parties here. And this case  
22 can't be resolved, dismissed, settled without their consent.  
23 It just --

24 THE COURT: Well, fine. I'll just end all  
12:57:35 25 this and put it into bankruptcy, and that's the end of your



1 case. You understand? The moment I do that, your case is  
2 automatically stayed and will sit forever.

3 MR. ROTHSCHILD: I mean I -- I'm not going to  
4 debate if that's what would occur or not.

12:57:49 5 THE COURT: It will occur. It will be stayed  
6 by law. Put this in, you know, bankruptcy.

7 MR. ROTHSCHILD: Certainly that can be no more  
8 fatal to our case than what is being proposed by the  
9 Receiver here.

12:58:01 10 I just want to propose again the answer to this, the  
11 settlement is good for the estate. We understand that. It  
12 will help to pay health care claims if they lead to eventual  
13 ending of the Receivership, that's all. If that can happen,  
14 that's great. It just can't happen on the backs of people  
12:58:18 15 who have valid claims that are well advanced. There's just  
16 no authority for that to happen.

17 So, you know, my suggestion, obviously, this is --  
18 these parties, the Receiver should be negotiating with those  
19 parties to settle without a Bar Order that just is not  
12:58:36 20 permitted under law.

21 MS. WHITMER: Your Honor, it is absolutely not  
22 possible to realize on the settlement without the Bar Order.  
23 And the Dunagan Intervenors really are the case in point.  
24 They -- they are very, what shall I say, energetic  
12:59:00 25 litigators and nobody --

1 THE COURT: They have a right to be energetic.  
2 No point being unenergetic litigators.

3 MS. WHITMER: But the question is whether when  
4 they are being energetic, they have a right to claim a  
12:59:16 5 greater portion of the policy proceeds than other policy  
6 proceeds claimants are entitled to. That's the issue.

7 THE COURT: Well, they're not necessarily. If  
8 anyone else wants to sue the Directors and Officers, they  
9 can do it. The Department of Education, if they want to  
12:59:36 10 bring a lawsuit, they can bring it. They haven't, but they  
11 certainly can.

12 MS. WHITMER: They haven't because the  
13 Receiver has been prosecuting their claims against the only  
14 source of recoverable funds, which is the policies.

12:59:53 15 MR. ROTHSCHILD: Okay. Can I --

16 THE COURT: What you're really saying, Ms.  
17 Whitmer, is a perpetual Receivership. If you're going to  
18 take over and get, you know, try and get, you know, keep  
19 litigating on behalf of the federal government, on behalf of  
13:00:13 20 the Dunagans, on behalf of the secured creditors, on behalf  
21 of the health care claimants, potentially forever, and  
22 either win or lose or settle and get some amount of money  
23 and then have some process among all of them. And --

24 MS. WHITMER: Prior to -- sorry.

13:00:33 25 THE COURT: I mean is that your --

1 MS. WHITMER: Your Honor, we're trying to end  
2 the Receivership. And one of the ways to end it is by  
3 settlement. The reason -- this settlement is, for all  
4 intents and purposes, really a miracle. It allows the  
13:00:51 5 Receiver and the Receivership estate to recover \$8 and a  
6 half million, the entire value of the first tier of  
7 insurance. It reserves the Receiver's right to go into the  
8 five-tier levels of insurance, and it preserves all claims  
9 by all parties against all of the policy proceeds, the  
13:01:18 10 Dunagan litigators will be treated the better or the worst.

11 Although the Receiver and his counsel have talked many  
12 times about a Litigation Trust, we can rule any claims  
13 against higher tiers of insurance against individual  
14 Litigation Trusts and recover that.

13:01:39 15 We are not seeking to bar the claims of the Dunagan  
16 Intervenors if they have claims. We are seeking --

17 THE COURT: Can you assign your claim? Can  
18 you -- can you assign your claim to the United States, for  
19 example? Just say -- why are you litigating? Can you  
13:02:07 20 assign your claim to the United States to pursue the United  
21 States' interests? Can you assign a possession of your  
22 claim to the Dunagans so they can litigate on their behalf?

23 A VOICE: I'm sorry to interrupt you.

24 Because we had the secured creditor and the United  
13:02:24 25 States and the Dunagans and other folks that are involved,

1 so the way to do this would be to have us continue to  
2 litigate it through a trust because your Honor wants to end  
3 the Receivership, I've spoken to the secured lender and  
4 they're pretty much in line with this. So when recovery  
13:02:41 5 comes, we would be -- everyone would share or believe a  
6 claim would attach to include the Dunagans, and I think my  
7 lawyers even put that in the brief, that they would -- were  
8 not barring them from any -- they had a claim in the  
9 Receivership estate.

13:02:56 10 MS. WHITMER: They had a claim against the  
11 policy and the estate to the extent they had a claim.

12 MR. BERKSON: They would have the same claim  
13 in the litigation fund.

14 THE COURT: It's my plan, Mr. Rothschild, my  
15 plan to do is if we approve this, take the money, we'll pay  
16 Receivership claims. I will put the balance in this  
17 Litigation Trust, which would be created. I'm going to end  
18 the Receivership and the Litigation Trust is going to pursue  
19 all of these claims of fraud, which they're all claims of  
13:03:34 20 fraud. They're different, you know, different potential  
21 victims, but all of the -- all of the Claimants Plaintiffs  
22 are alleging various types of fraud against the Directors  
23 and Officers. Your clients are alleging that -- articulated  
24 that they enrolled in an accredited institution, that at  
13:03:58 25 some point during their studies, the schools lost

1 accreditation. They thought they were still going to an  
2 accredited school, and it turns out they weren't. And so  
3 they have now received a degree, which is worthless and  
4 have, therefore, lost, while their loans have been  
13:04:22 5 cancelled, any out-of-pocket expenses, tuition, living  
6 expenses, et cetera, that they incurred, they want back.  
7 All right? That's -- so that's fraud.

8 Secured lenders have various allegations that they  
9 were defrauded in various representations. The Department  
13:04:41 10 of Education feels they were defrauded on behalf of the  
11 students who insured their loans and health care. So it's  
12 all alleged fraudulent misconduct by Directors and Officers.

13 And there should be a process where everyone can do  
14 their claims but are treated fairly. Your clients' claims  
13:05:01 15 of fraud are no -- are not entitled to any greater weight  
16 than anyone else's. And they're not entitled to any greater  
17 weight than yours.

18 So I can't -- I can't see how your clients are hurt by  
19 one, getting \$8 and a half million into the recovery pot,  
13:05:26 20 and two, having the litigation process created where all  
21 these claims are litigated. And I mean the only source of  
22 recovery really is the \$60 million and some of it comes in,  
23 and it comes in and everyone's treated fairly in some  
24 distribution process. How are your clients hurt by that?

13:05:50 25 MR. ROTHSCHILD: Let me answer that.

1 I think the Department of Justice wanted to say  
2 something as well. They're hurt by that, first of all, in  
3 the Receiver's brief, he says there will be no claims  
4 process, and the reason is because claimants like I  
13:06:05 5 represent, there's just, you know, the payments to health  
6 care and the Government and the secured creditors will just  
7 use up all the money. So there's no point. He's been very  
8 clear we're not getting money in there.

9 THE COURT: First of all, that is -- first of  
13:06:21 10 all, we don't know at the end of the day what position, you  
11 know, there could be X amount of money. I don't know how  
12 much there is. I know there's going to be \$8 million or so  
13 on this settlement if it goes through. There may be more.  
14 All right.

13:06:40 15 At the end of the day, there will be some amount of  
16 money. I have no idea what the secured creditors are going  
17 to do. I have no idea what the Department of Education is  
18 going to do in terms of pursuing that. It may say we'll let  
19 it go, let it go.

13:06:55 20 Your clients and potentially if there's a class,  
21 there's a class. Again, potentially. I don't know what the  
22 Judge is going to do. He may say that but I don't know.  
23 But there will be some process, an administrator, overseen  
24 by someone that's going to be fair.

13:07:12 25 MR. ROTHSCHILD: And within the Receivership,

1 the Receiver has been very clear there won't -- and I  
2 understand, your Honor, you have something to say about  
3 this, but they've been clear they're not recommending the  
4 process because there will be no money for it. Pages 16 to  
13:07:25 5 17 of their response. And so --

6 THE COURT: Just they have -- what is -- they  
7 may -- if everyone pursues their claims to the fullest  
8 extent, your client's claims are going to be pretty small in  
9 proportion.

13:07:45 10 MR. ROTHSCHILD: Your Honor, we understand  
11 within the Receivership proceeding, we have to compete for  
12 those funds against many other creditors, and we are a  
13 smaller creditor. We actually understand that. All we're  
14 trying to preserve here is our claims against  
13:07:59 15 non-Receivership entity. This is an effort to have you  
16 intervene in a separate federal court between  
17 non-Receivership entities on both sides of the V. That's  
18 how extraordinary this is.

19 So what's going to happen within the Receivership is  
13:08:13 20 not really the issue here; it's what's going to happen  
21 outside the Receivership.

22 As to the other policy proceeds, the Receiver's  
23 already represented that this is the best deal they could  
24 get on claims that -- supposedly on claims similar to ours,  
13:08:28 25 this is the best deal they could get. This is a miracle

1 that they evaluated the strength of their claims, the  
2 evidence of the claims, none of which, by the way, has been  
3 laid out in their -- in their filings, even though every  
4 other court has required it. They have said nothing about  
5 the causes of action they would bring, what the evidence is  
6 for that, what -- how the Receivership entities were hurt as  
7 opposed to how the students were hurt.

8 So what they have said, this was the very best we  
9 could do accounting for the strength of our claims, the  
10 Defenses, possible insurance coverage issues, we did the  
11 very best we can and now there's some illusion there's going  
12 to be a Litigation Trust for the quaint -- let me finish,  
13 please.

14 MR. BERKSON: Mr. Rothschild, the best you can  
15 get is policy limits on the first tier. We did that.

16 MR. ROTHSCHILD: That's my point, your Honor.  
17 That's my point.

18 A VOICE: Mr. Rothschild suggested there was  
19 an accommodation. He was listening to it. And while I've  
20 been sitting here, the Receiver's contention after the  
21 settlement is approved to -- if another settlement cannot be  
22 reached until after through litigation, the remaining tiers  
23 have been charged. To be able to get their settlement, we  
24 have to accord a release to the Officers and Directors that  
25 we would not go after their personal assets. Frankly, most



1 of whom don't have to give access that would warrant the  
2 litigation.

3 We believe that the Dunagan claims, student claims, do  
4 not -- student claims are accomplished in the Dunagan  
13:10:15 5 claim -- are part of the claims for which we will seek  
6 damages and not litigation.

7 If Mr. Rothschild believes the Dunagan claims, meaning  
8 his student claims, somehow have priority over others, we  
9 would have no issue with assigning those specific claims  
13:10:32 10 within our litigation. We can prosecute the litigation as  
11 pro-Plaintiffs and if we are successful in recovering them,  
12 he can and he believes he has priority and we can't reach an  
13 accommodation, we can enter into essentially declaratory  
14 judgment action and let a court determine priority claims.  
13:10:53 15 That would terminate the Receivership, it would allow us  
16 to -- Mr. Rothschild to protect his claimants, but not to  
17 the detriment of all Plaintiffs against the policy proceeds.

18 THE COURT: All right. That was, that's a  
19 good suggestion.

13:11:16 20 MR. KRESSE: Your Honor, this is John Kresse.  
21 If I may.

22 THE COURT: Yes.

23 MR. KRESSE: I just want to be clear here.

24 As I understand it, the Ds and Os, the Directors and  
13:11:27 25 Officers, will -- no one will be able to sue the Directors

1 and Officers if the Bar Order is approved. Is that correct?

2 THE COURT: No, no. That isn't right, Mr.

3 Kresse. No one can --

4 MR. KRESSE: Your Honor --

13:11:43 5 THE COURT: -- personal assets but they can be  
6 sued and the other insurers are going to have to defend  
7 them.

8 MR. KRESSE: That's what I'm asking.

9 Are their personal assets out of reach if it the Bar Order  
13:11:57 10 is approved.

11 THE COURT: Is that right, Mister -- who's  
12 speaking for the Receiver; is that right? The person -- the  
13 personal assets of the Directors and Officers can't be  
14 reached but the insurance proceeds can; is that right?

13:12:14 15 MR. BERKSON: Absolutely correct, Judge. Even  
16 with -- allows Mr. Rothschild and his firm to be held by the  
17 standard, litigate their claims in the same case but they  
18 can litigate their claims without having to worry about the  
19 other claims.

13:12:33 20 It would effectively have the Trustee as the  
21 litigating trust. Retaining Mr. Rothschild to do that on a  
22 contingency fee basis, just like he's retaining other  
23 counsel to litigate the claims for the secured lenders, the  
24 taxpayers, and others.

13:12:52 25 MR. KRESSE: Okay. If I may.

1 My point is that the -- according to the  
2 representations in the filings by the Receiver, I believe  
3 the Dream Center Foundation has paid about \$500,000 towards  
4 the litigation, ongoing litigation, that's my understanding,  
13:13:10 5 to allow the policy to kick in, ball park.

6 MS. WHITMER: Yes --

7 A VOICE: More than that --

8 MR. KRESSE: Hold on, please. So the  
9 Directors and Officers basically pay zero dollars toward  
13:13:24 10 anybody at this point. And as your Honor has said multiple  
11 times in this hearing so far, they are basically accused of  
12 fraud and other kinds of misrepresentations that have caused  
13 damage that to the Government, to the United States, over  
14 \$110 million at this point, the secured lender over 120 or  
13:13:46 15 30 million dollars, and for the students to some unknown  
16 extent, which is at least in the hundreds of thousands of  
17 dollars, even without the Class being approved in the  
18 Dunagan litigation.

19 So what we've done here is we have a miracle  
13:14:05 20 settlement that lets the Directors and Officers completely  
21 off the hook and the Directors also -- the other issue is  
22 the Dream Center Foundation, my understanding, is not a  
23 Receivership entity and isn't one of the Defendants in the  
24 Dunagan litigation. And they're also off the hook; is that  
13:14:21 25 correct?

1 MR. BERKSON: The Officers and Directors would  
2 be -- we could not go after their personal assets. It gets  
3 us to settlement and --

4 MR. KRESSE: I just asked a simple question.  
13:14:33 5 The Foundation is also off the hook as the Bar Order is  
6 approved; is that correct?

7 MR. BERKSON: You say off the hook. One of  
8 the main purposes of --

9 MR. KRESSE: Give me an answer to the  
13:14:43 10 question. Are they suable in the Dunagan litigation if this  
11 Bar Order is approved? Does the Dunagan Plaintiffs no  
12 longer have a case in the Northern District of Illinois  
13 according to the Bar Order?

14 MR. BERKSON: Correct.

13:14:58 15 MR. KRESSE: Okay. Thank you. That's all I  
16 wanted to know.

17 MR. BERKSON: Judge, it should be noted the  
18 United States Government is free to choose any time they  
19 want.

13:15:10 20 MR. KRESSE: To what effect? Yes, the United  
21 States Government is. That's correct. Thank you. But the  
22 point is that, the issue here -- and I'm not arguing on  
23 behalf of the students. I just want to be very clear that  
24 to what the Bar Order does. All right? I understand you  
13:15:27 25 can sue that --

1 MR. BERKSON: The Bar Order prevents anyone,  
2 other than the United States, from suing the Directors and  
3 Officers and attempting to gather personal assets. They can  
4 only be sued and damages received from proceeds from the  
13:15:42 5 tiers of insurance. But the one thing getting lost in all  
6 this, the other thing the settlement does is allow for the  
7 payment of all of these health care claims from the proceeds  
8 to receiving which was negotiated heavily with the  
9 Department of Labor, which is why I'm a little shocked that  
13:15:56 10 Mr. Kresse seems to be raising tremendous objections to a  
11 result that we got, much at the request of the United States  
12 Government.

13 A VOICE: Which, by the way, if this was in  
14 Bankruptcy Court, it would not be paid. It would be second.

13:16:12 15 MR. KRESSE: Okay.

16 I'm simply pointing out we object -- we responded to  
17 the Receiver's position on preemption and assignment claims.  
18 And even though we didn't talk about it in great detail  
19 already, the Receiver's position on preemption, the  
13:16:29 20 Receiver's position on assignment of the student claim is  
21 incorrect. Okay? I don't think anybody is disputing that  
22 anymore. But that's the reason that we did that. But, as  
23 far as -- I want clarification, talking about what the Bar  
24 Order does. I want to be very clear. So I appreciate the  
13:16:48 25 clarification.

1 THE COURT: All right.

2 And what's been made clear, I've forgotten and it's  
3 absolutely correct. The biggest potential to Plaintiff is  
4 if the United States Department of Education represented by  
13:17:03 5 the Department of Justice on behalf of all the students and  
6 the United States Government wants to go after these  
7 Officers and Directors personally at any time within the  
8 Statute of Limitations, they're free to do it. And it's a  
9 \$100 million claim and a 100 million reasons to do it.

13:17:22 10 And so any time the U.S. Government wants to go after  
11 them, they can. And it seems to me, given that, I can't see  
12 why, why we shouldn't get \$10 million into the recovery pot  
13 immediately. Okay? There still is the ability for the U.S.  
14 Government to go after the Officers and Directors. They're  
13:17:50 15 still on the hook but within the Statute of Limitations.  
16 We're up to \$100 million.

17 MR. ROTHSCHILD: Your Honor, our clients would  
18 not be able to --

19 THE COURT: Fine your clients -- your clients  
13:18:01 20 can share in the \$8 million and you can -- you can go after  
21 the \$60 million. I mean the -- you'll be -- you can be  
22 designated as co-counsel and you can proceed with your case.

23 MR. ROTHSCHILD: Your Honor, if I --

24 THE COURT: At the moment, the alternative if  
13:18:18 25 this doesn't go through, Mr. Rothschild, I'll just end the

1 Receivership, I'll put all this into bankruptcy, and your  
2 case is dead.

3 MR. ROTHSCHILD: I don't believe -- your  
4 Honor, I don't think our case would be dead. I don't -- we  
13:18:29 5 cited bankruptcy cases about Bar Orders.

6 THE COURT: No, it won't be a Bar Order.  
7 There will be no Bar Order. There will be an automatic stay  
8 of all litigation against all of these people and entities.

9 MR. ROTHSCHILD: Your Honor, it would be  
13:18:41 10 against the debtor entities, just like there was an  
11 automatic stay against the nondebtor Dream Center Foundation  
12 of the Directors and Officers.

13 I mean we obviously have to see what the Bankruptcy  
14 Court does but we'd be in the same position that we would  
13:18:55 15 had the case stayed against the debtor entities and not  
16 against the nondebtor entities. Our case -- we don't  
17 need -- this Bar Order simply is not supported by any  
18 authority, and it would be just a massive incursion into  
19 Judge Normal's courthouse and to our claims. It just --

13:19:14 20 MR. MARGULIES: Your Honor, may I be heard?  
21 This is Craig Margulies on behalf of the Dream Center  
22 Foundation.

23 It's been a lot of talk about the Bar Order and the  
24 extension of Bar Order. And I want to be absolutely clear  
13:19:26 25 that -- first of all, I do believe this Court has authority

1 to enter the Bar Order and that's in the various briefs.

2 And secondly, the Bar Order was a negotiated  
3 precondition to ending the Dunagan litigation and allowing  
4 them to assert claims in this Receivership estate, in the  
13:19:45 5 Litigation Trust, or wherever the Receiver's process goes.

6 But the communication that parties can still sue the  
7 Dream Center Foundation or its related affiliates or  
8 entities who have property rights that they have given up to  
9 allow this settlement to take place, property rights in the  
13:20:06 10 insurance proceeds to the tune of millions of dollars to  
11 one, defend the litigation if it goes forward, which it  
12 won't with this Bar Order by any party, or two, to pay any  
13 settlement that would be reached down the road, which there  
14 won't be because there's a settlement now. That's what this  
13:20:24 15 settlement is.

16 So to say that there can be litigation down the road  
17 by a party against the Dream Center or Dream Center-related  
18 parties who are giving up their rights in the insurance  
19 policies to the tune of millions of dollars, so that this  
13:20:41 20 settlement can be approved, having already paid \$500 million  
21 to make the policy an asset of this estate that can be kept,  
22 there's been consideration for this settlement. And I want  
23 to be clear that if this Bar Order is not what has been  
24 proposed in the pleadings but is now somehow being changed  
13:21:02 25 by some agreement that's being stated on the record, the



1 Dream Center Foundation withdraws its consent.

2 COUNSEL: Judge --

3 MR. MARGULIES: I don't know what the  
4 settlement was trying to be proposed by the Receiver and  
13:21:18 5 maybe that's for another day. But, the Dream Center  
6 Foundation's position is that this Bar Order was negotiated  
7 as part of the settlement and these millions of dollars are  
8 coming into this estate because of the Bar Order to prevent  
9 further litigation.

13:21:35 10 If there's litigation in the Litigation Trust to  
11 resolve claims, that's obviously -- but not contingent to  
12 pursue litigation for those giving up their property rights  
13 in the insurance proceeds.

14 MR. GLICKMAN: Judge, this is Rob. This is  
15 Rob Glickman again.

16 To be clear, I'm not suggesting any change to the Bar  
17 Order. What I'm suggesting to Mr. Rothschild, if what he's  
18 saying is accurate and he's not in a race to the proceeds,  
19 would be an accommodation in the litigation process. And  
13:22:06 20 Mr. Rothschild, I want to be clear, even though the Judge  
21 used the term co-counsel, that's not my suggested  
22 accommodation.

23 You would be counsel prosecuting your claims as you've  
24 asserted them on behalf of your clients. There would be  
13:22:21 25 other counsel prosecuting their claims for others in the

1 Receivership estate owed money. But you would not have to  
2 be co-counsel with one of us making different strategic  
3 decisions, et cetera.

4 MR. ROTHSCHILD: If what Mr. Glickman is  
13:22:40 5 saying is the Bar Order does not affect us from prosecuting  
6 our claims against the Dream Center Foundation and Directors  
7 and Officers, we're all for it.

8 MR. GLICKMAN: It does mean that but it means  
9 for advantage purposes, you can only recover from the  
13:22:56 10 insurance proceeds.

11 MR. ROTHSCHILD: I don't know why there would  
12 be any basis for that limitation.

13 MR. BERKSON: It's the only --

14 THE COURT: No. That's the only way to get  
13:23:07 15 any money. Okay?

16 MR. ROTHSCHILD: Your Honor, I don't think a  
17 record's being created by either party, but I can tell you  
18 some of the Directors and Officers are people of  
19 considerable means. So I don't want to -- I don't want to  
13:23:18 20 rule -- I'm not -- insurance proceeds can pay claims, that's  
21 great. But, there should be no limitation of that, of that  
22 nature.

23 And there have been -- I just want to underscore for  
24 the record --

13:23:29 25 THE COURT: The federal government thinks

1 there are -- there's additional assets with those individual  
2 Officers and Directors above and beyond the insurance  
3 proceeds, they should -- they should act accordingly but  
4 they're free to do it.

13:23:47 5 MR. ROTHSCHILD: And we should be free to do  
6 it.

7 THE COURT: All right. Look. I -- no one's  
8 giving this Court any good choices. Okay. I'll --

9 MR. ROTHSCHILD: Your Honor, I just --

13:23:58 10 THE COURT: We'll do the best we can and no  
11 one's going to be happy. We've got no good choices. The  
12 simple thing is to dump it all into Bankruptcy Court and the  
13 Bankruptcy Judge can do whatever the heck he or she wants  
14 and everything will be -- no one will get paid a penny.  
13:24:15 15 That's fine. I'm -- I may go that route. If all this is  
16 going to do is appeal my Bar Order to the Sixth Circuit,  
17 that accomplishes nothing. So we'll just end it all. We've  
18 done whatever we can and someone else can deal with this  
19 mess.

13:24:35 20 MR. BERKSON: Your Honor, this is Hubert  
21 Berkson.

22 If we go -- if you order this into bankruptcy, that  
23 does wipe out the health care claims.

24 THE COURT: Fine.

13:24:44 25 At this point, if everything's wiped out, you know, so

1 be it. I mean I -- to just have this go up to the Court of  
2 Appeals, why bother? Why bother? It's better to just end  
3 it all.

4 MR. GLICKMAN: Judge, if I could. It isn't  
13:25:05 5 better for the people affected, especially the health care  
6 claimants.

7 THE COURT: Mr. Glickman, if this is on  
8 appeal, no one's going to get a penny and I'm not certain --

9 MS. WHITMER: Your Honor, I don't think --

10 THE COURT: I don't think anyone has made it  
11 clear to me for me to extinguish the personal liability of  
12 these Officers and Directors.

13 MS. WHITMER: If I may.

14 THE COURT: From anyone but the United States.

13:25:37 15 MS. WHITMER: Your Honor, if I may. I --

16 THE COURT: It's a lawsuit. If the United  
17 States brings the lawsuit, then I'm fine because then  
18 everyone doesn't have to sue the Officers and Directors  
19 individually. If someone's doing it, that's fine. The U.S.  
13:25:53 20 Government's going to do it, that's fine.

21 Does the U.S. Government plan to bring a -- try to  
22 recover this \$100 million against the Officers and  
23 Directors, and/or their insurance proceeds?

24 There's been no lawsuit filed but I'd like to know  
13:26:12 25 this. If I'm going to create a litigating trust, I want to

1 know if the Government's going to be litigating.

2 MR. KRESSE: Your Honor, I can't say at this  
3 point. We don't have this -- we haven't filed suit. I  
4 don't have authority to say anything about that. But I  
13:26:28 5 don't think our lawsuit against -- if there was a federal  
6 government lawsuit against Directors and Officers, it's not  
7 the same as claims that are directly against the  
8 Receivership entities, the schools that have essentially  
9 statutory liability for the discharge loans.

13:26:52 10 So the entities that are in the Receivership are  
11 directly lockable. So that -- that's why we have this issue  
12 with the \$100 million plus of federal claims against the  
13 secured lenders, \$100 million.

14 THE COURT: What do you think I -- the Court  
13:27:16 15 should do here, Mr. Kresse? Should I just say we're done  
16 with this, it goes to Bankruptcy Court, and they can do  
17 whatever they want, or should I issue the Bar Order? Those  
18 seem to be the only two -- and create a litigating trust  
19 and, you know, individual lawyers like Mr. Rothschild, if  
13:27:36 20 they want to proceed on a contingency basis, they can. Of  
21 course, the U.S. Government can always do whatever they  
22 want.

23 And so I got those two choices. What would you  
24 recommend?

13:27:53 25 MR. KRESSE: Well, your Honor, I'm not

1 authorized to say what I would recommend for the Bar Order  
2 but obviously, we want our health care. We want the health  
3 care claims paid, first of all. That's obviously very  
4 important, and we negotiated for that.

13:28:07 5 The students are not going to -- they stated their  
6 position, and they have compelling reasons to, you know, as  
7 we've been discussing, to not be subject to the Bar Order as  
8 far as Directors and Officers are concerned, and their  
9 claims obviously have not been resolved.

13:28:31 10 THE COURT: Well, they should be carved out in  
11 the Bar Order. Okay? There's a Bar Order or there's not,  
12 and the Bar Order doesn't apply to the United States, but it  
13 applies to litigants. They can't sue the Directors and  
14 Officers personally, they can go after the insurance  
13:28:48 15 proceeds. So I've got a choice.

16 The only way to pay the health care claim is to do  
17 this. It goes into bankruptcy, those health care claims are  
18 lost forever. Not a penny. All right?

19 MR. KRESSE: I guess I don't understand why  
13:29:03 20 they wouldn't be paid if they're still the insurance  
21 proceeds.

22 MAGISTRATE PARKER: You can't give the  
23 proceeds unless -- IT seems to me, if I may, your Honor,  
24 what Mr. Kresse has just said, the negotiations that took  
13:29:18 25 place between the United States and the Receiver

1 specifically contemplated a Bar Order of the form we've been  
2 discussing to be issued.

3 THE COURT: Absolutely.

4 MAGISTRATE PARKER: The only way that health  
13:29:28 5 care claims could be paid would be if such an order were  
6 issued. So it seems to the Court that there was a specific  
7 contemplation of the Government.

8 Now Bar Orders, by definition, bar things. And they  
9 don't seem fair to the people who are barred, but in a  
13:29:46 10 Receivership, the Court is charged with the obligation of  
11 overseeing the marshalling of the assets of the Receivership  
12 entities. Some of the assets include the proceeds from  
13 these insurance policies that we've been talking about.

14 So in such a circumstance, the Court has to make  
15 choices. And, Mr. Rothschild, with all due respect, you've  
16 indicated that there is no precedent for this, but I venture  
17 to say there have been any number of Receivership cases over  
18 the years in which Courts of Appeals have approved various  
19 actions taken by the Court as a court of equity, which this  
13:30:01 20 is.

21 And you're not going to find one exactly like this,  
22 but that doesn't mean that the Court cannot, in its exercise  
23 of its discretion, take steps to protect the assets of the  
24 Receivership.

13:30:32 25 MR. ROTHSCHILD: Your Honor, the Court that

1 had issued the Bar Order recognized equitable authority, had  
2 been clear there are limits on their authority to do that,  
3 and they set out the specific requirements for that to  
4 occur, substantially identical claims being one of them.

13:30:51 5 That is --

6 THE COURT: You've got -- we've covered that.  
7 We have substantially identical claims.

8 MR. ROTHSCHILD: Your Honor, there's no  
9 evidence that -- first of all, the whole substantially  
13:31:01 10 identical claims is based on this idea of assignments that  
11 now is gone.

12 THE COURT: No. What I articulated at the  
13 beginning, Mr. Rothschild, all of the claims of the  
14 claimants, federal claimants, private claimants, health care  
13:31:14 15 claimants, they're all based on alleged fraud by the  
16 Directors and Officers of misrepresenting their product.

17 MR. ROTHSCHILD: Your Honor, that short  
18 description, summary of their claims is not what the courts  
19 that have made these findings have relied upon. They had  
13:31:32 20 actual lawsuits or draft complaints with causes of actions  
21 spelled out. The standing could be determined. The  
22 misconduct described the way that non -- students were  
23 injured but the Receivership entities were injured. What  
24 has been put forth in the declaration is not sufficient  
13:31:52 25 and --



1 THE COURT: Mr. Rothschild, I've lived with  
2 this case for two and a half years. I'm very familiar with  
3 all of the allegations. All right? Everyone has alleged  
4 fraud. Okay? Very strong allegations. There is  
5 substantial evidence of fraud and misrepresentation. All  
6 right, misrepresentation to students, misrepresentation to  
7 the federal government, misrepresentation to banks,  
8 misrepresentation to secured lenders. The whole thing  
9 collapsed. It was a debacle. All right?

10 So the -- I made those findings. So the question is  
11 what -- I mean there's no perfect choices here.

12 MR. ROTHSCHILD: Your Honor, the fraud  
13 committed against students which you just described,  
14 including about the accreditation, that is not de facto of  
15 fraud against the Receivership entity, the education  
16 holdings --

17 MS. WHITMER: If I could --

18 THE COURT: All right. All right. Look.  
19 I think Judge Parker summarized it well. The Courts  
20 that have dealt with this understand there are no perfect  
21 solutions and sometimes there are tradeoffs, and a Judge --  
22 a Receivership is sitting in equity, and I have to try and  
23 balance all the competing interests. All right?

24 So I've already determined all the claims here are  
25 alleging fraud, different aspects, different features, but

1 it's all fraud. And all the claimants need to be treated  
2 fairly. There's no way to get any money in without some  
3 sort of a Bar Order.

4 The only one who's been barred, the only bar is the  
13:33:27 5 limited bar of pursuing personal assets of Directors and  
6 Officers. In return, we're getting an immediate infusion of  
7 \$8 and a half million from the first tier of insurance. All  
8 right? The other is completely contingent on winning a  
9 claim, the existence of assets reached. All right?

13:33:48 10 This is -- this is certain. So that's -- that's a  
11 tradeoff but a very clear balance of proceeding with the  
12 settlement.

13 MR. ROTHSCHILD: Your Honor, we can't proceed  
14 with our lawsuit only up to the limits of the remaining  
13:34:01 15 insurance coverage.

16 THE COURT: Correct. I'm -- I've already  
17 worked that out, Mr. Rothschild, in this hearing. You will  
18 be able -- the Court intends to create a Litigation Trust.  
19 It's not going to be run by me. All right? I mean it's --  
13:34:18 20 it will be a Litigation Trust to pursue the remaining claims  
21 of Directors and Officers. And, Mr. Rothschild, you will be  
22 retained on a contingency basis to proceed with the claims  
23 of the four Dunagan Plaintiffs. And if you convince the  
24 Court in Illinois to create a class action, you'll be  
13:34:40 25 representing a class. If not, you still have the four

1 students.

2 The Government can proceed however it wishes. It's  
3 their creditors and receivers. These health care claims are  
4 very important. There are individuals who laid out money.  
13:35:00 5 They're getting billed. They're in an untenable situation.  
6 They don't have the money. It's a pressing need, and the  
7 only way to get those claims paid now is to approve this  
8 settlement. So that's a very compelling reason to do it.

9 And really the only thing the Dunagan claimants are  
13:35:26 10 losing is the ability to go after personal assets of  
11 Officers and Directors. While that is something, balanced  
12 against the potential \$60 million available in insurance,  
13 it's minimal when compared with all the other reasons to  
14 proceed with this settlement and the Bar Order.

13:35:53 15 MR. MARGULIES: Your Honor, this is Craig  
16 Margulies. Can I just clarify something he just said so  
17 that it's clear to me?

18 Did you say that the Dunagan parties, Plaintiffs are  
19 still free to pursue litigation in the Illinois Dunagan  
13:36:09 20 action or must they proceed solely against the Litigation  
21 Trust?

22 THE COURT: No.

23 MR. MARGULIES: My understanding is the  
24 latter, based on the Bar Order.

13:36:18 25 THE COURT: I assume the Litigation Trust

1 is -- I mean Mr. Rothschild is retained. I mean each case  
2 is where he's bringing it. He doesn't have to bring a new  
3 case. That would be sort of starting all over somewhere  
4 else. Why would anyone want to do that?

13:36:37

5 MR. MARGULIES: Your Honor, the Bar Order  
6 prevents pursuing the Dunagan claims, not just by the  
7 Dunagans but like a liquidating trust as well. If --

8 THE COURT: Mr. Glickman says that he's going  
9 to retain Mr. Dunagan just to do that, Mr. Margulies so --

13:36:54

10 MR. MARGULIES: I thought he said he was  
11 retaining to pursue other insurance proceeds but not to sue  
12 DCF or DCF-related entities who have given up their rights  
13 in the insurance policy.

13:37:09

14 MR. GLICKMAN: That's partially accurate and  
15 partially not. The Officers and Directors have agreed under  
16 our -- under this settlement agreement that they can be  
17 nominally sued. Damages cannot be awarded against them.  
18 They're not recovered from insurance proceeds.

13:37:27

19 My suggestion to Mr. Rothschild is an accommodation --  
20 because again, he says he doesn't want a race to the  
21 courthouse. Well, if the Dunagan litigation can in fact be  
22 barred, he'd be retained by the litigation trustee to  
23 proceed with claims against the Dunagan nominals, not many  
24 students, all four, and all similarly-situated Plaintiffs,  
13:37:46 25 and that other counsel would prosecute claims regarding the

1 other creditors.

2 So Mr. Rothschild wants to protect his people, but he  
3 claims he's not in a race to the proceeds, that those claims  
4 be brought in one litigation. And that's the accommodation  
13:38:02 5 that we are happy to discuss with Mr. Rothschild in the  
6 coming --

7 THE COURT: I'm not going to be deciding that  
8 because I'm not running the litigating trust and certainly  
9 not going to make a litigation decision. That's not for a  
13:38:14 10 Judge to do but counsel.

11 MR. MARGULIES: But on -- as somebody who --  
12 as somebody's who's been retained to prosecute those claims,  
13 I am saying for the record that IF that is the accommodation  
14 Mr. Rothschild would agree to on behalf of his clients, we  
13:38:30 15 would work with them.

16 MR. DOTTORE: I just want to make clear I made  
17 a fairly in depth investigation of these folks and their  
18 money with the Officers and Directors, outside of two, and  
19 it's not that much money. What I was going to do at one  
13:38:50 20 point, and I think I told the Court this, the ends wouldn't  
21 justify the means. The two people that I believe have money  
22 have money so tied up that to get to it would be so  
23 overwhelmingly costly because these are sophisticated people  
24 with sophisticated lawyers, I would never have been able to  
13:39:09 25 get to them. That's why this was the best way to go.

1 THE COURT: All right.

2 Well, I'm glad Mr. Dottore put that. That's a further  
3 reason why I think what is -- what is being evened up is  
4 substantially, overwhelmingly outweighed by the benefits of  
13:39:26 5 this settlement and Bar Order.

6 MS. WHITMER: Your Honor, Mary Whitmer.

7 I just wanted to request that we'd like to proffer the  
8 declaration as testimony, and we would like to move for  
9 admission of the exhibits as evidence.

13:39:48 10 THE COURT: What declaration is being  
11 proffered?

12 MR. GLICKMAN: The declaration as to moving  
13 papers and the accompanying --

14 THE COURT: It's all admitted. All right.

13:40:05 15 MR. ROTHSCHILD: Your Honor, so my  
16 understanding is -- I'm sorry. I didn't mean to interrupt  
17 you.

18 THE COURT: My intent is we will approve the  
19 settlement, enter the Bar Order, and direct the Receiver to  
13:40:21 20 begin the process of winding down the Receivership and  
21 creating the Litigating Trust, the Litigation Trust, the  
22 Litigating Trust, whatever, and to work with private  
23 counsel, Mr. Rothschild, and maybe others to effectuate what  
24 we resolved today so those claims can be pursued in the  
13:40:47 25 appropriate form without interruption.

1 MR. GLICKMAN: Taking those steps, your Honor,  
2 we're on our way and would love to talk to Mr. Rothschild.

3 THE COURT: All right. I'll ask Mr. Dottore  
4 and counsel to -- Mr. Glickman I think did the most  
13:41:02 5 speaking -- talk it Mr. Rothschild to facilitate that.

6 And again, all a court can do is balance a lot of  
7 competing interests in a situation like this and try to be  
8 as fair as possible to everyone. And I believe -- I believe  
9 this decision does that. Is it perfect? No. But I believe  
13:41:31 10 it strikes the right balance, and candidly, I think anyone  
11 in court would agree that strikes the right balance.

12 So we'll get the appropriate order out soon. And I  
13 appreciate everyone's hard work.

14 MR. ROTHSCHILD: Your Honor, thank you. I  
13:41:51 15 just want to clarify that the order will order -- modify the  
16 proposed Bar Order, and it will indicate that the claims can  
17 go forward against the policy coverage.

18 MS. WHITMER: No.

19 THE COURT: Look --

13:42:06 20 COUNSEL: That is not the case.

21 MR. ROTHSCHILD: Sorry. I'm not trying --

22 THE COURT: The Bar Order never precluded  
23 claims against -- the Bar Order, Mr. Rothschild, never  
24 precluded claims against the Officers and Directors. It  
13:42:24 25 only precluded any recovery against their personal assets.

1 MR. ROTHSCHILD: Specifically -- the Bar Order  
2 specifically prevents the Dunagan claims from proceeding in  
3 Illinois. That's what I need to clarify, your Honor, that  
4 that is correct.

13:42:45 5 MS. WHITMER: That is correct.

6 MR. ROTHSCHILD: So we're back to where we  
7 were before.

8 MAGISTRATE PARKER: That is the Court's  
9 understanding. The Bar Order says what it says. Mr.  
13:42:57 10 Rothschild, I think you've made your point in your briefs  
11 and your presentation here today. We're getting to the  
12 point where we are now restating.

13 THE COURT: You'll be able to proceed with  
14 those claims in the appropriate forum. All right? And  
13:43:11 15 we'll get that litigation up and going. And so you can  
16 discuss with Mr. Glickman the appropriate forum to bring  
17 those claims.

18 MR. GLICKMAN: Thank you, Judge.

19 MR. ROTHSCHILD: My understanding is we have  
13:43:23 20 claims against Directors and Officers and the Foundation.  
21 That's how I'm understanding what's being ordered today.

22 MAGISTRATE PARKER: The Bar Order says what it  
23 says, Mr. Rothschild.

24 THE COURT: It says what it says. I'm not  
13:43:34 25 going to interpret or construe it.



1 MR. ROTHSCHILD: I can just add as written, it  
2 certainly will have to appeal it because it does bar -- it's  
3 different than what's being said here. It bars our claims,  
4 and we would have to appeal that. And I think Mr. Margulies  
13:43:48 5 thinks the same thing, that our claims in Illinois would be  
6 barred against any form of recovery.

7 I didn't think that was the Court's intention but if  
8 it is --

9 MR. GLICKMAN: It's not what the Court said  
13:44:01 10 and it's not what the Bar Order said. And you can say it  
11 again and again and again.

12 THE COURT: Right. You can't appeal -- I mean  
13 the Bar Order says what it says. And he -- he told you that  
14 you are going to be able to have the appropriate forum to  
13:44:17 15 represent your clients and proceed with their claims. The  
16 only limitation is going to be that you cannot go after  
17 personal assets of the Directors and Officers should you  
18 prevail.

19 MAGISTRATE PARKER: Just to be clear, the  
13:44:35 20 appropriate forum, your Honor, does not include the current  
21 lawsuit in Illinois. That is not the appropriate forum.

22 THE COURT: Right. There will be a -- there  
23 will be an appropriate forum in this -- in this country.  
24 All right?

13:44:50 25 MR. GLICKMAN: Judge, the appropriate forum,

1 frankly, from Mr. Rothschild's perspective and from a state  
2 law perspective on cases against Directors and Officers is a  
3 far more friendly forum if, again, Mr. Rothschild only  
4 intends to race us to the policy proceeds.

13:45:07

5 THE COURT: All right.

6 Well, thank you everyone. We are adjourned.

7 COUNSEL: Thank you, Judge.

8 (Proceedings adjourned at 1:45 p.m.)

9 C E R T I F I C A T E

10 I certify that the foregoing is a correct  
11 transcript from the record of proceedings in the  
12 above-entitled matter.

13  
14  
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