

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re	:	Chapter 11
ALDRICH PUMP LLC, <i>et al.</i> ,	:	No. 20-30608 (JCW)
Debtors,	:	(Jointly Administered)
ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	
Plaintiffs,	:	Adversary Proceeding
v.	:	No. 20-03041 (JCW)
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000.	:	
Defendants.	:	

**THE DEBTORS' OBJECTION TO OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS' MOTION TO COMPEL**

Plaintiffs Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), debtors in these chapter 11 cases (collectively, the "Debtors")¹, object to the *Motion of the Official Committee of Asbestos Personal Injury Claimants to Compel the Debtors and Non-Debtor Affiliates to (i) Provide Testimony Regarding Certain Matters and (ii) Produce Certain Withheld Documents* [Adv. Dkt. 141] (the "Motion to Compel").

PRELIMINARY STATEMENT

The Official Committee of Asbestos Personal Injury Claimants (the "Committee") sought extensive discovery in this adversary proceeding. It targeted not just the extent and historical

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.



management of the asbestos liabilities that the Debtors seek to address and resolve in their chapter 11 cases, but the Debtors' decisions to make their chapter 11 filings and the planning and implementation of the corporate restructurings that preceded those decisions. The Debtors and Non-Debtor Affiliates² have responded completely and transparently, producing many thousands of documents and making available for deposition officers, board members, corporate designees, and still others, all on a compressed time table and at no small expense.

This effort has produced evidence of nothing more than what the Debtors set forth in their first day pleadings: Following corporate restructurings to facilitate flexibility to consider the option, the Boards of Managers of these two Debtors determined that the most practicable way to resolve their asbestos liabilities fully, finally, and globally was through reorganization under Section 524(g) of the Bankruptcy Code and the establishment and funding of trusts from which all legitimate claimants can seek and receive appropriate compensation.

The Committee, unsatisfied with this record as it developed, opted to deploy discovery in search of a dispute. The Committee serially challenged more-than-credible privilege assessments made during production, questioned every claw-back of an inadvertently produced privileged document, and directed deposition inquiry to matters that were unquestionably privileged. The Committee now expresses consternation, moves to compel, and argues that the Debtors have impeded the Committee's legitimate discovery efforts. But all of the Committee's legitimate discovery efforts have been accommodated (and then some). What the Committee seeks is this Court's aid in the Committee's tactical effort to invade the privilege. The Court should decline the request and deny the Committee's Motion to Compel.

² For purposes of this Objection, the "Non-Debtor Affiliates" consist of Trane Technologies Company LLC and Trane U.S. Inc.

The Committee, in the main, seeks to compel the production of an unredacted copy of a May 15, 2020 PowerPoint presentation (the "May 15 PowerPoint") drafted and delivered by counsel to the Boards of Managers of the Debtors (during meetings held before their decisions to authorize the filings of these cases)³ and additional testimony from two of the Debtors' Board members, Manlio Valdes and Robert Zafari.⁴ The vast majority of the May 15 PowerPoint is unredacted. These unredacted slides address various aspects of the Debtors' asbestos liability and the management of it—a topic on which the Debtors also provided page after page of unimpeded deposition testimony.

The redactions in the presentation that the Committee now seeks to remove concern only privileged content and advice prepared and given by counsel; the testimony the Committee seeks would reveal privileged communications between Board members and counsel about that privileged content and other privileged matters. The Debtors' effort to produce all material that is non-privileged is evident. The Committee's effort to invade privilege is equally clear. It should not be countenanced.

The Committee's effort to probe that which is privileged goes further. It extends beyond pre-petition matters to deposition preparation efforts in this adversary proceeding. That is, the Committee seeks disclosure of the selection of documents made by Debtors' counsel in their efforts to ready Debtors' Board members and officers to testify in deposition. The attorney work

³ The Debtors will make an unredacted copy of the May 15, 2020 PowerPoint presentation available to the Court for in-camera review upon request.

⁴ While the Committee complains generally about instructions not to answer questions that occurred at other depositions about advice and attorney mental impressions shared during Debtors' Board meetings, the Committee offers no reason why the instructions at those depositions were improper or why those deponents should be compelled to sit for additional depositions. See Mot. to Compel at 6, n.7. The Motion to Compel also referenced an Asbestos Tender Agreement entered into as part of an unrelated Reverse Morris Trust transaction involving the sale of Trane Technologies, plc's industrial businesses in early 2020. See Mot. to Compel at 18, n.14. The Non-Debtor Affiliates produced the Asbestos Tender Agreement on April 1, 2021.

product protection for this selection is patent; the Committee's continued effort to pierce this recognized protection is just as plainly impermissible.

The Committee's Motion to Compel should be denied in its entirety.

BACKGROUND

The Committee has undertaken in this adversary proceeding to probe the genesis of two corporate restructurings and the decisions of two Boards to file these two chapter 11 cases. These are matters that obviously involve lawyers and legal advice and no small number of the former or measure of the latter. The Committee cannot claim surprise that much of what it seeks to examine involves counsel, their communications and work product, and, therefore, privilege. This said, the Debtors have not asserted privilege protection for information "simply because it [was] funneled through a lawyer or because a lawyer was copied on a communication," as the Committee charges. Mot. to Compel at 2. In fact, the Debtors and Non-Debtor Affiliates have provided an enormous amount of information to the Committee, including producing more than 90,000 pages of documents, and with producing witnesses to sit for a total of 19 depositions.

The Debtors and Non-Debtor Affiliates have produced hundreds of documents in which lawyers are either senders or recipients. The Debtors and Non-Debtor Affiliates presented four in-house lawyers involved in these matters for deposition, only limitedly asserting privilege objections: Allan Tananbaum, the Debtors' Chief Legal Officer (who was deposed twice); Robb Sands, an in-house attorney seconded to the Debtors; Evan Turtz, the General Counsel of the Non-Debtor Affiliates; and Sara Walden-Brown, another in-house attorney for the Non-Debtor Affiliates.

The Debtors have not attempted to fend off disclosure by funneling anything through lawyers or anyone else. The Debtors have sought to protect only that which is privileged.

The Board meetings about which these lawyers and the Board members gave testimony unquestionably included topics on which the elicitation and provision of legal advice was appropriate and, indeed, occurred. Advice came both from certain of the in-house lawyers mentioned above and from outside counsel. The Board minutes themselves reflect the topics of advice provided:

- [REDACTED] See DEBTORS_00050787, May 15, 2020 Debtors' Joint Meeting Minutes, attached as Ex. B, at 789.
- [REDACTED] Id.
- [REDACTED] Id. at 790.
- [REDACTED] See DEBTORS_00050796, May 29, 2020 Debtors' Joint Meeting Minutes, attached as Ex. D, at 798.
- [REDACTED] See DEBTORS_00050802, June 5, 2020 Debtors' Joint Meeting Minutes, attached as Ex. E, at 805.

But, as noted, the Debtors did not withhold production of these minutes; they did not seek to avoid or to impede testimony about these meetings. They merely withheld or redacted (and then logged) privileged information, and, likewise cautioned or instructed witnesses not to reveal privileged communications. The above-referenced in-house lawyers testified at length. So did all of the Board members. The Debtors have provided and the Committee has learned the facts. What the Committee seeks now are privileged communications or attorney work product to which it is not entitled.

The Committee, as noted, focuses much of its argument on a May 15, 2020 PowerPoint presentation delivered to the Debtors' Boards [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See id.; see also Ex. B, DEBTORS_00050787, May 15, 2020 Debtors' Joint Meeting Minutes. [REDACTED]

[REDACTED]

[REDACTED]

See id. at 789. The authors and topics are noteworthy for the likely inclusion of privileged content, and the Debtors produced a copy of the May 15 PowerPoint, limitedly redacted for privilege, in October 2020. See October 2020 Production Correspondence, attached as Ex. G; Ex. F, May 15 Powerpoint. The Committee waited some five months before moving to compel its production in unredacted form.

And to be clear, the Debtors did not in the interim foreclose the Committee from inquiring about the non-privileged portions of the May 15 PowerPoint. Each of the Debtors' Board members testified at length regarding the content of the May 15 PowerPoint. See Deposition of Robert Zafari March 2, 2021, excerpts attached as Ex. H at 78-99; Deposition of

Marc DuFour, March 3, 2021, excerpts attached as Ex. I at 97-116; Deposition of Amy Roeder, March 16, 2021, excerpts attached as Ex. J at 138-41; Deposition of Manlio Valdes, March 1, 2021, excerpts attached as Ex. K at 232-36. Likewise, Mr. Tananbaum and Ray Pittard, the Debtors' Chief Restructuring Officer, also testified concerning the presentation. Deposition of Ray Pittard, March 17, 2021, excerpts attached as Ex. M at 261-77; Deposition of Allan Tananbaum, March 22, 2021, excerpts attached as Ex. L at 282-87.

Nor did the Debtors otherwise impair or impede the Committee from examining Board members regarding other topics of interest to the Committee. All of the Board members testified on the strategic options they considered for addressing asbestos liability. Ex. K, Valdes Dep. at 167-69; Ex. H, Zafari Dep. at 103-04, 114; Ex. I, Dufour Dep. at 124-28; Ex. J, Roeder Dep. at 139-40. Messrs. Pittard and Tananbaum testified regarding the strategic options and implications of a Section 524(g) bankruptcy. Ex. M, Pittard Dep. at 95-96; Ex. L, Tananbaum Dep. at 268-88.

On these and other matters, the Debtors' redactions of documents for privilege and their objections regarding the same at depositions were limited. There is just one privilege redaction to the minutes for the nine Board meetings from May to mid-June 2020. Ex. C, DEBTORS_00050791, May 22, 2020 Debtors' Joint Meeting Minutes. The Debtors produced all three of the presentations made to their Boards before the decisions to file for bankruptcy, among them, the May 15 PowerPoint. Ex. F, May 15 PowerPoint; see also DEBTORS_00051657, May 29 PowerPoint; DEBTORS_00051663, June 12 Communications Update.

In depositions, counsel for the Debtors objected or cautioned witnesses regarding privilege only when questions implicated privilege and, offering explanations for the objections

lodged. Counsel for the Debtors often instructed the witnesses to answer as much of the questions as they could without revealing legal advice or attorney work product.⁵

Some of the Committee's questions, particularly those posed at the depositions of Board members Robert Zafari and Manlio Valdes, were framed to elicit privileged information and necessarily drew objections and instructions not to answer. Committee counsel, referring to Board minutes that described a "robust discussion of the benefits and challenges associated with the use of 524(g) bankruptcy," a discussion led by and involving counsel for the Debtors, asked Mr. Valdes: "What was the substance of the robust discussion of the benefits...?" See Ex. K, Valdes Dep. at 256. Debtors' counsel objected and properly instructed Mr. Valdes not to reveal the "substance" of his discussions with counsel. Id.

Counsel for the Committee asked Mr. Zafari questions about a different presentation made at the May 15, 2020 Board meeting—this one given by Debtors' outside counsel, Brad Erens of Jones Day, concerning the "experience of companies that recently made Chapter 11

⁵ See e.g. Ex. I, Dufour Dep. at 68-69 (MR. GOLDMAN: "So what is your memory of what – of the subjects that were discussed at this meeting?" MR. HIRST: "Let me interject an objection and caution. Objection on the basis of attorney-client privilege. I will caution Mr. Dufour not to reveal any specific communications provided by counsel or specific questions that you have asked counsel in the way of receiving legal advice. You can answer at a high level your understanding, I believe, is Mr. Goldman's question, as long as you don't reveal any of those communications.").

Ex. K, Valdes Dep. at 249-50 ("MR. GOLDMAN: And what were your questions?" MR. HAMILTON: "Object. And to the extent that your questions were questions to the lawyers for legal advice, I'm going to instruct you not to disclose those questions in the answer to the pending question by Mr. Goldman. If you had questions that were not for legal advice, but to others, like Mr. Pittard, you can go ahead and answer.").

Ex. L, Tananbaum Dep. at 273-74 (MR. PHILLIPS: "What were those post restructuring activities you were reviewing [at the Debtors' board meeting]?" MR. HIRST: "Let me interject an objection. I want to ensure, Mr. Tananbaum, you don't reveal any legal advice that was provided to the board on that. But if you can answer that and answer as to the facts presented to the board, you can do so.").

Ex. J, Roeder Dep. at 77 (MR. LIESEMER: "As you sit here today as CFO of Aldrich and Murray, do you know how close Aldrich and Murray are to having a plan of reorganization." MR. HIRST: "I'll object – let me also object and caution to the extent this answer implicates legal advice you've received from counsel, I'll instruct you not to answer on that part, but you can certainly answer your overall understanding if you have one.").

Ex. M, Pittard Dep. at 41-42 (MR. GOLDMAN: "And what was the idea that was brought to you, to the best you remember it." MR. JONES: "I'm going to object, and caution the witness not to share communications with counsel other than the topic if you – or the advice – or elicitation of advice. So if you can briefly state the topic of the idea more than you already have, Mr. Pittard, that's fine. But I caution you not to share communications with counsel.").

filings in an effort to finally resolve their current and future asbestos claims utilizing Section 524(g) of the bankruptcy code." See Ex. H, Zafari Dep. at 102. Among counsel's questions to Mr. Zafari were:

- "What did [Mr. Erens] say about that?"
- "What did Mr. Erens say about the Georgia Pacific, LLC restructuring?"
- "How about the DBMP restructuring?"

See id. at 102-03. All of these questions were necessarily, and perhaps intentionally, designed to elicit privileged communications with Debtors' counsel. Objections and instructions not to answer these questions were more than warranted.

So were those few instructions directed to protecting the selection of documents counsel for the Debtors assembled to assist Debtors' witnesses in preparing to testify.⁶ That selection is core attorney work product, the protection for which is recognized in scores of cases and, therefore, is not a matter over which this Court's docket should have been burdened.

ARGUMENT

The Supreme Court, in Upjohn, "expressly recognized that the attorney-client privilege enjoys a special position as 'the oldest of the privileges for confidential communications known to the common law' and that the privilege serves a salutary and important purpose: to encourage 'full and frank communication between attorneys and their clients and thereby promote public interest in the observance of law and administration of justice.'" In re Allen, 106 F.3d 582, 600 (4th Cir. 1997) (quoting Upjohn Co. v. United States, 449 U.S. 383, 389 (1981)). "[I]f the purpose of the attorney-client privilege is to be served, the attorney and client must be able to

⁶ See, e.g., Ex. L, Tananbaum Dep. at 23-24 (MR. PHILLIPS: "What documents did you flip through [to prepare for deposition]?" MR. HIRST: "Let me just object real quickly, and Allan, you'll be able to answer this question. Any documents you reviewed in preparation please identify for Mr. Phillips. Things that we preselected for you and only discussed during our meetings based on our selection I would object based on privilege. But I think you can answer the question based on the way it was put and the way you testified earlier.")

predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all." Upjohn, 449 U.S. at 393.

"The importance of the attorney client and work product privileges cannot be understated." Ferry v. BJ's Wholesale Club, No. 3:06 CV 226-C, 2007 WL 75375, at *3 (W.D.N.C. Jan. 8, 2007). A party seeking to overcome the attorney-client privilege bears the burden of establishing an applicable exception. Peters v. Aetna, Inc., No. 1:15-cv-00109-MR, 2018 WL 3616923, at *4 (W.D.N.C. July 27, 2018). It is a "significant cornerstone of our justice system," and "hard cases should be resolved in favor of the privilege, not in favor of disclosure." Id. at *5 (citation omitted). If work product were regularly ordered to be produced to opposing counsel, "much of what is now put down in writing would remain unwritten" and "[i]nefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial." Hickman v. Taylor, 329 U.S. 495, 511 (1947).

The Committee has not met its burden to pierce privilege here. Its Motion to Compel should be denied.

I. LEGAL ADVICE PROVIDED TO THE DEBTORS' BOARDS OF MANAGERS IS NOT SUBJECT TO DISCOVERY.

The Motion to Compel, fairly read, seeks two things concerning the Debtors' board of managers meetings: (i) production of an unredacted copy of the May 15, 2020 PowerPoint provided to the Boards of the Debtors; and (ii) additional deposition testimony from two Aldrich Board members, Messrs. Valdes and Zafari, regarding that presentation and related matters. See Mot. to Compel at 3.⁷

⁷ The Committee's separate complaint in the Motion to Compel about instructions concerning documents selected by counsel and reviewed by witnesses in advance of their depositions are addressed in Section II, page 14 infra.

The Committee argues that it is entitled to this information because the Boards' consideration of their options to address asbestos liabilities and their decision to file for bankruptcy protection were "business" decisions and any advice provided by lawyers to the Debtors' Boards in aid of making those decisions somehow must only be non-legal advice about factual matters or "business strategies." Mot. to Compel at 2. In the alternative (and perhaps acknowledging the implausibility of this first proposition), the Committee argues that even if the advice provided by counsel were legal, that legal advice could only be "incidental" to the "primary business purpose of the meetings," and, therefore, is not entitled to protection. Id. at 2-3.

The Committee is wrong on both counts. The Board meetings in May and early June 2020, as noted at the outset, focused on how to resolve the Debtors' asbestos liabilities and the tens of thousands of lawsuits concerning those liabilities, including through the potential filing of bankruptcy proceedings.⁸ In addressing that resolution of those liabilities, lawsuits, and, ultimately, the decision to file, the Board understandably sought and received legal advice.

The minutes of the Board meetings reveal the topics on which the Board sought that legal advice; they identify the team of in-house and outside counsel who provided it. The decisions the Board faced and made may have involved what the Committee characterizes as business matters, but the advice conveyed was decidedly legal. "No reasonable interpretation of [the attorney's] communications with [the client] regarding the legal obligations involved in filing a

⁸ Ex. B. DEBTORS' 00050787, May 15, 2020 Debtors' Joint Meeting Minutes at 789 [REDACTED]; id. (Strategies the Debtors had historically taken to resolve those liabilities); id. at 790 [REDACTED]

Ex. D. DEBTORS' 00050796, May 29, 2020 Debtors' Joint Meeting Minutes at 798 [REDACTED]

Ex. E. DEBTORS' 00050802, June 5, 2020 Debtors' Joint Meeting Minutes at 805 [REDACTED]

bankruptcy petition would characterize them as anything other than legal advice." United States v. Bauer, 132 F.3d 504, 509 (9th Cir. 1997).

The Committee's complaints about privilege instructions to Board members Messrs. Valdes and Zafari are unwarranted. The fact that legal advice informed business decisions does not vitiate privilege protection for the legal advice. See e.g. Digital Vending Servs. Int'l, Inc. v. Univ. of Phoenix, Inc., No. 2:09-cv-555, 2013 WL 1560212, at *5 (E.D. Va. Apr. 12, 2013) ("Similar to communications between counsel and employees, communications between counsel and current members of a Board of Directors are generally protected."); see also Great Plains Mut. Ins. Co. v. Mut. Reinsurance Bureau, 150 F.R.D. 193, 198 (D. Kan. 1993) (collecting cases from multiple jurisdictions denying discovery of legal advice or information conveyed by a corporation's attorney to its Board of Directors). Protected, too, is legal advice shared and work product generated in connection with the earlier review of whether and how a corporate restructuring might provide advantageous options for addressing burdensome asbestos liabilities through a later bankruptcy filing or otherwise. See Motley v. Marathon Oil Co., 71 F.3d 1547, 1550-51 (10th Cir. 1995) (no abuse of discretion in concluding that memorandum and lists containing legal advice for corporate restructuring were privileged).⁹

The May 15, 2020 PowerPoint, prepared and presented by counsel, does not lose applicable privilege protection merely because the slides may have been used to aid the Board in making business decisions. In re Smith & Nephew Birmingham Hip Resurfacing Hip Implant Prods. Liab. Litig., No. 1:17-MD-2775, 2019 WL 2330863, at *2 (D. Md. May 31, 2019)

⁹ The Committee's cited authority has nothing to do with corporate restructurings or bankruptcy filings and is otherwise inapposite. See United States v. Cohn, 303 F. Supp. 2d 672, 684-85 (D. Md. 2003) (attorney review of telemarketing scripts not protected because attorney's advice related to sales and profit increases); SCM v. Xerox Corp., 70 F.R.D. 508, 517 (D. Conn. 1976) (review of license grants not privileged when decisions were not of the kind that called for consultation with counsel).

("Because the Briefing Document and the PowerPoint presentation appear to have been developed in conjunction with each other in order to provide legal advice to the board and in anticipation of pending litigation, both the attorney-client privilege and the work-product protection apply."); In re Sulfuric Acid Antitrust Litig., 235 F.R.D. 407, 426 (N.D. Ill. 2006) (finding PowerPoint presentation slide entitled "Business environment-legal considerations" privileged as attorney-client communication).

While the majority of the May 15 PowerPoint was produced, the following slides were redacted for the following reasons:

Slides 4-5, 21-24, and 26-28 were redacted because the redacted contents reveal counsel's mental impressions concerning litigation of asbestos claims and legal strategies concerning the resolution of those claims in the tort system.

Slides 32-35 were redacted because they reveal the Debtors' confidential, non-public future liability and insurance recovery projections, which were themselves a product of models based on legal advice and attorney work product.

See Ex. F.

Both sets of redactions were appropriate, and the Committee's demand that those redactions be removed should be denied. The Debtors limited their redactions to text that would reveal either legal advice or attorney mental impressions. Duplan Corp. v. Deering Milliken, Inc., 540 F.2d 1215, 1223 (4th Cir. 1976) (opinion work product contains the "mental impressions, opinions, and legal theories" of counsel). All of the redactions to Slides 4-5, 21-24, and 26-28 protect the legal advice and strategies of counsel concerning litigating and resolving asbestos cases in the tort system. In re Martin Marietta Corp., 856 F.2d 619, 626 (4th Cir. 1988) ("[T]he plain language of Fed. R. Civ. P. 26(b)(3) suggests especial protection for opinion work product."); Carolina Power & Light Co. v. 3M Co., 278 F.R.D. 156, 159 (E.D.N.C. 2011) ("The privilege with respect to opinion work-product is nearly absolute.").

The redactions on Slides 32-35 all protect information concerning the Debtors' future asbestos liability and insurance coverage projections. These projections were originally prepared by outside consultants (NERA in the case of liability projections, and Claro in the case of insurance projections), both of whom were retained by counsel. See April 2021 Declaration of Allan Tananbaum, attached as Ex. A ¶ 6. These consultants were retained to assist the Debtors' (and the Debtors' predecessors) in-house and outside counsel in providing legal advice concerning the management of asbestos liabilities, pursuit of related insurance recoveries, and any resulting legal implications for corporate reporting requirements (e.g., those required by the Securities and Exchange Commission's regulations) concerning those same liabilities. Id. ¶¶ 6-9. Assumptions and other inputs for the methodologies used by all three consultants to estimate future asbestos liability and insurance recoveries were derived, in part, with the assistance of the Debtors' in-house and outside counsel and based on the mental impressions of that counsel, which are integral to the projections. Id. ¶ 8.¹⁰ The slides were properly redacted to protect only that which is privileged, and the Committee nowhere troubles itself to suggest their relevance to any issue to be resolved at the hearing on the preliminary injunction.

The Committee suggests that the May 15 PowerPoint redactions "are not protected as attorney work product because there is no basis to assert that the redacted information was prepared in anticipation of litigation." See Mot. to Compel at 16. But the Debtors' Boards met on May 15 to determine how to address the Debtors' asbestos liabilities that were the product of tens of thousands of active lawsuits and those that would follow. Counsel prepared the redacted

¹⁰ The Debtors' position on privilege here with respect to the work of these outside consultants is consistent with the positions their predecessors previously advanced, and successfully litigated, with respect to the work of NERA and Ankura in litigation with their asbestos liability insurers in state court in New Jersey. See Ingersoll-Rand Company v. Affiliated FM Insurance Company, et al., case no. MID-L-252-12 (Superior Ct. of NJ, Middlesex Cty.) As the Debtors' disclosed to the Committee in this case, the New Jersey court's March 26, 2019 opinion on those privilege assertions remains under seal and cannot be disclosed absent agreement of the various insurance carriers that were litigants and/or permission of the New Jersey court in that case.

slides for the purpose of advising those boards on how to address those liabilities and lawsuits. There can be no question that they were prepared in anticipation of litigation—anticipated and actual. See In re Grand Jury Subpoena, 201 F. Supp. 3d 767, 772 (W.D.N.C. Aug. 16, 2016) ("[I]n determining whether a document has been prepared 'in anticipation of litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation. . . . The 'prospect of litigation' refers to whether the document's preparer 'faces an actual claim or a potential claim.'") (quoting Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co., Inc., 967 F.2d 980, 984 (4th Cir. 1992)).

The Committee also contends, in passing and without any support, that the "privilege protects primarily the client's communications *to the attorney*, testimony concerning statements made *by* the attorneys may be discoverable provided they do not reveal the substance of the *client's* communications." See Mot. to Compel at 3. The Committee is wrong. This Court has held that "[t]he privilege protects both the giving of legal advice to those who can act on it and the giving of information to the lawyer to enable him to give sound and informed advice." In re Wolbert, No. 09-30765, 2010 WL 8971772, *3 (Bankr. W.D.N.C. Feb. 17, 2010) (Whitley, J.) (internal citations omitted); see also Digital Vending Servs. Int'l, Inc. v. Univ. of Phoenix, Inc., No. 2:09-cv-555, 2013 WL 1560212, at *5 (E.D. Va. Apr. 12, 2013) (citing Fourth Circuit precedent noting that the attorney-client privilege can apply to the downward flow of legal advice from counsel to client).

The Debtors' Boards were called upon to address extensive liabilities and legal strategies to resolve them. They called upon counsel to advise them. That advice and the mental impressions of the lawyers (and their retained consultants) that provided it are protected from disclosure by privilege. The Committee has asked for much—essentially all documents related

to these filings, the restructurings that came before, and day after deposition-day of testimony on both topics—and the Debtors and Non-Debtor Affiliates have done all they practicably could to provide it.

What the Committee is not entitled to is the privileged advice shared with the Board or the protected work product of the counsel who shared it.

II. THE COMMITTEE MAY NOT INVADE WORK PRODUCT PROTECTION FOR AN ATTORNEY'S SELECTION OF DOCUMENTS BY ASKING QUESTIONS OF WITNESSES CALCULATED TO REVEAL IT.

The Committee cannot invade attorney work product by impermissibly asking deponents questions calculated to reveal it.

The Fourth Circuit has held that the "choice and arrangement [of interview notes and summaries] constitutes opinion work product because [counsel's] selection and compilation of these particular documents reveals her thought processes and theories regarding this litigation." In re Allen, 106 F.3d at 608. The same rule has been widely adopted by other circuits, and in Allen, the Fourth Circuit specifically cited Third and Eighth Circuit decisions holding the same. See id. (citing Sporck v. Peil, 759 F.2d 312, 316 (3d Cir. 1985) ("We believe that the selection and compilation of documents in this case in preparation for pretrial discovery falls within the highly-protected category of opinion work product."); Shelton v. Am. Motors Corp., 805 F.2d 1323, 1329 (8th Cir. 1986) ("In cases that involve reams of documents and extensive document discovery, the selection and compilation of documents is often more crucial than legal research. . . We believe [counsel's] selective review of [her clients'] numerous documents was based on her professional judgment of the issues and defenses involved in this case.")).

Courts throughout this circuit have acknowledged that attorney work product includes document selection. See In re Int'l Payment Grp., Inc., No ADV 10-80049-HB, 2011 WL 4738321, at *2 (Bankr. D.S.C. Oct. 6, 2011) (writing that opinion work product is "not limited to

those containing opinions or analysis only" and acknowledging that the choice and arrangement of documents constitutes opinion work product); Weintraub v. Mental Health Auth. of St. Mary's Inc., No. DKC 2008-2669, 2010 WL 347882, at *7 (D. Md. Jan. 22, 2010) ("[Movant] appears to claim that simply because the document was reviewed by Plaintiff in preparing for her deposition, it is discoverable. This is a gross oversimplification of the relevant considerations, however."); Proa v. NRT Mid-Atlantic, Inc., No. AMD-05-2157, 2008 WL 11363286, at *22 (D. Md. June 20, 2008) ("The Fourth Circuit has extended work product protection to documents culled from a larger group of documents.").¹¹

The one exception to the general prohibition is that set forth in Federal Rule of Evidence 612 for documents that a witness relies on to refresh his or her recollection. See Nutramax Lab'ys, Inc. v. Twin Lab'ys Inc., 183 F.R.D. 458, 467-68 (D. Md. 1998) (explaining elements that must be met before applying Rule 612 to documents reviewed by a witness prior to a deposition). The Committee fails to show any instance in which it laid the foundation that would allow it to rely on Rule 612. "The party who is seeking to invoke Rule 612 has the burden of showing that the documents at issue were actually used by a deponent to refresh his or her recollection while testifying or in preparation for testifying." Brown v. Tethys Bioscience, Inc., No. 3:11-MC-11, 2011 WL 4829340, at *1 (E.D. Va. Oct. 11, 2011).

Counsel for the Debtors and Non-Debtor Affiliates instructed witnesses not to reveal the identity of documents selected by counsel for the witnesses to review in preparation for their depositions but allowed the witnesses to testify about: (i) any documents they chose to

¹¹ The Committee does not mention, much less attempt to distinguish, this authority. Instead, the Committee relies on one case from within this circuit, the District of South Carolina's decision in Fort v. Leonard, to support its position. But Fort is an outlier and distinguishable. The defendants in Fort sought much broader protection than here and objected to deposition questions ranging from "Have you read any transcripts?" to "Did you review the transcripts of any 2004 examinations that were not provided to you by [the defense attorney]?" Fort v. Leonard, No. 7:05-1028-HFF-WMC, 2006 WL 8444690, at *1-*2 (D.S.C. Oct. 11, 2006).

independently review (which would not reveal counsel's mental impressions) and (ii) any documents that refreshed the witnesses' memories.¹²

The Debtors' efforts to preserve protection for attorney work product and attorney-client communications during these depositions (and after) complied, at all times, with the Federal Rules of Civil Procedure. The Rules expressly authorize counsel to "instruct a witness not to answer . . . when necessary to preserve a privilege" and correspondingly authorize opposing counsel, who believe such an instruction improper, to "move for an order compelling an answer." Fed. R. Civ. P. 30(a) & 37(a)(3); see Fed. R. Bankr. P. 7030 & 7037. The District of Massachusetts decision cited by the Committee, see Mot. to Compel at p. 9, n.12, which decision appears to call upon an objecting party to file a motion for protective order, is at odds with the plain words of the Rules.

The Committee moved to compel, as was its obligation if it determined to raise the matter. That motion should now be overruled.

CONCLUSION

For all of these reasons, the Committee's Motion to Compel should be denied.

¹² See, e.g., Ex. I, Dufour Dep. at 18-19 (MR. HIRST: "I'm going to object to the extent that any of the documents – object on the attorney-client privilege grounds to the extent the documents were documents provided to you by counsel. If Mr. Dufour independently chose any documents to review, I'll let him answer that question."); id. at 20 (same); id. at 21 (same); id. at 23 (MR. GOLDMAN: "What documents did you review that were of assistance to you in refreshing your recollection?" MR. HIRST: "Go ahead.")

Ex. H., Zafari Dep. at 13 (MR. HAMILTON: I disagree. The rule [612] only addresses documents that refresh the witness's recollection. You haven't established that he looked at any documents that refreshed his recollection.)

Ex. L, Tananbaum Dep. at 23-24 (MR. HIRST: "Any documents you reviewed in preparation please identify for Mr. Phillips. Things that were preselected for you and only discussed during out meetings based on our selection I would object based on privilege. But I think you can answer the question...").

Dated: April 14, 2021
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net

-and-

Brad B. Erens (IL Bar No. 6206864)
David S. Torborg (DC Bar No. 475598)
Robert W. Hamilton (OH Bar No. 0038889)
Morgan R. Hirst (IL Bar No. 6275128)
Caitlin K. Cahow (IL Bar No. 6317676)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
dstorborg@jonesday.com
rwhamilton@jonesday.com
mhirst@jonesday.com
ccahow@jonesday.com
(Admitted *pro hac vice*)

-and-

Gregory M. Gordon (TX Bar No. 08435300)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re	:	
	:	Chapter 11
ALDRICH PUMP LLC, <i>et al.</i> , ¹	:	No. 20-30608 (JCW)
Debtors,	:	(Jointly Administered)

ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	
Plaintiffs,	:	Adversary Proceeding
v.	:	No. 20-03041 (JCW)
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000.	:	
Defendants.	:	

**DECLARATION OF ALLAN TANANBAUM IN SUPPORT OF DEBTORS' OBJECTION
TO THE COMMITTEE'S MOTION TO COMPEL**

I, Allan Tananbaum, being first duly sworn, deposes and states as follows:

1. I am the Chief Legal Officer of Aldrich Pump LLC, a North Carolina limited liability company ("Aldrich") and Murray Boiler LLC, a North Carolina limited liability company ("Murray"). Aldrich and Murray are the debtors and debtors in possession in the above-captioned chapter 11 cases (together, the "Debtors") and the plaintiffs in the above-captioned adversary proceeding. I have been the Chief Legal Officer for each of the Debtors since their formation on May 1, 2020.

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

2. I am employed by Trane Technologies Company LLC ("New Trane Technologies"). I have been seconded full-time from New Trane Technologies to the Debtors. During my secondment, I effectively serve as a full time employee of the Debtors, taking direction from their respective officer and board of managers.

3. Since April 2020, I have been Vice President and Deputy General Counsel for Product Litigation to the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey corporation) ("Old IRNJ"). From February 2010 to April 2020, I was the Vice President, Compliance and Deputy General Counsel to Old IRNJ, and during part of this period, I also held the role of Vice President and Deputy General Counsel for Litigation at Old IRNJ. From June 2008 to February 2010, I was the Deputy General Counsel (and later during that same period, Vice President and Deputy General Counsel) for Litigation at Old IRNJ. From January 2005 to June 2008, I headed the Litigation function in the Legal Department of Trane Inc.—the parent company of the former Trane U.S. Inc. ("Old Trane")—which was acquired by the former parent company of Old IRNJ in June 2008.

4. I make this declaration in opposition to the Official Committee of Asbestos Personal Injury Claimants (the "Committee")'s *Motion to Compel the Debtors and Non-Debtor Affiliates to (i) Provide Testimony Regarding Certain Matters and to (ii) to Produce Certain Withheld Documents* [Adv. Dkt. 141] (the "Motion to Compel").

5. As Chief Legal Officer of the Debtors, I am responsible for overseeing the defense and resolution of asbestos-related claims that have been or could have been asserted against the Debtors, Old IRNJ, or Old Trane (collectively, the "Aldrich/Murray Asbestos Claims").²

² Aldrich/Murray Asbestos Claims include all asbestos personal injury claims and other asbestos-related claims allocated to, respectively, Aldrich from Old IRNJ or Murray from Old Trane in the documents implementing the 2020 Corporate Restructuring (as defined below). The Aldrich/Murray Asbestos Claims do not include

6. To assist me and other attorneys retained and employed by Debtors or seconded to the Debtors in providing legal advice to the Debtors regarding anticipated asbestos-related litigation and corporate reporting obligations related thereto, I, and my predecessors at Old IRNJ and Old Trane, have retained consultants – including Ankura Consulting Group (previously known as ARPC), NERA Economic Consulting, and The Claro Group (collectively the "Consultants") – to, in part, assist in projecting future litigation costs and insurance recoveries relating to the Debtors' asbestos liabilities.

7. For this work, the Consultants were retained by the Debtors' or their predecessors' in-house counsel or outside counsel. Specifically: (1) Ankura Consulting Group was retained by the Debtors' then national strategic counsel for asbestos, Debevoise and Plimpton LLC; (2) NERA Economic Consulting was retained by the Debtors' current national coordinating counsel, Evert Weathersby and Houff; and (3) The Claro Group was retained by my former colleague in the Trane Technologies legal department, Phyllis Morey.

8. Assumptions and other inputs for the methodologies developed by the Consultants to project future litigation costs and insurance recoveries were based, in part, on the analysis and mental impressions of the Debtors' and their predecessors' in-house and outside counsel, which are integral to the projections.

9. Because of this, the Debtors and the Consultants have treated communications between Debtors and/or its attorneys, on the one hand, and the Consultants, on the other hand, as privileged and confidential.

10. Likewise, the Debtors and the Consultants have treated the Consultants' work product, which was prepared to assist counsel in providing legal advice to Debtors, as confidential

asbestos-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

work product prepared in connection with and in anticipation of asbestos and insurance coverage litigation against the Debtors.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

EXECUTED on this 14th day of April, 2021.

/s/ Allan Tananbaum

Allan Tananbaum

EXHIBIT B

Debtors' May 15 Joint Board of Managers Meeting Minutes.

**Exhibit Filed Provisionally Under Seal Per Agreed
Protective Order Governing Confidential Information**

EXHIBIT C

Debtors' May 22 Joint Board of Managers Meeting Minutes.

**Exhibit Filed Provisionally Under Seal Per Agreed
Protective Order Governing Confidential Information**

EXHIBIT D

Debtors' May 29 Joint Board of Managers Meeting Minutes.

**Exhibit Filed Provisionally Under Seal Per Agreed
Protective Order Governing Confidential Information**

EXHIBIT E

Debtors' June 5 Joint Board of Managers Meeting Minutes.

**Exhibit Filed Provisionally Under Seal Per Agreed
Protective Order Governing Confidential Information**

EXHIBIT F

Debtors' May 15 PowerPoint.

**Exhibit Filed Provisionally Under Seal Per Agreed
Protective Order Governing Confidential Information**

EXHIBIT G

October 30 Production Correspondence.

From: Djurovic, Zarko <ZDjurovic@winston.com>
Sent: Friday, October 30, 2020 10:59 AM
To: Hidalgo, Nicolas A.; NRamsey@rc.com; kmaclay@capdale.com; tphillips@capdale.com; gthompson@lawhssm.com; DWright@rc.com; CGuerrero@Capdale.com; Hardman, Carrie
Cc: Hirst, Morgan R.; Erens, Brad B.; Jones, James M.; Cody, Mark A.; Ghaul, Genna; Cahow, Caitlin K.; jmiller@rcdlaw.net; Pratt, Elizabeth A.; CMEvert@ewhlaw.com; rrayburn@rcdlaw.net; Hamilton, Robert W.; gmascitti@mccarter.com; scordes@burtcordeslaw.com; ABartell@McCarter.com; alreynolds@ewhlaw.com; Finkler, Michael
Subject: RE: In re Aldrich Pump LLC et al. / Debtors' Production of Documents

**** External mail ****

Thank you, Nicolas.

We received the production documents.

Zarko Djurovic

Litigation Support Senior Project Manager

Winston & Strawn LLP

T: +1 312-558-5600

D: +1 312-558-7480

winston.com



From: Hidalgo, Nicolas A. <nhidalgo@jonesday.com>
Sent: Friday, October 30, 2020 10:50 AM
To: NRamsey@rc.com; kmaclay@capdale.com; tphillips@capdale.com; gthompson@lawhssm.com; DWright@rc.com; CGuerrero@Capdale.com; Hardman, Carrie <CHardman@winston.com>; Djurovic, Zarko <ZDjurovic@winston.com>
Cc: Hirst, Morgan R. <mhirst@JonesDay.com>; Erens, Brad B. <bberens@JonesDay.com>; Jones, James M. <jmjones@JonesDay.com>; Cody, Mark A. <macody@JonesDay.com>; Ghaul, Genna <gghaul@jonesday.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; jmiller@rcdlaw.net; Pratt, Elizabeth A. <epratt@JonesDay.com>; CMEvert@ewhlaw.com; rrayburn@rcdlaw.net; Hamilton, Robert W. <rwhamilton@JonesDay.com>; gmascitti@mccarter.com; scordes@burtcordeslaw.com; ABartell@McCarter.com; alreynolds@ewhlaw.com; Finkler, Michael <mfinkler@McCarter.com>
Subject: In re Aldrich Pump LLC et al. / Debtors' Production of Documents

Counsel:

Shortly, I will send you an FTP containing non-privileged documents being produced by the Debtors in response to the Committee's First Requests for Production of Documents. These documents are being produced subject to the Debtors' September 14, 2020 responses to the Committee's First Requests for Production of Documents, and the Agreed Protective Order Governing Confidential Information (Dkt. 345). These documents are designated DEBTORS_00050479 - DEBTORS_00051352. The password for this FTP file is xU2rU4yX4vY3tA4q.

Regards,

Nicolas A. Hidalgo
Associate
JONES DAY® - One Firm WorldwideSM
77 W. Wacker Drive
Chicago, IL 60601
Office +1.312.269.4221
nhidalgo@jonesday.com

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The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.

EXHIBIT H

Excerpts of the March 2 Robert Zafari Deposition Transcript.

**Exhibit Redacted Per Agreed Protective Order Governing
Confidential Information**

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION
4

5 IN RE:)
6)
7 ALDRICH PUMP LLC, et al.,) Chapter 11
8 Debtors,) No. 20-30608 (JCW)
9) (Jointly Administered)
10)
11 ALDRICH PUMP LLC and)
12 MURRAY BOILER LLC,) Adversary Proceeding
13 Plaintiffs,) No. 20-03041 (JCW)
14)
15 V.)
16 THOSE PARTIES TO ACTIONS)
17 LISTED ON APPENDIX A TO)
18 COMPLAINT and JOHN AND)
19 JANE DOES 1-1000,)
20 Defendants.)
21)
22)
23)
24)
25)

20 REMOTE DEPOSITION OF ROBERT ZAFARI

21 TUESDAY, MARCH 2, 2021

22 8:29 A.M.

24 REPORTED BY: KATHERINE FERGUSON, CSR NO. 12332

25 JOB NO. 190522

1 at any documents that refreshed his recollection.
2 There's established case law in this jurisdiction and
3 other jurisdictions that states that questions asking
4 what documents were shown to the witness by counsel
5 is privileged and work product and the only exception
6 is if it refreshes his recollection. You haven't
7 established that. So I disagree strongly that I have
8 violated any rule at all.

9 BY MR. GOLDMAN:

10 Q Sir, what was your purpose in reviewing the
11 documents?

12 A The minutes of --

13 MR. HAMILTON: Again, I'm going to object
14 and instruct the witness not to answer that question.
15 If you want to ask him if his recollection was
16 refreshed, that's fine, but I'm not going to let you
17 ask any more questions about what I chose to show him
18 in preparing him for his deposition.

19 THE WITNESS: I'll follow my counsel's
20 advice then.

21 BY MR. GOLDMAN:

22 Q Did you review the document -- did you
23 review the documents for any purpose other than
24 refreshing your recollection? You can answer that
25 yes or no.

1 said as part of this discussion?

2 A I think this is probably the meeting where
3 I can recognize --

4 MR. HAMILTON: Excuse me. I was on mute.
5 My fault. I'm objecting and instructing the witness
6 not to answer on the grounds that it requires
7 disclosure of communications protected by the
8 attorney/client privilege.

9 BY MR. GOLDMAN:

10 Q If you look at the second section of the
11 subject, the discussion, it says there,
12 "Mr. Tananbaum, with the assist of Mr. Evert and
13 Ms. Morey, then reviewed a slide presentation with
14 respect to the history of the companies with
15 asbestos."

16 Do you recall that?

17 A Yes.

18 Q We'll look at parts of that in a minute.

19 But before we do that, what do you -- what
20 is your memory of that slide presentation?

21 A As it says, history of the companies with
22 asbestos. Starts very early for both companies, very
23 early in the '80s where the products were used and
24 what type of asbestos was used, the -- the number of
25 claims before and after the asbestos industry

1 transformation of the late '90s. I remember --
2 there's a lot of -- probably even the -- some about
3 the Morey and Aldrich activities. It's a pretty
4 heavy presentation, maybe 20, 30 pages. So it's in
5 the beef of the matter, very informational and very
6 useful.

7 Q And the third subject of discussion that
8 was identified in the minutes is the review of
9 potential strategic options for addressing current
10 and future liabilities, and that indicates that one
11 of the options discussed was the potential use of
12 524(g) of the bankruptcy code; is that correct?

13 A Yes, that's correct.

14 Q And what do you recall being said during
15 that discussion?

16 MR. HAMILTON: Object and instruct the
17 witness not to answer on the grounds that it calls
18 for the disclosure of communications protected by the
19 attorney/client privilege.

20 BY MR. GOLDMAN:

21 Q Let me just ask you: Was that discussion
22 important to you in making your decision as to
23 whether to approve the filing of the bankruptcy early
24 on; is that part of the information you received
25 important to you?

1 A The history is extremely important to
2 understand what the -- you know, what the evolution
3 of things are and how to try to resolve it, because
4 instead of going away, these things have tended to
5 inflate over the years. That's the sort of thing
6 that we saw in some of the historical facts. Now we
7 spent more time and I think it was in a separate
8 meeting where we went about the various alternatives
9 that are in front of us and the choices and the --
10 but that was -- I don't recall that we mixed those
11 meetings up. It was not done in one meeting, it was
12 done in several meetings where we dug deeper and
13 deeper to see what the options were in front of us.

14 Q Okay. If we can turn -- you can close that
15 document now and if we could turn to the debtors
16 50712 through 506 -- excuse me, 50760.

17 MR. DEPEAU: Steve, can you read off the
18 beginning Bates number.

19 MR. GOLDMAN: 50712.

20 MR. DEPEAU: Thanks. It's up in the chat
21 now. It will be Exhibit 42.

22 (Exhibit 42 was marked for identification.)

23 THE WITNESS: Yes, this is the
24 presentation.

25 BY MR. GOLDMAN:

1 Q This is the presentation from the board
2 meeting on May 15th, 2020?

3 MR. HAMILTON: I'm going to have to
4 interject here, Mr. Goldman. I think I've got this
5 right and maybe Ms. Cahow can help me with this, but
6 it's my understanding that this particular version of
7 the document was clawed back by the debtors and
8 replaced with one that we had redacted inadvertently
9 privileged material.

10 MR. GOLDMAN: Is there --

11 MR. HAMILTON: It's page 35. And I assume
12 that in the clawback letter we asked that all copies
13 of the one produced be destroyed. That would include
14 the one just put up on the screen.

15 MR. GOLDMAN: Wait a minute. It should
16 have been destroyed if that's the case.

17 MR. HAMILTON: Let me confirm this. I have
18 to check an e-mail.

19 MR. GOLDMAN: I think it's --

20 MR. HAMILTON: Hold on. Let me just check.

21 MR. GOLDMAN: Do you want to take a break?

22 MR. HAMILTON: Yeah, give me five minutes.

23 MR. GOLDMAN: Yeah, we'll straighten it
24 out. Whatever is clawed back, tell me what, I won't
25 ask him about that and get rid of it.

1 MR. HAMILTON: Okay. Five minutes.

2 MR. GOLDMAN: Yeah.

3 THE VIDEOGRAPHER: The time is 10:54 a.m.

4 and we're going off the record.

5 (Brief recess.)

6 THE VIDEOGRAPHER: The time is 11:03 a.m.

7 and we're back on the record.

8 BY MR. GOLDMAN:

9 Q Mr. Zafari, we've got a new version of this
10 exhibit.

11 MR. GOLDMAN: What Exhibit Number is this
12 again?

13 MR. DEPEAU: Exhibit 42.

14 BY MR. GOLDMAN:

15 Q And do you recognize this document?

16 A Yes.

17 Q And what do you recognize it as?

18 A I recognize a document that we reviewed, as
19 it says, I think May 15th, during a board, and we
20 went in length through the history of the asbestos
21 claim for the two companies and -- and all that, you
22 know. So pretty long document.

23 Q Have you reviewed this document at any time
24 since May 15th?

25 A No. I browsed through it.

1 Q Browsed through it.

2 When did you browse through it?

3 A Maybe a few weeks ago.

4 Q Was that for the purpose of refreshing your
5 recollection of the presentation?

6 A Yes.

7 Q When you browsed through it, were there any
8 parts -- let me, for example, draw your attention to
9 page 4.

10 A Page 4. Introduction?

11 Q Yes. Do you see towards the bottom, the
12 blocked out area "redacted-privileged"?

13 A Yes, I see that, yeah.

14 Q Was that in what you reviewed or did you
15 review the document without that redaction?

16 A No, always with the redaction.

17 Q And when was it that you -- you looked at
18 this document?

19 A Maybe a couple of weeks ago.

20 Q Let's go to page 3, if we could.

21 A Three?

22 Q Yes.

23 A Okay. Starts with "asbestos litigation".

24 Q Yes.

25 A Okay.

1 Q It says "over time" on the third bullet.
2 Over time approximately 2B -- did you understand that
3 to mean billion?

4 A Yes.

5 Q -- to defend and settle the asbestos
6 litigation.

7 And then -- was that the first time -- when
8 this presentation was made, was that the first time
9 you learned that?

10 A Definitely.

11 Q Okay. So when you became a manager of
12 Aldrich, you were not aware of that?

13 A No.

14 Q And then the last bullet says, "On average
15 in recent years, Aldrich and Murray have spent
16 approximately 100 million dollars annually defending
17 and settling asbestos claims."

18 Is that the first time -- when you saw this
19 presentation on May 15, 2020, is that the first time
20 you learned of that?

21 A Yes, my recollection is no such numbers
22 were shared at any time before this meeting. They
23 were probably being pulled together for us, so --

24 Q Okay. And if we could go to page --
25 withdrawn.

1 And that also is something you were not
2 aware of when you first became a manager of Aldrich?

3 A No, definitely not these numbers. I don't
4 think we discussed any specific numbers.

5 Q If we could scroll down to page 5. Okay.
6 At the top, it's "redacted-privileged".

7 Was that redacted when you reviewed the
8 document two weeks ago or so?

9 A Yes.

10 Q Okay. The first bullet that's not redacted
11 says, The tort system derives inefficient transition
12 cost and misallocation of resources.

13 MR. HAMILTON: I think you misread it.
14 It's transaction, not transition.

15 MR. GOLDMAN: Excuse me, you're right.

16 BY MR. GOLDMAN:

17 Q The second bullet says, "tort system
18 derives inefficient transaction costs and
19 misallocation of resources?"

20 What did you understand inefficient
21 transaction costs to refer to?

22 A It's so variable, depending on which court
23 you're in or what state. So that's part of it which
24 every case is different and results in costs that are
25 unpredictable. And so it's basically inefficient.

1 That was my understanding.

2 Q The last bullet on this page says,
3 "asbestos lawsuits can take years from filing to
4 resolution and some plaintiffs die in the interim,
5 though their families can recover."

6 What importance, if any, did that have to
7 you when you read this or it was presented to you at
8 the May 15th meeting?

9 A Naturally it's important because we --
10 whatever view we've had on this, we're looking for
11 equitable outcome for everybody. So that's the --
12 that's the fact -- I don't know how -- how frequent
13 it is, I don't know -- it doesn't qualify it. It's
14 just that it occurred. It could be one, could be
15 ten. I don't know. It's definitely something we
16 take into consideration.

17 Q Why?

18 A Why? Because it's just written there. You
19 want the most efficient system so that the legitimate
20 claimants receive their legitimate dues in the most
21 efficient way.

22 Q And did you -- sorry to interrupt.

23 A That's all right.

24 Q And would you agree that it is important to
25 get these claims resolved while plaintiffs are still

1 alive?

2 A It is important to resolve the claims as
3 best as possible, as efficiently as possible.

4 Q Is it important to resolve them while
5 plaintiffs are still alive?

6 MR. HAMILTON: Objection, asked and
7 answered. You can answer again.

8 THE WITNESS: Again, we want to resolve
9 them as fast as possible, as efficiently as possible
10 for legitimate claims.

11 BY MR. GOLDMAN:

12 Q When you say "as efficiently as possible",
13 what do you mean by that?

14 MR. HAMILTON: Objection, asked and
15 answered. You can answer again.

16 THE WITNESS: Same. I don't know. I
17 cannot define it. As fast as possible. I'm not --
18 I'm not an expert, for example, in the tort system to
19 know if it can last three months or 10 years. I
20 don't know. As fast as possible. As fast as the
21 system in which we're operating allows.

22 BY MR. GOLDMAN:

23 Q I'm sorry, I was asking about when you said
24 "as fast as possible" and "as efficiently as
25 possible". I understand the as fast as possible

1 part. I was really asking about when you say "as
2 efficiently as possible".

3 What do you mean?

4 A It's related. I mean, it's probably
5 related because if things drag on for 10 years, they
6 definitely tend to be less efficient than if they're
7 dealt with amicably in six months, for example. I
8 don't know. It's a broad question so I can only
9 answer it in broad sort of common sense answers. I
10 cannot give a scientific answer to that question. As
11 fast as possible in the system --

12 Q Scroll down to page 7, please.

13 A Seven?

14 Q Yeah.

15 A Yes.

16 Q The last bullet on there says,
17 "Nevertheless, widespread misconception that all
18 mesotheliomas is caused are asbestos."

19 Do you know the source of that statement?

20 A No.

21 Q Was that explained to you at all during the
22 board of managers meeting on May 15th?

23 A We may have had a question or two. I know
24 through the various readings, we read at that time
25 that there's mesothelioma that is called, quote,

1 naturally, but again, there's no quantification of
2 that or anything like that. So when I see the
3 sentence, when I saw the sentence "nevertheless,
4 widespread misconception", it may be. It doesn't
5 shock me. And it is definitely before I even knew
6 more about the asbestos industry in general. It was
7 clear in my own mind that all the mesothelioma was
8 asbestos. I mean, it could not be -- I didn't know
9 that there was natural occurrence of that. And I've
10 seen it here or there, but I cannot name a source. I
11 could find it again. There are studies. There are
12 tons of studies on asbestos and various types and all
13 of that, which we were made aware of as part of these
14 meetings.

15 Q If you could turn to page 17, please.

16 A We learned that not all asbestos were equal
17 and that sort of thing. So again, it's here.

18 Q And who explained that to you?

19 A We read this. We talked with, you know,
20 the people present, you know, Ken Bowman, others as
21 part of the reports that we had read. Part of it, if
22 I go back to the earlier document I referenced, which
23 was the Bestwall case, for example, there's a lot of
24 references there that I had read at that time.

25 Q A lot of references to what?

1 A To sources of, you know, where the, you
2 know, the different -- how the different -- how the
3 different asbestos are, et cetera, scientific
4 literature. I know how I can find some of those
5 references. Here we talked with the -- the people,
6 again, including Alan Tananbaum about some of these
7 points here.

8 Q Okay. If you could scroll down to page 17;
9 are you there? Okay.

10 A A very important one was also where the
11 asbestos was used and what quantity, et cetera, which
12 were specific to us, to Aldrich.

13 17, I'm going there. Claims served against
14 company --

15 Q I'm going to ask you to look down at the
16 section there on -- it says "allegations of exposure
17 to the asbestos products of bankruptcy companies
18 drastically reduced"; do you see that?

19 A Uh-huh.

20 Q What do you recall being said at the
21 meeting about that?

22 A Basically written there. We came over on
23 the same -- to get this phenomenon and this
24 documented some of that. So I think a lot of this
25 were in the same document that I referenced earlier.

1 Q I'm trying to understand what that document
2 was a little better. I understand it was from the
3 Bestwall bankruptcy case; is that right?

4 A Yes.

5 Q What -- there have been many, many, many
6 filings in the asbestos -- in the Bestwall bankruptcy
7 case.

8 Do you remember the title of this document
9 you reviewed or what --

10 A No, I don't remember.

11 Q Do you recall who prepared it?

12 A I think it's a document -- I think I
13 mentioned it earlier. It's a brief for a case that
14 Bestwall had submitted to some court. I think it's a
15 40- or 50-page document which details a lot of the
16 environment, what is called the asbestos industry or
17 lack of better words. So a lot of it is documented
18 there and mentioned here, including the -- the
19 various points that are here at the bottom.

20 Q Okay. Let me ask you to turn to page --
21 scroll down to page 21, which is mostly redacted.
22 But the very top of it says "tort system realities".
23 Tell me when you're there.

24 A Say again.

25 Q Tell me when you're there, let me know

1 when --

2 A Yeah, I'm there.

3 Q Okay. Do you recall what -- what was said
4 about the tort system realities at this meeting on
5 May 15th?

6 A I'm not an expert, so basically I think
7 what was --

8 MR. HAMILTON: I'm sorry, I was on mute. I
9 have to object and instruct the witness not to answer
10 on the grounds that the answer would require
11 disclosure of communications protected by the
12 attorney/client privilege.

13 BY MR. GOLDMAN:

14 Q Do you recall who presented this section of
15 the presentation on tort system realities?

16 A No, I don't.

17 Q Do you recall whether it was an attorney?

18 A I don't remember. I can't remember if it's
19 an attorney or not. I just can't remember. I have
20 to assume it could be. But I don't remember.

21 Q And at the end of this meeting, did you
22 have an understanding about some realities of the
23 tort system that were important to you as takeaways
24 from the meeting?

25 A I think there was nothing of a big surprise

1 in terms of the variability, the length, the
2 efficiency of the tort system, because even though
3 I'm not a specialist, but through different
4 businesses I've been exposed to this in the past. So
5 I think it may be more of a confirmation than
6 discovery. But this sets it in more in the -- the
7 environment in which Aldrich operates, so --

8 Q If I could ask you to scroll down to page
9 30.

10 A I'm there.

11 Q Okay. This page is titled "Cost of
12 defense" and it says, the first bullet is "legal
13 fees" and then it mentions "national coordinating
14 counsel".

15 Do you know who the national coordinating
16 counsel is or was?

17 A No. I didn't and I still don't.

18 Q A little bit further down this page, it
19 looks like you've got total defense costs paid from
20 inception of asbestos cases, 2/29/19, which total
21 about five hundred and something million dollars.

22 Were those numbers new to you during this
23 presentation?

24 A Yes. I thought it was closer to 600.

25 Q And then if we go to page 31, next page, it

1 says "total insurance reimbursements to date".

2 Were those numbers new to you as well?

3 A Yes.

4 Q So was pursuing these claims further with
5 various insurance companies an option that was
6 pursued?

7 A It was an option we looked at. I'm not
8 sure in this meeting, but definitely the insurance
9 path was a clear option to investigate.

10 Q I'll ask you to look at page 32, which is
11 redacted except for the title. It says there,
12 "Future liability forecasts"; do you see that?

13 A Yes.

14 Q And what do you remember being said at the
15 meeting about future liability forecasts?

16 MR. HAMILTON: Object and instruct the
17 witness not to answer on the grounds that answering
18 it would require disclosure of communications
19 protected by the attorney/client privilege.

20 BY MR. GOLDMAN:

21 Q Mr. Zafari, is the potential future
22 liability of the company for asbestos liabilities
23 important to you and the decisions that you would
24 make to make on behalf of Aldrich?

25 A The -- I'm trying to look for the right

1 impression that I had at that time. It was
2 definitely one to find a way -- given the history and
3 where we came from, to find a way that -- to find a
4 solution not to kick the can, you know, down the road
5 and come up with a solution that could be permanent.
6 That was definitely part of the objectives that I
7 personally had in mind.

8 Q Was it important to you to know what the
9 probable liabilities would amount to in dollars if
10 you kept going the way that the companies had been
11 going?

12 A Yes, but -- yes, but at the same time
13 nobody could really say what it would be, the range
14 of forecast, et cetera, was sort of make that
15 question almost unanswerable, and because it's so
16 unpredictable again. So that was definitely part of
17 how can we make this, you know, 30 years ago would
18 know where the evolution of things would be, we would
19 make the decision differently. Now we don't want to
20 make a decision for the next 30 years and wake up in
21 the next 20 years and wake up with absolutely
22 unpredicted outcome, not only -- bearing in mind
23 current claimants and future claimants. Also, that
24 was part of the logic that we were played.

25 Q Is that one of the things you learned from

1 the future of liability forecasts, that future
2 liabilities would be unanswerable and unpredictable?

3 MR. HAMILTON: Hold on, Mr. Zafari. One of
4 the things you learned -- I'm going to instruct the
5 witness not to answer that question on the grounds
6 that it would require disclosure of communications
7 protected by the attorney/client privilege.

8 BY MR. GOLDMAN:

9 Q At the end of this presentation, did you
10 believe that future liabilities were unpredictable
11 and unanswerable?

12 MR. HAMILTON: You can answer that
13 question, Mr. Zafari.

14 THE WITNESS: Yeah, unpredictable, at least
15 we can say, very broad range unpredictable, yes.

16 BY MR. GOLDMAN:

17 Q Were there attempts to predict future
18 liability forecasts made during this meeting?

19 MR. HAMILTON: Object and instruct the
20 witness not to answer on the grounds that it would
21 require of communications protected by the
22 attorney/client privilege.

23 BY MR. GOLDMAN:

24 Q If I could ask you to look -- scroll down
25 to page 34.

1 A Yes.

2 Q That third -- the part that's not redacted,
3 it says, "forecast and insurance reimbursements in
4 the tort system", and then there's an asterisk at the
5 become of the page, the asterisk says "excludes Clark
6 Equipment liability projections."

7 Do you know what Clark Equipment is or was?

8 A Clark Equipment is an old division of
9 Ingersoll that was acquired in the mid '90s and sold
10 with -- when the Bobcat business was sold, roughly.
11 Bobcat was part of Clark Equipment when it was
12 acquired, so very historical. I don't think anybody
13 asked questions there. I don't know what it relates
14 to exactly.

15 Q Do you know why it was excluded from the
16 liability projections?

17 A No, I don't know.

18 Q The part that's not redacted says, "value
19 of future insurance indemnity reimbursements", and
20 then it lists figures for Aldrich and Murray.

21 Do you know what the -- how those were
22 calculated?

23 A No. Definitely no. Not an expert.

24 Q Ask you to look at page 38. Are you there?

25 A Yes, I'm there.

1 Q Thank you. This looks like -- the title of
2 this slide is "Aldrich average settlement figures."
3 And they go -- they appear to go up for at least in
4 the "all" category.

5 MR. HAMILTON: I'm on the wrong page. What
6 page are you on?

7 MR. GOLDMAN: Page 39.

8 THE WITNESS: Oh, I was on 38 you said. I
9 was on dismissal rate. Okay. Yes. What was the
10 question?

11 BY MR. GOLDMAN:

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 MR. GOLDMAN: If we could -- you can close
11 that exhibit now. If we could look at Exhibit 32
12 next.

13 MR. DEPEAU: Exhibit 32 is in the chat.
14 (Exhibit 32 was marked for identification.)

15 THE WITNESS: I have it. It's the board of
16 directors meeting. I'm trying to look for the date
17 here.

18 BY MR. GOLDMAN:

19 Q It's right -- appears to be May 22?

20 A May 22, yeah, okay.

21 Q If I can ask you to turn to the third page,
22 please.

23 A Yes.

24 Q Okay. And the first subject of discussion
25 that is -- that is outlined in these minutes is

1 witness not answer on the grounds it requires
2 disclosure of communications protected by the
3 attorney/client privilege.

4 BY MR. GOLDMAN:

5 Q Can you describe the extensive discussions?

6 MR. HAMILTON: Object and instruct not to
7 answer.

8 BY MR. GOLDMAN:

9 Q The bottom of this page states, "Mr.
10 Tananbaum then asked Mr. Erens to review the
11 experience of companies that recently made Chapter 11
12 filings in an effort to finally resolve their current
13 and future asbestos claims utilizing section 524(g)
14 of the bankruptcy code."

15 Did Mr. Erens do that review?

16 A Yes.

17 Q What did he say about that?

18 MR. HAMILTON: Object and instruct the
19 witness not to answer on the ground its requires
20 disclosure of information protected by the
21 attorney/client privilege.

22 BY MR. GOLDMAN:

23 Q What did Mr. Erens say about the Georgia
24 Pacific, LLC restructuring?

25 MR. HAMILTON: Object and instruct the

1 witness not to answer on the same grounds.

2 BY MR. GOLDMAN:

3 Q How about the DPMP restructuring?

4 MR. HAMILTON: Object, instruct the witness
5 not to answer on the same grounds.

6 BY MR. GOLDMAN:

7 Q How about the Paddock Enterprises
8 reorganization?

9 MR. HAMILTON: Object and instruct the
10 witness not to answer on the same grounds.

11 BY MR. GOLDMAN:

12 Q Further down, the next paragraph, it says
13 "Mr. Tananbaum then reviewed the other strategic
14 options for addressing current and future asbestos
15 claims that were presented at the May 15th joint
16 meeting."

17 What strategic -- what other strategic
18 options were those?

19 MR. HAMILTON: You can answer that
20 question, Mr. Zafari.

21 THE WITNESS: Pretty broad range, but to
22 sum it up, of course on the one hand you have the
23 524(g), but then we had the -- some options with
24 further insurance and probably a third range of
25 options around optimization, organizational

1 optimization, et cetera. So those were the
2 headlines, if you will.

3 BY MR. GOLDMAN:

4 Q I'm sorry, the third one is what?

5 A I don't know how we called it exactly, but
6 it was around optimization of -- organization
7 optimization.

8 Q Can you explain what that was?

9 A I think a way of trying -- maybe
10 organization to handle this with more efficiency.

11 Q And how would that be done?

12 A Maybe more centralization of how we handle
13 this and a couple of options like that.

14 Q What other options besides more
15 centralization?

16 A Trying to find maybe other ways of -- how
17 do you say this -- maybe better ways of understanding
18 what the full liability would be over time and
19 address it that way. But every time we looked at the
20 future, the inconsistency of the system, of the
21 current system, makes it difficult to project
22 anything, going back to the discussions we had on
23 forecasts earlier.

24 Q I'm sorry, go ahead.

25 A So it's just whichever way we looked at it,

1 A It was basically what we discussed before,
2 the headlines were organizational, optimization,
3 insurance and 524(g). And the outcome of possible
4 permanent, efficient, et cetera. I think that's --
5 those are the discussions. They weren't held only
6 during this meeting. They were held -- this whole
7 thing traveled over time, on the 15th onward. We
8 were digging into each scenario to make sure we're
9 making the right decision. So side by side would
10 definitely look at the credibility, the cost and
11 things of that sort, all of the things we underlined
12 earlier in our conversation and the efficiency,
13 permanency, all of that.

14 Q Did you have any questions about side by
15 side?

16 MR. HAMILTON: You can answer that question
17 yes or no.

18 THE WITNESS: I probably did. I'm sure I
19 did.

20 BY MR. GOLDMAN:

21 Q What were those questions?

22 MR. HAMILTON: Objection, instruct the
23 witness not to answer on the grounds it requires
24 disclosure of communications protected by the
25 attorney/client privilege.

EXHIBIT I

Excerpts of the March 3 Marc Dufour Deposition Transcript.

**Exhibit Redacted Per Agreed Protective Order Governing
Confidential Information**

1
2 UNITED STATES BANKRUPTCY COURT
3 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
4 CHARLOTTE DIVISION

4 -----x
5 IN RE: Chapter 11
6 No. 20-30608 (JCW)
(Jointly Administered)

7 ALDRICH PUMP LLC, et al.,
8 Debtors.

9 -----x
10 ALDRICH PUMP LLC and
11 MURRAY BOILER LLC,
12 Plaintiffs,

13 v. Adversary Proceeding
14 No. 20-03041 (JCW)

15 THOSE PARTIES TO ACTIONS
16 LISTED ON APPENDIX A
17 TO COMPLAINT and
18 JOHN and JANE DOES 1-1000,
19 Defendants.

20 -----x
21 REMOTE VIDEOTAPED DEPOSITION OF

22 MARC DUFOUR

23 MARCH 3, 2021

24 Reported by:
Sara S. Clark, RPR/RMR/CRR/CRC
25 JOB No. 190524

1 (M. DUFOUR - 3/3/21)

2 I then rose up through the ranks. And
3 basically from 2000 to 2006, ran the compressor
4 businesses for Ingersoll Rand, portions of the
5 compressor businesses.

6 In 2006, I was named president of The
7 Americas, which means I ran all of the
8 industrial businesses for Ingersoll Rand,
9 including the compressor tool material-handling
10 businesses, and did that for six years. And
11 then in 2011, I was then president and CEO of
12 Club Car.

13 Q. And when did you become aware that
14 your deposition was going to be taken in this
15 case?

16 A. When did I become aware? Probably
17 about a month ago.

18 Q. Okay. And since that time, have you
19 reviewed any documents in order to prepare
20 yourself for this deposition?

21 A. The only documents --

22 MR. HIRST: Hold on, Marc. Let me
23 cast an objection.

24 I'm going to object to the extent that
25 any of the documents -- object on the

1 (M. DUFOUR - 3/3/21)
2 attorney-client privilege grounds to the
3 extent the documents were documents provided
4 to you by counsel.

5 If Mr. Dufour independently chose any
6 documents to review, I'll let him answer
7 that question.

8 MR. GOLDMAN: I don't think Rule 612
9 has a limitation on whether -- who showed
10 him the documents. Anything that
11 refreshed -- you reviewed or refreshed your
12 recollection should --

13 MR. HIRST: Well, you haven't
14 established that he needed his recollection
15 refreshed yet, so that's the first step of
16 612. We're certain the law is pretty clear
17 that counsel's selection of documents is
18 privileged.

19 So my objection stands. He can
20 testify as to anything he chose --

21 MR. GOLDMAN: Do you have any
22 authority for the proposition counsel's
23 selection of documents that a witness
24 reviews is privileged?

25 MR. HIRST: It's pretty much clear

1 (M. DUFOUR - 3/3/21)

2 law. I don't need a bunch of case law to --

3 MR. GOLDMAN: Can you give me one? I
4 don't need a bunch.

5 MR. HIRST: In a deposition? No. And
6 I'm not the one under examination. If we
7 want to duke this out later, I'm happy to.

8 MR. GOLDMAN: This interrupts the
9 whole deposition and then we have to go back
10 and do the witness again, ask him what he
11 looked at, which seems a little burdensome.

12 MR. HIRST: If that's a motion you
13 want to bring, Steve, that's fine. The
14 instruction stands, which is counsel's
15 selection of documents I'm not going to let
16 him testify to over the attorney-client
17 privilege and work product doctrine. He can
18 testify as to any documents he independently
19 chose to review. If there's further
20 questions that you want to ask, they may not
21 be privileged, so let's lay that out.

22 BY MR. GOLDMAN:

23 Q. Let me just be clear, Mr. Dufour. I'm
24 not asking you which documents counsel asked you
25 to select as opposed to which, if any, you

1 (M. DUFOUR - 3/3/21)

2 decided to review yourself.

3 But what documents did you review in
4 preparation for this deposition?

5 MR. HIRST: And my objection stands,
6 and the same instruction stands, which is
7 the documents, to the extent they were
8 provided to you and selected by counsel, I'm
9 instructing you not to answer. To the
10 extent you independently chose to review any
11 other documents, Mr. Dufour, you can answer
12 that question.

13 Q. If you can go ahead and answer.

14 THE WITNESS: Pardon me?

15 MR. HIRST: You can answer as to
16 whether --

17 A. No.

18 MR. HIRST: -- you chose any documents
19 independently.

20 A. No.

21 Q. Were there documents that were
22 provided to you by counsel to review? You can
23 answer that yes or no.

24 MR. HIRST: Go ahead, Marc.

25 A. Yes.

1 (M. DUFOUR - 3/3/21)

2 Q. And what documents were those?

3 MR. HIRST: Same objections as before.
4 Again, the documents we selected for him to
5 review are protected by work product and
6 attorney-client privilege.

7 I instruct you not to answer.

8 Q. The documents that you did review, did
9 you review them for the purpose of refreshing
10 your recollection to be able to testify in this
11 deposition?

12 A. Yes.

13 Q. And did they, in fact, refresh your
14 recollection as to certain facts and
15 circumstances relating to Murray Boiler?

16 A. Because of the complexities of all of
17 the things that went on almost a year ago, they
18 did, to some extent.

19 MR. GOLDMAN: I'm going to renew my --
20 Mr. Hirst, are you still going to -- so we
21 don't have to go around and around -- are
22 you still going to instruct him not to
23 answer as to what documents he reviewed that
24 did, in fact, refresh his recollection?

25 MR. HIRST: You haven't asked him that

1 (M. DUFOUR - 3/3/21)

2 question yet, Steve. If you ask that
3 question, I may very well let him answer.

4 MR. GOLDMAN: All right.

5 BY MR. GOLDMAN:

6 Q. What documents did you review that
7 were of assistance to you in refreshing your
8 recollection?

9 MR. HIRST: Go ahead.

10 A. I reviewed the May 15th, 2020 board
11 meeting notes.

12 Q. Any others?

13 A. No.

14 Q. And was that in a PowerPoint form or
15 was that the minutes, or both?

16 A. What I reviewed was in a PowerPoint
17 form, but I think it was part of the minutes
18 also.

19 Q. Okay. And were there redactions in
20 what you reviewed?

21 A. Yes.

22 Q. In the notes or in the PowerPoint?

23 A. The PowerPoint.

24 Q. When did you -- sorry. You said you
25 retired in 20- --

1 (M. DUFOUR - 3/3/21)

2 And please restrict your answer to
3 "yes," "no," or "I don't recall," and then
4 we can piece --

5 A. I don't recall. I don't recall.

6 Q. Okay. When you say you don't recall
7 whether there was such a discussion, is it your
8 belief that there was not such a discussion?

9 MR. HIRST: Objection.

10 A. No. As I said earlier --

11 THE WITNESS: Morgan? Do you want to
12 weigh in?

13 MR. HIRST: Objection to the form of
14 the question.

15 You can answer.

16 THE WITNESS: Okay.

17 A. As I said earlier, my recollection
18 would be if there was discussion, it wasn't a
19 detailed discussion.

20 Q. Okay. So you're uncertain whether
21 there was any discussion, but you are certain
22 that if there was any discussion at all, it was
23 not detailed; is that right?

24 A. Yes. That's correct.

25 Q. So what is your memory of what -- of

1 (M. DUFOUR - 3/3/21)

2 the subjects that were discussed at this
3 meeting?

4 MR. HIRST: Let me interject an
5 objection and caution.

6 Objection on the basis of the
7 attorney-client privilege.

8 I will caution Mr. Dufour not to
9 reveal any specific communications provided
10 by counsel or specific questions that you
11 may have asked questions in the way of
12 receiving legal advice. You can answer at a
13 high level your understanding, I believe, is
14 Mr. Goldman's question, as long as you don't
15 reveal any of those communications.

16 THE WITNESS: Yeah.

17 A. I think -- my biggest recollection of
18 that meeting is it was kind of a "get started"
19 and how we would function and how we would work
20 together, and exchanging phone numbers and
21 e-mail addresses and things like that. There
22 was some discussion of the work at hand. But as
23 I've said earlier, my recollection is that was
24 very, very high level, and the -- those
25 discussions about consideration of what we would

1 (M. DUFOUR - 3/3/21)

2 MR. HIRST: At this point, I'm going
3 to object on the basis of privilege and
4 instruct the witness not to answer on the
5 basis of the attorney-client privilege and
6 work product doctrine.

7 Q. Do you recall who did the speaking
8 during this part of the meeting?

9 A. I think you could see in the notes, I
10 think the notes refer to -- I think it was
11 Mr. Tananbaum with some support probably from
12 outside counsel.

13 Q. And then in the second subject in the
14 meeting minutes, which are "Review of the
15 History of the Companies with Asbestos," the
16 first sentence says "Mr. Tananbaum, with the
17 assistance of Mr. Evert and Ms. Morey, then
18 reviewed a slide presentation with respect to
19 the history of the companies with asbestos,
20 noting that the slides being presented
21 electronically at the meeting reflected minor
22 updates of the version thereto circulated in
23 advance of the meeting."

24 Did you receive a slide deck or
25 PowerPoint in advance of the meeting?

1 (M. DUFOUR - 3/3/21)

2 A. I can't recall if I saw it in advance
3 of meeting. Probably not. We didn't get a lot
4 of information prior to the meetings. So I
5 can't say. I don't remember.

6 Q. And then it says the slides -- the
7 presentation, which I think is also referred to
8 as slides, "addressed, among other things," and
9 then there's a list of things, but one of them
10 is "historical and forecasted cost and insurance
11 reimbursements of the companies associated with
12 asbestos-related lawsuits."

13 Do you recall that subject being
14 discussed during the presentation?

15 A. Yes. I think it's included in that
16 May 15 presentation I referred to.

17 Q. Were the forecasted future costs and
18 insurance reimbursements associated with
19 asbestos-related lawsuits important to you?

20 A. Obviously, yes.

21 Q. Why?

22 A. As I said earlier, it's really two
23 reasons. We wanted to make sure that we created
24 an efficient system for people that had
25 legitimate claims to get their money fairly and

1 (M. DUFOUR - 3/3/21)
2 fastly and as much money as possible. We also
3 wanted to take care of the outstanding
4 liabilities that Trane had incurred over the
5 years to try to get an idea and a cap on what
6 that might be.

7 Q. With regard to the second thing you
8 mentioned, what were the reasons for that?

9 A. I think as the presentation explains
10 that you have, at that time, you can see the
11 steep increase in costs and claims that these
12 businesses had incurred.

13 Q. If we go to the last page of this
14 exhibit of the minutes, it's titled "Review of
15 Potential Strategic Options for Addressing
16 Current and Future Asbestos Claims," and it
17 states there "Mr. Tananbaum reviewed options
18 available to the company with respect to
19 resolution of current and future asbestos
20 claims, including the potential use of Section
21 524(g), the bankruptcy code."

22 Do you recall that?

23 A. I recall that we went through -- and
24 I'm not sure if it was in this meeting or a
25 future meeting, a detailed discussion on

1 (M. DUFOUR - 3/3/21)

2 strategic options that we had to work through
3 the asbestos issue.

4 Q. Do you recall Mr. Tananbaum reviewing
5 the option of using 524(g) of the bankruptcy
6 code during this meeting?

7 MR. HIRST: Let me, for the purposes
8 of privilege, let me object and ask you to
9 restrict your answer to this question to
10 "yes," "no," or "I don't recall."

11 A. I don't recall.

12 Q. Do you recall there being a
13 presentation at this meeting regarding
14 Section 524(g) of the bankruptcy code?

15 A. I recall there being a presentation on
16 three strategic options that the board needed to
17 consider. I do not recall if it was that
18 specific meeting or future meeting.

19 Q. Okay. If I could draw your -- I'm
20 sorry.

21 A. I'm sorry.

22 And I know that we had a very vigorous
23 and detailed discussion about those options.

24 Q. I'd like to draw your attention to the
25 second paragraph of this where it says

1 (M. DUFOUR - 3/3/21)

2 "Mr. Erens, with the assistance of Mr. Cody,
3 then made a presentation regarding
4 Section 524(g) of the bankruptcy code and the
5 potential use thereof as a mechanism to finally
6 resolve current and future claims against the
7 company."

8 Do you recall that presentation?

9 A. As I said earlier --

10 MR. HIRST: Again, Marc, real quick.

11 THE WITNESS: Sorry.

12 MR. HIRST: Same objection on the
13 basis of privilege.

14 Same caution. Please answer
15 Mr. Goldman's question "yes," "no," or "I
16 don't recall," and then we can work from
17 there.

18 A. I'll say yes, I recall the
19 presentation.

20 Q. Okay. And what was said during the
21 presentation?

22 MR. HIRST: Okay. So here I'm going
23 to object --

24 THE WITNESS: I can't -- I can't
25 answer.

1 (M. DUFOUR - 3/3/21)

2 MR. HIRST: Here, I'm going to object
3 on the basis of privilege. Calls for
4 information protected by the attorney-client
5 privilege and work product doctrine and ask
6 the witness not to answer.

7 THE WITNESS: Yeah.

8 BY MR. GOLDMAN:

9 Q. And just so we're clear, Mr. Dufour,
10 you said you can't answer. Do you mean you
11 can't answer because your counsel's instructing
12 you not to answer, or you can't answer
13 because --

14 A. That's correct. I can't answer
15 because my counsel's instructing me not to
16 answer.

17 Q. Okay. It's not because you don't have
18 a memory of the presentation. It's because your
19 counsel's instructing you not to answer, just so
20 we're clear?

21 A. Correct.

22 Q. Okay.

23 MR. GOLDMAN: If we could look at the
24 next exhibit, which is Exhibit 42, which I
25 believe is parts of the slide presentation,

1 (M. DUFOUR - 3/3/21)

2 and it bears Bates Numbers DEBTORS_50712
3 through --

4 MR. HIRST: Real quickly, Steve.
5 Before we get into this one, I know there
6 was an issue with this document yesterday.

7 Is this, for lack of a better term,
8 the right version, the one that -- the
9 corrected one that was sent to you guys a
10 week and a half or so ago?

11 MR. DEPEAU: Yes, it is.

12 MR. GOLDMAN: I will defer to
13 Mr. DePeau.

14 MR. HIRST: Okay.

15 MR. GOLDMAN: It's above or below, but
16 it's not my pay grade.

17 MR. DEPEAU: No, I think we confirmed
18 this yesterday, and the one that we actually
19 submitted to be marked was the correct
20 version.

21 MR. HIRST: Thank you.

22 Steve, we can go back to your pay
23 grade now, if you want.

24 BY MR. GOLDMAN:

25 Q. Okay. Are these the minutes -- excuse

1 (M. DUFOUR - 3/3/21)

2 me. Withdrawn.

3 Is this the slide deck or PowerPoint
4 that was referred to in the May 15th minutes?

5 A. You're asking me?

6 Q. Yes.

7 A. Yes. Sorry. Yes.

8 Q. And did you review this before today
9 in preparation for your deposition?

10 A. As I said earlier, I don't recall --
11 we had a couple presentations sent in advance,
12 usually a day before. But on this one, I can't
13 remember if it was sent -- I doubt it. I don't
14 think we saw it the day before. I thought we
15 just -- we went to that meeting to listen and
16 hear the presentation.

17 Q. Was this -- let's turn to Page 3 of
18 the exhibit, which is titled "Introduction."

19 A. "Introduction"?

20 Q. Yeah.

21 A. Okay.

22 Q. You see the third bullet, it says
23 "Over time, Aldrich and Murray have spent
24 approximately \$2 billion to defend and settle
25 asbestos litigation."

1 (M. DUFOUR - 3/3/21)

2 Was this the first time -- when this
3 was presented to you or sent to you and you read
4 it, is this the first time you were aware of
5 that?

6 A. I'm sorry. You're looking at what
7 page, 3?

8 Q. Page 3 of the exhibit.

9 A. Yeah. It's -- that -- that was the
10 first time we saw that specific number.

11 Q. Okay. And that would be true of this
12 breakdown between Aldrich and Murray?

13 A. Yes.

14 Q. If we can turn to Page 5. It says in
15 the first part that's not redacted, "Tort system
16 drives inefficient transaction costs and
17 misallocation of resources."

18 What is -- do you agree with that
19 statement?

20 A. I think if --

21 MR. HIRST: Go ahead.

22 THE WITNESS: Go ahead.

23 MR. HIRST: No, go ahead.

24 Withdraw the objection.

25 A. At the time, I was just looking at the

1 (M. DUFOUR - 3/3/21)

2 next, you know, RAND study. So to see that, I
3 would say, I mean, yeah. Meaning if I'm reading
4 this correctly, the attorneys get 58 cents on
5 the dollar, and claimants get 42 cents on the
6 dollar.

7 Q. And is that what you understand
8 "inefficient transaction costs" to mean?

9 A. Yeah. I mean, from my personal basis,
10 yeah.

11 Q. Okay.

12 A. I would think the focus would be the
13 claimants get everything they deserve, and it
14 doesn't -- more than 50 percent goes to somebody
15 else.

16 Q. And then "misallocation of resources,"
17 what did you understand to be meant by
18 misallocation of resources?

19 A. 58 versus 42.

20 Q. So the same thing?

21 A. Same thing.

22 Q. And the last bullet point says
23 "Asbestos lawsuits can take years from filing to
24 resolution, and some plaintiffs die in the
25 interim."

1 (M. DUFOUR - 3/3/21)

2 What significance, if any, did that
3 have to you in your role as a manager of Murray?

4 A. Again, it's -- you know, having worked
5 in organizations our whole lives, it's making
6 sure that these claimants get the money as fast
7 as possible and as much as they can get before
8 they would pass away. It would be a crime, you
9 know, to see somebody die waiting years to get
10 40 cents on the dollar that -- you know, when
11 they should be getting the whole dollar.

12 Q. So do you believe it would be
13 inequitable to do anything to delay their
14 recovery?

15 MR. HIRST: Object to the form.

16 A. Yes. I think, as I've stated earlier,
17 the whole focus -- a lot of our focus was how we
18 get them the money faster, and more of it.

19 Q. Turn to Page 17.

20 A. Got it.

21 Q. Okay. Do you see around the middle of
22 the page there, it says "Litigation became the
23 'endless search for the solvent bystander' "?

24 A. Yes.

25 Q. What did you understand that to mean?

1 (M. DUFOUR - 3/3/21)

2 A. That as companies started to declare
3 bankruptcy, there was people looking for
4 additional companies, basically not only to
5 benefit from the trust created, but also to file
6 claims on those companies that were not in the
7 trust.

8 Q. If we could turn to Page -- I'm having
9 trouble reading this -- 21, which I think is
10 mostly redacted, but there's a title on the top.

11 A. Yeah. All I have is the title.

12 Q. The title.

13 And the title is "Tort System
14 Realities," correct?

15 A. That's correct.

16 Q. And that title goes over on the next
17 few pages.

18 And what is your understanding of the
19 realities of the tort system as it relates to
20 Murray?

21 A. I don't recall.

22 MR. HIRST: Never mind.

23 Marc, was your answer --

24 THE WITNESS: I just said I couldn't
25 recall.

1 (M. DUFOUR - 3/3/21)

2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. Okay. If we could turn to Page 30.

8 I'm sorry. This looks -- I'm sorry. 31. I'm
9 sorry. I meant 31.

10 A. Yes.

11 Q. I'm sorry. If we can go back to
12 Page 30.

13 A. 30 or 31?

14 Q. Let's look at 30.

15 A. Okay. I'm sorry.

16 Q. No, it's my fault.

17 A. Okay.

18 Q. There is a reference "legal fees" and
19 "national coordinating counsel."

20 Did Murray have national coordinating
21 counsel?

22 A. I don't know what a national
23 coordinating counsel is.

24 Q. Okay. So I assume from that, you
25 don't know who it is if there is one; is that

1 (M. DUFOUR - 3/3/21)

2 correct?

3 A. Right, right. I mean, did we have
4 lawyers there? Yes. Which ones was -- defined
5 as that? I couldn't -- and I don't really know
6 what that specific term means.

7 Q. Let's look at the next page, Page 31,
8 which is where we were.

9 A. I do have that.

10 Q. Okay. That has the -- explains how
11 much of the liabilities have been paid for by
12 insurance; is that correct?

13 A. That's correct.

14 Q. Was there discussion at this meeting
15 about how much more insurers may pay sometime in
16 the future?

17 MR. HIRST: Marc, let me object on the
18 basis of privilege again, and ask you to
19 answer that question "yes," "no," or "I
20 don't recall," and then we can go from
21 there.

22 A. Yes.

23 Q. Okay. And then if we can look at
24 Page 34, is that the -- are those the numbers
25 you were given as to how much insurers were

1 (M. DUFOUR - 3/3/21)

2 likely to pay into the future?

3 A. Yes.

4 Q. And there's an asterisk there that at
5 the bottom of the page that says "Excludes
6 Clark Equipment Company liability projections."

7 What is or what was Clark Equipment?

8 A. Clark Equipment was a company that the
9 parent, Ingersoll Rand, purchased in the
10 mid-'90s, which included Club Car. And so it
11 was part of that acquisition. And the other
12 business that was included with it was -- I
13 don't remember. I know Club Car was part of the
14 Clark acquisition.

15 Q. Do you know why Clark Equipment's
16 liability projections are not included in this
17 analysis?

18 A. No, I would not know.

19 Q. Do you know whether it had --
20 Clark Equipment has asbestos-related lawsuits
21 pending against it?

22 A. No, I would not know.

23 Q. If I can ask you to turn to Page 44.

24 A. I've got it.

25 Q. Okay. And this is a chart of the

1 (M. DUFOUR - 3/3/21)
2 number of lawsuits -- asbestos-related lawsuits
3 filed against -- or relating to the
4 Murray Boiler asbestos liabilities for each
5 year; is that right?

6 A. That's what it says. That's correct.

7 Q. Do you know why the number was lower
8 in 2018?

9 A. No.

10 Q. Do you expect it to go -- in the
11 absence of bankruptcy, did you expect it to go
12 up or down in the future?

13 MR. HIRST: Hold on one second.

14 Objection -- objection on the basis of
15 the attorney-client privilege and work
16 product doctrine.

17 A. I would agree. I can't answer that.

18 Q. You can't --

19 MR. HIRST: Hold on. Let me finish my
20 instruction, Steve.

21 THE WITNESS: I should say I'm not
22 answering it on the advice of the attorney.

23 MR. HIRST: Let me give that advice
24 first.

25 To the extent you have independent

1 (M. DUFOUR - 3/3/21)

2 knowledge beyond what your attorneys told
3 you, Mr. Dufour, you can answer the
4 question. To the extent all of your
5 knowledge is based on advice of counsel,
6 then I instruct you not to answer.

7 A. Which I decline to answer because of
8 advice of counsel.

9 Q. I'd ask you to turn to Page 47 --
10 excuse me -- 48. I'm sorry.

11 A. I've got it.

12 Q. Okay. And that's titled
13 "Murray - Annual Indemnity Payments."

14 Is that a chart showing the amount of
15 indemnity payments paid to claimants, either in
16 settlements or judgments in favor of those
17 claimants?

18 A. Yes. I'm assuming that's what it was
19 referencing.

20 Q. Okay. And do you have an
21 understanding -- when you agreed to support the
22 Murray bankruptcy filing, did you expect that
23 number to -- in the absence of a bankruptcy, to
24 go up or down moving forward?

25 MR. HIRST: And I'll object on the

1 (M. DUFOUR - 3/3/21)

2 basis of the attorney-client privilege, work
3 product doctrine.

4 And my instruction will be,

5 Mr. Dufour, if you had an independent
6 understanding in response to Mr. Goldman's
7 question, please provide it. Otherwise, if
8 your understanding is entirely based on the
9 advice of counsel, I will instruct you not
10 to answer.

11 A. I will not answer on the advice of
12 counsel.

13 Q. I will ask you to look at the last
14 page of the exhibit, which is Page 49, which is
15 titled "Murray Defense Costs."

16 Are those the numbers for -- per year,
17 spent on either legal fees or expenses related
18 to defending claims and the litigation?

19 A. That's correct.

20 Q. And at the time you elected to support
21 the bankruptcy filing of Murray Boiler, did you
22 have an expectation that number would go up or
23 down in future years?

24 MR. HIRST: And same objection.

25 Objection on the basis of the

1 (M. DUFOUR - 3/3/21)
2 attorney-client privilege and work product
3 doctrine.

4 Again, Mr. Dufour, if you had
5 independent knowledge not provided by
6 counsel in response to Mr. Goldman's answer,
7 please provide it. If all of your
8 information was information provided by
9 counsel, then I would instruct you not to
10 answer.

11 A. I will not answer on the advice of
12 counsel.

13 Q. Have you read any of the filings in
14 the Murray bankruptcy -- filings in the
15 bankruptcy court?

16 A. If it was presented to us in a board
17 meeting, I would have. If it was not presented
18 to us in a board meeting, I would not have.

19 Q. And we have minutes, which have been
20 marked and we can go through, for board meetings
21 on every -- every sort of seven days, May --
22 after the May 15th board meeting, May 22nd,
23 May 29, June 5, June 12, and, I believe,
24 June 17.

25 Is there -- have there been other

1 (M. DUFOUR - 3/3/21)

2 it.

3 MR. GOLDMAN: Okay.

4 BY MR. GOLDMAN:

5 Q. And what is your memory of this
6 meeting?

7 A. I recall this meeting, we went
8 through -- just give me a moment and let me just
9 review the notes real quick, if you don't mind.

10 Q. Sure.

11 (Witness reviews document.)

12 A. Yeah. I mean, this is -- I've read up
13 to probably Page 3.

14 This was the meeting where we -- they
15 presented the Bestwall case, and then we went
16 through the strategic options that we would go
17 through in terms of the three strategic options
18 that were in front of us to move forward.

19 Q. And what were the three strategic
20 options?

21 A. There was -- it was insurance, it was
22 bankruptcy, and the other one was called
23 strategic restructuring.

24 Q. Okay. So let me just -- and the
25 bankruptcy option is the one that was ultimately

1 (M. DUFOUR - 3/3/21)

2 pursued; is that correct?

3 A. That's correct.

4 Q. So let's go over the other two.

5 And before doing that, would it be
6 correct that the purpose for creating
7 Murray Boiler LLC as a separate entity was to
8 address the asbestos-related claims and lawsuits
9 that were being made that related to the
10 Murray Boiler -- historic Murray Boiler product?

11 A. Yeah.

12 MR. HIRST: Object to form and
13 foundation.

14 Go ahead. I'm sorry.

15 A. Yes.

16 Q. Okay. So I take it with these three
17 options still open, the idea would be that that
18 restructuring was designed to make any of these
19 options more -- easier to accomplish; is that
20 correct?

21 A. That's correct.

22 Q. Okay. So let's -- let me ask you
23 about what you've described as the insurance
24 option.

25 What was that?

1 (M. DUFOUR - 3/3/21)

2 MR. HIRST: Just to interject before
3 you answer, Marc, an objection, similar to
4 the ones as before.

5 I'm going to object on the basis of
6 attorney-client privilege and work product
7 doctrine.

8 Marc, please provide your
9 understanding. I just caution you to not
10 reveal specific attorney-client
11 communications concerning the same.

12 With that instruction, you can answer.

13 Q. In light of that instruction, let me
14 just ask you a foundational question.

15 Before this meeting, had you had any
16 discussions with anyone about this insurance
17 option you just described?

18 A. Not the specific option, but we were
19 aware that insurance was involved in paying out
20 on these claims, as you saw in the previous
21 presentation.

22 Q. Okay. But you were not -- before this
23 meeting, you were not aware of an insurance
24 option that would be an alternative to the
25 bankruptcy option; is that correct?

1 (M. DUFOUR - 3/3/21)

2 A. Right. In fact, I think during this
3 meeting, we talked about it so much that we
4 instructed Allan, legal counsel, to go back, and
5 we asked a bunch of specific questions related
6 to that option that actually he needed to go
7 research and look into. And I believe he
8 reported back on those in the following board
9 meeting.

10 Q. Okay.

11 A. So there was quite a long, very
12 detailed discussion. Board members such as
13 Ray Pittard, Manilo Valdes. I asked a lot of
14 questions, because we just didn't understand
15 that insurance. And, actually, if we could have
16 found somebody that could have provided the
17 insurance to us, we thought that might be an
18 easier path to follow.

19 Q. Okay. What was that path? What was
20 the insurance option? I understand that it
21 involves insurance companies and hoped they'd
22 somehow pay for some, all, or most of it, but
23 can you give me a little more specificity?

24 A. Well, I think that's kind of it. I
25 mean, we really didn't know. Like I told you,

1 (M. DUFOUR - 3/3/21)
2 we were -- you know, obviously you're sitting
3 there wondering, okay, who carries this kind of
4 insurance, and what would it cost, and how does
5 it work. And that's what all of the questions
6 were about. Okay? Because none of us really
7 understood. In fact, you know, I don't think,
8 you know, our legal team had really done -- they
9 needed to do more due diligence on it, which
10 they went back and did, and then we had an even
11 more robust discussion about it when they came
12 back the following meeting and reported out.

13 Q. Was the question whether the existing
14 historical insurance policies would pay for
15 these asbestos liabilities, or was the question
16 whether there were new insurance products that
17 you might be able to purchase to pay for some or
18 all of these liabilities?

19 A. New --

20 MR. HIRST: Hold on, Marc.

21 THE WITNESS: Okay.

22 MR. HIRST: Let me just think about
23 the question real quick.

24 THE WITNESS: Okay.

25 MR. HIRST: You can go ahead and

EXHIBIT J

Excerpts of the March 16 Amy Roeder Deposition Transcript.

1 AMY ROEDER

2 UNITED STATES BANKRUPTCY COURT
3 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
4 CHARLOTTE DIVISION

4 -----x

5 IN RE: Chapter 11
6 No. 20-30608 (JCW)
(Jointly Administered)

7 ALDRICH PUMP LLC, et al.,
8 Debtors.

9 -----x

10 ALDRICH PUMP LLC and
11 MURRAY BOILER LLC,
12 Plaintiffs,

13 v. Adversary Proceeding
14 No. 20-03041 (JCW)

15 THOSE PARTIES TO ACTIONS
16 LISTED ON APPENDIX A
17 TO COMPLAINT and
18 JOHN and JANE DOES 1-1000,
19 Defendants.

20 -----x

21
22 REMOTE VIDEOTAPED DEPOSITION OF
23 AMY ROEDER

24 Reported by:
Sara S. Clark, RPR/RMR/CRR/CRC
25 JOB No. 191083

1 AMY ROEDER

2 Murray bankruptcies, do you know what a
3 consensual plan of reorganization is?

4 A. I do not.

5 Q. Do you know whether it is a goal of
6 Aldrich and Murray to have a consensual plan of
7 reorganization?

8 A. I do not, because I don't know what a
9 consensual reorganization is.

10 Q. Okay. As you sit here today as CFO of
11 Aldrich and Murray, do you know how close
12 Aldrich and Murray are to having a plan of
13 reorganization?

14 MR. HIRST: Object to the form.

15 Go ahead.

16 And, actually, I'll object -- let me
17 also object and caution to the extent this
18 answer implicates legal advice you've
19 received from counsel, I'll instruct you not
20 to answer on that part, but you can
21 certainly answer your overall understanding
22 if you have one.

23 A. Well, this is where I would have to
24 ask you to be a little more specific.

25 Q. Are you aware of any plan of

1 AMY ROEDER

2 at the meeting?

3 A. I don't recall.

4 Q. Do you recall if anyone else asked
5 questions about the update at the meeting?

6 A. There would have been questions asked
7 just based on the minutes, but I don't recall
8 who asked questions.

9 Q. Do you recall what the questions were
10 about?

11 MR. HIRST: Hold on real quick, Amy.

12 Again, this is a yes-or-no question to start
13 with, and then we can work from there to try
14 to maintain the privilege.

15 So go ahead.

16 THE WITNESS: Yeah.

17 A. No, I don't recall what the questions
18 were.

19 Q. Okay. Why don't we turn to Page 4.
20 Let me know when you're there.

21 A. I'm there.

22 Q. And the new paragraph on that page
23 says "Following a lengthy and robust discussion
24 of the benefits and challenges associated with
25 the use of Section 524(g) of the

1 AMY ROEDER

2 Bankruptcy Code, Mr. Tananbaum then reviewed the
3 other strategic options for addressing current
4 and future asbestos liabilities that were
5 presented at the May 15 joint meeting."

6 Do you see that?

7 A. I do.

8 Q. Do you recall a lengthy and robust
9 discussion at the meeting?

10 A. I do.

11 Q. In what way was the discussion robust?

12 A. I just recall a lot of involvement
13 from all participants asking questions,
14 obviously, the board members asking questions.
15 I don't remember what questions they were
16 asking, but certainly very interested in
17 understanding everything that had really been
18 presented and really wanted to kind of do a
19 thorough deep dive of everything.

20 Q. At the meeting, was there disagreement
21 among the board members over which options to
22 choose?

23 A. No, not that I recall.

24 Q. The next sentence says "During his
25 review, Mr. Tananbaum, with the assistance of

1 AMY ROEDER

2 Mr. Evert, Mr. Erens, Ms. Morey, and Mr. Turtz,
3 responded to questions from members of the
4 boards and Mr. Pittard, resulting in a lengthy
5 and robust discussion of the mechanics and
6 limitations of these other options."

7 Do you see that?

8 A. I do.

9 Q. Do you recall a lengthy and robust
10 discussion?

11 A. I recall a lengthy and robust
12 discussion in general about everything, but not
13 specific to this.

14 Q. Do you recall in what way the
15 discussion was robust?

16 A. Well, as I stated earlier, it was just
17 a lot of questions and just wanted to gain a
18 really good understanding.

19 Q. So there was no disagreement at this
20 meeting among board members regarding the
21 mechanics and limitations of other options?

22 A. Not that I recall.

23 MR. LIESEMER: Jessica, could you
24 kindly send the witness Tab 27, please.

25 Ms. Roeder, we will be sending you

1 AMY ROEDER

2 through the chat function a document
3 previously marked as Committee Exhibit 33.

4 Please let me know when you've
5 received and opened it.

6 THE WITNESS: I have it and it's open.

7 BY MR. LIESEMER:

8 Q. Do you recognize Exhibit 33?

9 A. This is joint meeting minutes, it
10 looks like, dated Friday, May 29th.

11 Q. On Page 3, under the heading "Review
12 and Further Discussion of Strategic Options for
13 Addressing Current and Future Asbestos
14 Claims" -- are you there?

15 A. I am.

16 Q. -- the minutes say "Mr. Tananbaum
17 briefly reviewed the strategic options for
18 addressing current and future asbestos claims
19 presented at the May 15 joint meeting and
20 further discussed at the May 22 joint meeting,
21 noting that he had received requests from
22 members of the boards at and after the May 22
23 joint meeting to prepare for review with the
24 boards a side-by-side comparison of such
25 options."

EXHIBIT K

Excerpts of the March 1 Manlio Valdes Deposition Transcript.

1 MANLIO VALDES

2 UNITED STATES BANKRUPTCY COURT
3 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
4 CHARLOTTE DIVISION

4 -----x

5 IN RE: Chapter 11
6 No. 20-30608 (JCW)
(Jointly Administered)

7 ALDRICH PUMP LLC, et al.,
8 Debtors.

9 -----x

10 ALDRICH PUMP LLC and
11 MURRAY BOILER LLC,
12 Plaintiffs,

13 v. Adversary Proceeding
14 No. 20-03041 (JCW)

15 THOSE PARTIES TO ACTIONS
16 LISTED ON APPENDIX A
17 TO COMPLAINT and
18 JOHN and JANE DOES 1-1000,
19 Defendants.

20 -----x

21 *REVISED*

22 REMOTE VIDEOTAPED DEPOSITION OF
23 MANLIO VALDES

24 Reported by:
Sara S. Clark, RPR/RMR/CRR/CRC
25 JOB No. 190521

1 MANLIO VALDES

2 If the bankruptcy were not filed, what
3 was your -- withdrawn.

4 What was your understanding before the
5 bankruptcy filing as to how Aldrich Pump LLC
6 would handle its asbestos claims or liabilities
7 if there were no bankruptcy?

8 A. So, you know, from recollection, as we
9 established the first board meetings and we got
10 our first financial updates, it was clear we had
11 a set of liabilities, including the operating
12 liabilities. It wasn't just the claims. And at
13 that point in time, we did have a preliminary
14 funding agreement with the parent company, so we
15 did know that there was some cash flow that we
16 had available to us.

17 But at that point in time, our primary
18 focus of discussion at the board level became
19 what are the options available to us in making
20 decisions as to how these businesses operate
21 going forward. And at that point in time, we
22 spent a significant amount of time as a board
23 discussing what those options were.

24 There were three major options that
25 were an area probably more time focused, and

1 MANLIO VALDES

2 that was an ongoing discussion for -- I'm going
3 to say it consumed us between the first board
4 meeting and the time that the filing took place.

5 So at that point in time, my
6 understanding was that our options were, number
7 one, we could continue to receive claims as they
8 were. In other words, as claims came in, they
9 would be processed much the same way; that at
10 one point in time, we were told were being
11 processed by Ingersoll Rand Company.

12 The second major option we discussed
13 was whether insurance was available to us and
14 whether that was a tangible possibility or not.

15 And the third major point of -- or
16 option discussed was a potential bankruptcy
17 filing.

18 There was a long discussion as to
19 whether there were any other possibilities. For
20 context, I mean, our board members, you know,
21 asked a few questions -- I don't recall the
22 specific questions. From my recollection, my
23 mind went to, you know, is there a fourth way,
24 is there a fifth way, is there anything else
25 that is tangible and doable, right? Because you

1 MANLIO VALDES

2 can always come up with potentially fantastic or
3 incredible options that are just not tangible or
4 not doable in the business world.

5 So after a long deliberation, we came
6 and anchored around and focused a lot of our
7 discussion around those three major options
8 available to us at the time.

9 Q. And let me explore those three
10 options. First, I gather you -- eventually the
11 decision was made to go with the bankruptcy
12 option; is that correct?

13 A. That is correct.

14 Q. Why was that decision made?

15 A. Well, you know, when we deliberated
16 and, you know, had the internal discussions, you
17 know, continuing to operate the way we're
18 operating, in other words, just fulfilling
19 claims, from a business standpoint in my
20 viewpoint, the questions that I asked was, what
21 does the total liability look like? What time
22 fences are we looking at? Is this a sensible
23 option for us?

24 From recollection, I mean, all -- it's
25 stay as you were. It's, you know, a liability

1 MANLIO VALDES

2 prepared it, to answer the question directly.

3 Q. Do you recall whether you ever
4 reviewed a presentation by the BatesCarey firm?

5 A. The simple answer is no. I think it's
6 important, just for context, right, we had two,
7 three different firms sitting around the table.
8 And Zoom is always difficult to figure out who
9 is speaking for whom. And I think we did a --
10 tried very hard to keep the clarity, but it
11 wasn't always the ideal. So I wouldn't be able
12 to answer with certainty as to who those folks
13 are or whether they joined some of the meetings
14 or not.

15 Q. Do you remember the substance of the
16 presentation -- the written presentation that
17 was forwarded to you with this e-mail of May 14
18 from Mr. Tananbaum?

19 A. I don't -- without looking at it
20 again, Mr. Goldman, I'm afraid I -- like I said,
21 there were several. It was -- there was a
22 period of time where we had board meetings, I
23 believe it was almost every week. So I have a
24 hard time placing what presentation went where,
25 the subject matter, I'm afraid.

1 MANLIO VALDES

2 MR. GOLDMAN: Mr. Hamilton, has
3 that -- I don't believe that's been
4 produced. Do you know why? Just trying to
5 figure out if we've got an issue we need to
6 pursue or not.

7 MR. HAMILTON: I don't know if it's
8 been produced. If it has not been produced,
9 I would speculate -- I don't know, but I
10 would assume because it's privileged and
11 probably shows up on a privilege log
12 somewhere.

13 MR. GOLDMAN: Do we have a privileged
14 log?

15 MR. HAMILTON: I don't know the answer
16 to that question. I know that Morgan Hirst
17 has been dealing with that issue.

18 MR. GOLDMAN: Okay. We can figure
19 that out. We would certainly ask for it if
20 it hasn't already been produced, and I don't
21 believe it has been. But we -- but we'll
22 double-check on that.

23 BY MR. GOLDMAN:

24 Q. If we can go, Mr. Valdes, to the
25 e-mail above that, towards the top of the

1 MANLIO VALDES

2 exhibit, which is an e-mail from Mr. Tananbaum
3 dated May 15th -- this is the one dated
4 May 15th -- that says "As promised, enclosed
5 please find the corrected version of today's
6 presentation as we spoke of it on the call.
7 Please replace the version you received last
8 night with this version."

9 Do you recall what was corrected or
10 changed between the original presentation you
11 received and the one you received on the 15th?

12 A. I do not, Mr. Goldman.

13 Q. Let's go to a new exhibit, which is
14 DEBTORS_50787 through 790.

15 MR. DEPEAU: Mr. Valdes, don't click
16 on that one. I clicked on the wrong one
17 here. Let me load up the right one.

18 MR. HAMILTON: While he's doing that,
19 Mr. Goldman, my associate, Nick Hidalgo,
20 informs me that we clawed back a version of
21 the May 15 presentation and produced a new
22 version that added privilege redactions on
23 Page 35. I don't know if that's the same
24 presentation that's referred to in
25 Mr. Tananbaum's e-mail, but I suspect it may

1 MANLIO VALDES

2 be. The Bates stamp I have of the one that
3 we clawed back was TRANE-DEBTORS_00001213.
4 So I believe we inadvertently produced it
5 and clawed it back, and you should have a
6 redacted version that was produced, I
7 believe.

8 MR. GOLDMAN: Do you know the Bates
9 number?

10 MR. HAMILTON: I do not know the Bates
11 number of the one that we produced with the
12 privilege redaction.

13 MR. HIDALGO: It would be the same
14 Bates number.

15 MR. HAMILTON: All right. And in
16 answer to the other question, yes, we have
17 produced a privilege log. Mr. Hidalgo
18 informs me of that. I'll stop bouncing on
19 that. It's now in your guys' lap.

20 MR. GOLDMAN: Thank you.

21 BY MR. GOLDMAN:

22 Q. Okay. So let's look at --

23 A. I'm sorry. Which document should I be
24 looking at?

25 Q. The one beginning 50787.

1 MANLIO VALDES

2 A. 787. Okay. Let me open that up.

3 MR. HAMILTON: And that will be

4 Committee Exhibit 31.

5 - - -

6 (Committee Exhibit 31 marked.)

7 - - -

8 THE WITNESS: And that's minutes of
9 the joint meeting, Mr. Goldman?

10 MR. GOLDMAN: Thank you. Yep.

11 BY MR. GOLDMAN:

12 Q. Now, in the second page, middle of the
13 page, under the "Introductory Remarks," again,
14 there was an indication that there first would
15 be an update regarding activities in connection
16 with the current asbestos-related lawsuits
17 against the companies.

18 Do you recall any new update or
19 receiving any information at this meeting that
20 you had not received at the meeting before this?

21 MR. HAMILTON: You can answer that
22 question yes or no, Mr. Valdes.

23 A. The answer's yes.

24 Q. And what do you recall learning at
25 this meeting?

1 MANLIO VALDES

2 recall whether it was -- it was certainly more
3 than -- from vague recollection, more than a
4 couple months for meeting at least once a week.

5 Q. And if we go to Page 3 of the exhibit,
6 which is -- has Number 50793 affixed to it.

7 A. Correct.

8 Q. The second section there, "Review and
9 further discussion of strategic options," below
10 there, it says "Mr. Tananbaum briefly reviewed
11 the topics presented at the May 15 joint meeting
12 and noted the numerous questions received from
13 members of the board and Mr. Pittard both at and
14 after the May 15 joint meeting."

15 Did you have any questions following
16 the May 15 meeting about strategic options?

17 MR. HAMILTON: I believe you should
18 answer that question yes or no, Mr. Valdes.

19 THE WITNESS: I'm trying -- thank you,
20 Mr. Hamilton. I'm trying to recall.

21 A. I believe I had -- I believe I had one
22 or two questions. Maybe more than that, but I
23 believe I had at least one or two questions.

24 Q. And what were your questions?

25 MR. HAMILTON: Object. And to the

1 MANLIO VALDES
2 extent that your questions were questions to
3 the lawyers for legal advice, I'm going to
4 instruct you not to disclose those questions
5 in the answer to the pending question by
6 Mr. Goldman. If you had questions that were
7 not for legal advice but to others, like
8 Mr. Pittard, you can go ahead and answer
9 that.

10 MR. GOLDMAN: Any question to a
11 lawyer -- let's get some clarification here
12 in terms of what you're instructing the
13 witness so we know.

14 So if he asked a question of someone
15 who happens to have a law degree, are you
16 telling him not to answer as to that
17 question, or only if he's seeking legal
18 advice? And then we ought to give some
19 guidance to the witness as to what you mean
20 by "legal advice," because I don't know if
21 he's -- he's primed on that.

22 MR. HAMILTON: I'm not going to get
23 into that level of detail with my
24 instructions. If his questions were for
25 counsel, I'm instructing him not to answer

1 MANLIO VALDES

2 assure you it was not necessarily the most
3 polite conversations. There was plenty of
4 exchange of ideas as to whether there were any
5 other options that we should consider, and we
6 weren't going to move until we had examined all
7 of the potential combinations that we had
8 potentially available to us.

9 Q. What was the substance of the robust
10 discussion of the benefits of -- of the
11 benefits? Because it says "discussion of
12 benefits and challenges."

13 MR. HAMILTON: I'm going to object and
14 instruct the witness not to answer on the
15 grounds that it asks the witness to disclose
16 communications protected by the
17 attorney-client privilege.

18 Q. What were the challenges discussed?

19 MR. HAMILTON: Same objection; same
20 instruction not to answer.

21 Q. Do you know -- the section below that
22 paragraph is redacted. Do you know, without --
23 what subject that discussed?

24 MR. HAMILTON: I'm going to object.

25 A. Not offhand, Mr. Goldman.

1 MANLIO VALDES

2 MR. HAMILTON: I'm going to object and
3 instruct the witness not to answer on the
4 grounds of privilege.

5 Q. If we go to the next page after the
6 redactions, it says "Mr. Erens provided a
7 general overview regarding the preparations that
8 had been undertaken as contingency planning in
9 case the boards were ultimately to determine to
10 make pursue [sic] a strategy of using 524(g) of
11 the bankruptcy code to finally resolve current
12 and future asbestos claims against the
13 companies."

14 What is your recollection of when
15 those preparations were begun?

16 MR. HAMILTON: Object to form.

17 You can answer, Mr. Valdes.

18 A. I don't recall the exact meeting,
19 Mr. Goldman, but it was -- I remember that it
20 was -- I don't believe it was the first meeting,
21 and my memory may not serve me well, but it was
22 fairly early on when the discussion focused
23 around the complexity of any bankruptcy filing,
24 the timelines, you know, that it would take, how
25 long it would take, that that discussion took

EXHIBIT L

Excerpts of the March 22 Allan Tananbaum Deposition Transcript.

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

-----x
4 IN RE:

Chapter 11
5 No. 20-30608 (JCW)
(Jointly Administered)

6 ALDRICH PUMP LLC, et al.,
7 Debtors.

-----x
8 ALDRICH PUMP LLC and

9 MURRAY BOILERS LLC,
10 Plaintiffs,

Adversary Proceeding
12 No. 20-03041 (JCW)

13 v.

14 THOSE PARTIES TO ACTIONS
15 LISTED ON APPENDIX A
16 TO COMPLAINT AND

17 JOHN AND JANE DOES 1-1000,
18 Defendants.

-----x
19 March 22 2021

20
21 REMOTE VIDEOTAPED DEPOSITION OF
22 ALLAN TANANBAUM

23
24 Stenographically Reported By:
Mark Richman, CSR, CCR, RPR, CM
25 Job No. 191087

1 A. TANANBAUM

2 what the likely areas of inquiry were?

3 A. Various participants on those
4 discussions.

5 Q. Did you email, send letters, any
6 other, any written communication about
7 this deposition?

8 A. In general, no. I may have sent
9 one or two emails to Mr. Hirst.

10 Q. You said you flipped through some
11 documents that had been produced to the
12 ACC; is that correct?

13 A. That's correct.

14 Q. What documents did you flip
15 through?

16 MR. HIRST: Let me just object
17 real quickly, and Allan, you'll be
18 able to answer this question. Any
19 documents you reviewed in preparation
20 please identify for Mr. Phillips.

21 Things that we preselected for
22 you and only discussed during our
23 meetings based on our selection I
24 would object based on privilege. But
25 I think you can answer the question

1 A. TANANBAUM

2 based on the way it was put and the
3 way you testified earlier.

4 A. This weekend I flipped through my
5 original declaration docket item number
6 3, Mr. Phillips, as you noted, which I
7 have before me. I also flipped through
8 my supplemental declaration filed in
9 connection with the debtors' summary
10 judgment motion.

11 I flipped through one of the
12 funding agreements. There were parallel
13 sets of funding agreements for each
14 debtor. I flipped through one of the
15 three agreements for one of the debtors,
16 I believe it was the original funding
17 agreement for Murray Boiler. I flipped
18 through one version of the services
19 agreement, one version of the support
20 agreement, one version of the secondment
21 agreement.

22 I flipped through the
23 presentation, the produced redacted
24 version of the presentation on the
25 company's history on, of asbestos that I

1 A. TANANBAUM
2 necessitated by various settlement
3 discussions or things that perhaps
4 plaintiffs' counsel may have heard on
5 their own.

6 Q. What about before filing for
7 bankruptcy, did the debtors reach out to
8 the asbestos plaintiffs bar to discuss a
9 potential bankruptcy?

10 A. No.

11 Q. How do you think the debtors will
12 achieve a consensual plan of
13 reorganization? I think I've heard you
14 use the word consensual. How do you
15 think the debtors will achieve that
16 here?

17 A. I think it's going to take a lot
18 of long and probably difficult
19 negotiations. I think we're talking
20 about, under any scenario, a significant
21 amount of money and when you're dealing
22 with significant amounts of money, in my
23 experience there are going to be some
24 difficulty discussions.

25 So I think that's kind of the

1 A. TANANBAUM
2 bottom line. I don't know all the
3 levers that are going to have to be
4 pushed to get there.

5 You just, just by way of example,
6 you mentioned something this morning
7 about an estimation proceeding. That's
8 one potential. I don't know if and when
9 that's going to have to occur.

10 But while my understanding is
11 that the judge's ruling in any
12 estimation proceeding wouldn't be
13 binding, it may in given instances be a
14 likely spur to successful negotiations.

15 So that type of thing. And there
16 could be many others.

17 Q. In paragraph -- on page 13 of
18 your declaration on paragraph 35, you
19 state that absent an injunction or
20 declaration many defendants who already
21 have asserted asbestos claims against
22 the protected parties will attempt to
23 continue prosecuting such claims against
24 the protected parties outside of the
25 Chapter 11 cases. Do you recall that?

1 A. TANANBAUM

2 A. Yes, I do.

3 Q. What is the basis for that
4 statement? Your declaration?

5 A. The facts that they've already
6 chosen to file claims against protected
7 parties. And by protected parties in
8 that instance we are specifically
9 talking about affiliates. There were
10 some 65 tort claims filed against Trane
11 Technologies LLC and/or Trane US Inc.
12 Since that time there have been more. I
13 don't recall specifically what the total
14 count is as of today. But something on
15 the order of magnitude of 200-plus
16 sounds right.

17 There's also been to my knowledge
18 more recently at least one claim
19 directly lodged against Trane
20 Technologies PLC.

21 But, you know, I don't think it's
22 a stretch to say that if a party has
23 purposely availed itself of naming one
24 of those protected parties, that if a
25 temporary restraining order is lifted

1 A. TANANBAUM

2 that they'll continue litigating their
3 claim. That just seems to make good
4 sense.

5 Q. I'd like to talk for a few
6 minutes about the board meetings that
7 you've participated in, sir. I think
8 you stated earlier that you regularly
9 participate or always participate in the
10 Aldrich and Murray board meetings; is
11 that right?

12 A. That's correct.

13 Q. And your role in those meetings I
14 think you said you were the secretary or
15 presided over them, something like that;
16 is that right?

17 A. I don't know whether I did, but I
18 -- I did preside over them. I would do
19 the roll call, lay out orally what the
20 agenda for that day's session was and
21 ensure that the minutes were drafted
22 accurately and reviewed. So, so yes.

23 Q. And I think we talked about how
24 the Jones Day lawyers attended those
25 board meetings; is that right?

1 A. TANANBAUM

2 A. That's correct.

3 Q. Let's look at tab 35, Cecelia.

4 Mr. Tananbaum, I'm going to send you
5 through the Chat function Committee
6 Exhibit, what's been previously marked
7 as Committee Exhibit 28. It's Aldrich
8 board meeting minutes from May 8th,
9 2020.

10 (Committee Exhibit 28, Aldrich
11 board meeting minutes from May 8th,
12 2020 was previously marked for
13 identification.)

14 Q. Let me know when you have that.

15 A. Exhibit 28, yes, I have it.

16 Q. You see it has a Bates number at
17 the bottom Debtors 50778, I think if you
18 go to the last page it looks like
19 there's a signature above your name. Is
20 that your signature, sir?

21 A. That is.

22 Q. Did you send all the board
23 minutes?

24 A. I did.

25 Q. And did you draft these minutes?

1 A. TANANBAUM

2 A. They were in the first instance
3 drafted by Jones Day and I reviewed them
4 for accuracy and made edits where
5 necessary.

6 Q. Is there any reason for you to
7 believe these are not an accurate copy
8 of the board minutes from May 8th, 2020
9 for Aldrich?

10 A. No reason.

11 Q. Was this the very first Aldrich
12 board meeting, May 8th, 2020?

13 A. Yes, it was.

14 Q. On page 3 with the header
15 entitled Review of post restructuring
16 activities in relation to the debtors
17 asbestos related lawsuits, do you see
18 that on page 3?

19 A. At the top, correct.

20 Q. It says Mr. Evert with the
21 assistance of Mr. Tananbaum, that's you,
22 and Ms. Murray reviewed the company's
23 post restructuring activities.

24 A. Yes.

25 Q. What were those post

1 A. TANANBAUM
2 restructuring activities you were
3 reviewing?

4 MR. HIRST: Let me just interject
5 an objection. I want to ensure, Mr.
6 Tananbaum, you don't reveal any legal
7 advice that was provided to the board
8 on that. But if you can answer that
9 and answer as to the facts presented
10 to the board, you can do so.

11 A. I think we were in general
12 reporting what the experience in the
13 tort system was in light of the
14 restructuring and in light of word
15 getting out that Old IR and Old Trane
16 had restructured.

17 And so I think things such as the
18 namings of what we're now calling
19 protected parties would have outlined I
20 think things such as our communications
21 with our counsel network and with
22 various local courts around the
23 restructuring were discussed. And I
24 also would have referred to
25 communications that I and K&L Gates had

1 A. TANANBAUM
2 with various insurers, insurers around
3 the restructuring. That constellation
4 of activities were reported to the
5 board.

6 Q. What were the communications
7 between you and the insurers regarding
8 the restructuring? Actually, let me ask
9 this first.

10 When did you tell the insurers
11 that you were undergoing the corporate
12 restructuring?

13 A. We informed them shortly after
14 May 1st, and not all the calls were --
15 not all the calls occurred on the same
16 day.

17 Q. And then what other
18 communications did you have with
19 insurers regarding the restructuring
20 that you're referring to here?

21 A. There were some follow-up
22 requests from certain insurers for
23 documents, if you will, to help them
24 validate or prove out the facts around
25 the restructuring as represented to

1 A. TANANBAUM
2 them, and K&L Gates, with some guidance
3 from Jones Day, put those packets
4 together and sent them.

5 Q. Okay. A little lower down on
6 page 3 it says review of post
7 restructuring protocols and guidelines.
8 You see that?

9 A. I do.

10 Q. It says to begin Mr. Erens
11 provided a brief overview of the
12 restructuring and its effects. You see
13 that?

14 A. Yes.

15 Q. What were the effects of the
16 restructuring that's being referred to
17 here?

18 MR. HIRST: Let me think about
19 that question.

20 Can I ask the court reporter to
21 please read the question back to me.

22 (The requested portion of the
23 record was read.)

24 MR. HIRST: I'm going to object
25 and instruct the witness at this

1 A. TANANBAUM

2 point not to answer that because I
3 believe that's specific legal advice
4 that's being presented by Jones Day
5 to the board.

6 Q. You're going to follow that
7 instruction, Mr. Tananbaum?

8 A. Yes, I am.

9 (Instruction not to answer.)

10 MR. PHILLIPS: Cecelia, let's
11 turn to tab 36.

12 Q. Mr. Tananbaum, we are going to
13 send you through the Chat function
14 what's been previously marked as
15 Committee Exhibit 29, these are Murray
16 board meeting minutes from May 8th.

17 (Committee Exhibit 29, Murray
18 board meeting minutes from May 8th
19 was previously marked for
20 identification.)

21 Q. Let me know when you have that.
22 I'll note that it looks like your
23 signature is on page 5 above your name.
24 And this has a Bates stamp on the bottom
25 right-hand corner of debtors 50782,

1 A. TANANBAUM

2 first page.

3 A. I have it up now.

4 Q. Did you write these board
5 minutes?

6 A. Just give me one second to look
7 through them. Okay, yes, I recognize my
8 signature. These appear to be the, the
9 minutes. Can you repeat the question?

10 Q. Did you write these?

11 A. No. Again as mentioned with the
12 Aldrich board minutes, they were drafted
13 in the first instance by Jones Day and
14 then I reviewed them for accuracy and
15 provided edits where I thought
16 necessary.

17 Q. Okay. If I asked you the same
18 question about Mr. Evert's discussion
19 about post restructuring activities and
20 communications with insurers as well as
21 -- I'm sorry. If I asked you that same
22 question, would it be the same answer
23 here for Murray?

24 A. Yes, yes, absolutely.

25 Q. And if I asked you about the

1 A. TANANBAUM
2 effects of the restructuring and the
3 next, and two paragraphs down, I guess
4 same answer, that it's privileged and
5 you're following instruction not to
6 answer that?

7 MR. HIRST: And before Mr.
8 Tananbaum answers, let me -- Mr.
9 Tananbaum, the instruction remains as
10 to any legal advice Mr. Erens
11 presented.

12 To the extent this overview
13 relates solely to facts or anything
14 that doesn't include privileged legal
15 advice, I will let you respond to
16 that and, Mr. Phillips, I'll get you
17 go back on the Aldrich doc if there's
18 anything that doesn't relate to
19 provision of legal advice here, Mr.
20 Tananbaum.

21 Q. Okay. So I asked you about what
22 the effects of the restructuring that
23 were discussed in this overview.

24 Can you answer that, sir?

25 A. Well, one thing comes to mind

1 A. TANANBAUM
2 that I don't believe is privileged, and
3 that was just a recitation of the fact
4 that -- of which assets and liabilities
5 were isolated in the debtors.

6 Q. Okay. That should be something
7 you discussed on May 8th with the
8 Aldrich board and the Murray board?

9 A. I believe so, yes.

10 Q. Were those meetings consecutive?
11 Were they back to back?

12 A. They were back to back, I
13 believe, yes. Because two thirds of
14 each board is comprised of the same
15 folks. And I think for largely that
16 reason, it's helpful to make them back
17 to back.

18 Q. Okay.

19 MR. PHILLIPS: Cecelia, let's do
20 tab 33.

21 Q. Mr. Tananbaum, we're going to
22 send to you through the Chat function
23 what's been previously marked as
24 Committee Exhibit 31, these are the
25 minutes of a joint board meeting of

1 A. TANANBAUM
2 Aldrich and Murray dated May 15th, 2020.

3 (Committee Exhibit 31, joint
4 board meeting of Aldrich and Murray
5 dated May 15th, 2020 was previously
6 marked for identification.)

7 MR. PHILLIPS: They have a Bates
8 number at the first page of debtors
9 50787 and your signature appears at
10 the end of the document above your
11 name. Let me know when you have
12 that.

13 MR. HIRST: Todd, while he's
14 bringing that up, just to prevent
15 crashing of computers that we've seen
16 happen in the past, can we be
17 shutting down other than the PI
18 brief, is it likely we can shut down
19 the other documents we've been
20 looking at, I'm sorry, other than the
21 PI affidavit, can we be shutting down
22 these other documents?

23 MR. PHILLIPS: Yes.

24 A. I was going to ask the same
25 question. I've got so many open. And

1 A. TANANBAUM

2 if I shut one down you want I'll just
3 reopen it. Okay. So I have exhibit 31
4 open now.

5 Q. Okay. Do you recognize this
6 document? It's got your signature on
7 the last page, I believe.

8 A. Yes, these appear to be the
9 minutes of the joint board meeting held
10 on May 15.

11 Q. Any reason to believe this is not
12 an accurate depiction of this document?

13 A. No reason.

14 Q. Did you draft this document or
15 did Jones Day draft it like the other
16 ones?

17 A. Jones Day using the same
18 procedure as the other ones where I
19 reviewed and made any necessary edits.

20 Q. On page 3 under the heading
21 update regarding activities in
22 connection with the current asbestos
23 related lawsuits?

24 A. Yes.

25 Q. Mr. Evert, with the assistance of

1 A. TANANBAUM

2 yourself, provided an update?

3 A. I see that, yes.

4 Q. Do you recall what those updates
5 were?

6 MR. HIRST: Again, Mr. Tananbaum,
7 I'm going to caution you, you
8 certainly can testify as to any facts
9 that were provided to the board, but
10 any legal advice that was included
11 with that I would instruct you not to
12 reveal.

13 A. My recollection was that the same
14 constellation of activities was
15 discussed, that is to say we brought
16 forward to each debtors' experience in
17 the tort system that had occurred in the
18 prior week and any updated
19 communications we may have had with
20 insurers as well as additional
21 communications with courts and our
22 defense counsel network.

23 Q. Under the heading review of the
24 history of the companies with asbestos,
25 it looks like you gave a slide

1 A. TANANBAUM

2 presentation; is that right?

3 A. That's correct.

4 Q. Why did the boards of Aldrich and
5 Murray receive this slide presentation
6 on asbestos liability?

7 A. Well, we wanted the boards to
8 take a deep dive into asbestos and to
9 make some potentially significant
10 decisions about what, if anything, to do
11 to change the historical approach of the
12 predecessors. But in order to make an
13 informed decision, I think the view
14 correctly was that they needed some data
15 around the companies' history defending
16 asbestos claims.

17 And so that presentation was
18 meant to attempt to bring them up to
19 speed as best as a group possibly can
20 that hasn't been living these cases for
21 many years.

22 Q. Did someone request that
23 presentation?

24 A. I don't specifically -- I don't
25 specifically recall a request for such a

1 A. TANANBAUM

2 presentation, although it's possible
3 there were questions out there.

4 I do know that regardless my plan
5 was to present, prepare and present such
6 a presentation anyway.

7 Q. Did you draft that presentation
8 yourself?

9 A. I did take the laboring oar in
10 drafting the presentation, but I did
11 have significant assistance in -- in --
12 in places from Mr. Evert.

13 Q. On page --

14 A. And some assistance from
15 Ms. Morey as indicated here.

16 Q. On page 4 under the heading
17 review of potential strategic options
18 for addressing current and future
19 asbestos claims, do you see that?

20 A. I do.

21 Q. It says Mr. Tananbaum reviewed
22 options available to the companies with
23 respect to the resolution of current and
24 future asbestos claims, including
25 Section 524 (g), do you see that?

1 A. TANANBAUM

2 A. I do.

3 Q. What options did you review that
4 May 15th meeting?

5 A. I think --

6 MR. HIRST: Hold on. Let me
7 again submit the caution to you,
8 while you can respond to Mr. Phillips
9 question, do not reveal any legal
10 advice specific to those options.
11 But I think you can go ahead and
12 answer.

13 A. Okay. I think we reviewed in
14 this first discussion of options all
15 four of what I would characterize as the
16 pending options that were discussed
17 subsequently. Option number 1, remain
18 in the tort system, if you will, status
19 quo.

20 Option number 2, structural
21 optimization as we discussed earlier
22 today.

23 Option number 3, the insurance
24 product option that we discussed
25 earlier.

1 A. TANANBAUM

2 And option number 4, a Chapter 11
3 524 (g) case.

4 Q. At that point in time, May 15th,
5 had you already personally made a
6 decision as to which option you
7 preferred?

8 A. I think that's fair to say, yes.

9 Q. And was that -- what was that
10 option?

11 A. That would be the Chapter 11 524
12 (g) option.

13 Q. Were any options ruled out at
14 that May 15th board meeting?

15 A. No, no options were ruled out.

16 Q. Page 4 also says that the
17 presentation sparked questions from
18 members of the board and Mr. Pittard.

19 A. I see that, yes.

20 Q. Do you recall what questions the
21 board had with respect to that
22 presentation?

23 MR. HIRST: And let me interject
24 an objection. You can answer the
25 question but just limit yourself for

1 A. TANANBAUM
2 privilege purposes just for now to
3 yes or no.
4 A. I don't recall the specific
5 questions. I do recall there being a
6 fairly large number of questions. We
7 were hitting the board members called
8 with just a long, a large amount of
9 information, a long list of data which
10 was dissected in many different ways,
11 and I recall there being a lot of
12 different questions about a lot of
13 different things, none of which I can
14 specifically recall right here and now.

15 Q. Mr. Pittard --

16 A. Yes.

17 Q. -- apparently had questions as
18 well. Do you remember what his
19 questions were?

20 A. Not specifically, no. But Ray
21 has always been an active questioner,
22 and I do have a lot of contact with him
23 to this day in the matter and he's very
24 inquisitive in general. And so I recall
25 just a lot of different questions about

EXHIBIT M

Excerpts of the March 17 Ray Pittard Deposition Transcript.

1 RAY PITTARD

2 UNITED STATES BANKRUPTCY COURT
3 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
4 CHARLOTTE DIVISION

4 -----x
5 IN RE: Chapter 11
6 No. 20-30608 (JCW)
(Jointly Administered)

7 ALDRICH PUMP LLC, et al.,
8 Debtors.

9 -----x

10 ALDRICH PUMP LLC and
11 MURRAY BOILER LLC,
12 Plaintiffs,

13 v. Adversary Proceeding
14 No. 20-03041 (JCW)

15 THOSE PARTIES TO ACTIONS
16 LISTED ON APPENDIX A
17 TO COMPLAINT and
18 JOHN and JANE DOES 1-1000,
19 Defendants.

20 -----x

21 MARCH 17, 2021

22 REMOTE VIDEOTAPED DEPOSITION OF

23 RAY PITTARD

24 Reported by:
Sara S. Clark, RPR/RMR/CRR/CRC
25 JOB NO: 191084

1 RAY PITTARD

2 A. Evan Turtz, our general counsel.

3 Q. Anybody else that you recall?

4 A. That's it.

5 Q. Do you recall anyone -- and was this
6 at a meeting this was presented?

7 A. It was a meeting.

8 Q. And was -- was everyone there in
9 person, or were there some remote?

10 A. I believe they were, but -- I can't
11 say with certainty, but I believe they were.

12 Q. And when was this meeting?

13 A. I believe it would have -- I believe
14 the fall of 2019, I believe. I don't remember
15 the exact date.

16 Q. And what was the idea that was brought
17 to you, to the best you remember it?

18 MR. JONES: I'm going to object, and
19 caution the witness not to share
20 communications with counsel other than the
21 topic if you -- or the advice -- or
22 elicitation of advice.

23 So if you can briefly state the topic
24 of the idea more than you already have,
25 Mr. Pittard, that's fine. But I caution you

1 RAY PITTARD

2 to not share communications with counsel.

3 A. The general topic was restructuring to
4 create flexibility to help efficiently address
5 our overwhelming asbestos claims and expenses
6 and administrative burden.

7 Q. Was it -- when was the idea named
8 Project Omega?

9 A. I don't recall exactly when the name
10 was chosen.

11 Q. It was sometime after that meeting?

12 A. I presume so, you know, but I don't
13 recall.

14 Q. Okay. And was there a PowerPoint
15 presented at that meeting?

16 A. I don't recall. I don't recall if
17 there was or not.

18 Q. Did you take notes at that meeting?

19 A. I don't recall. I don't know if I did
20 or not. Quite some time ago.

21 Q. If you did take notes, was your --
22 withdrawn.

23 Was your practice at the time when you
24 did take notes to do them in writing or on your
25 laptop or some other device?

1 RAY PITTARD

2 Q. Okay. Let me start with the -- and
3 how so?

4 A. Just to make sure I'm clear on the
5 question -- could you rephrase the last
6 question? I want to make sure --

7 Q. Yeah.

8 A. There's something at the very end I
9 want to make sure I --

10 Q. Yeah.

11 Did the restructuring provide you with
12 an enhanced ability to resolve the asbestos
13 claims outside of bankruptcy? In other words,
14 with an option other than Chapter 11.

15 A. The restructuring gave us several
16 advantages that would help that flexibility.
17 First, I think, is it did enable the ability to
18 do the 524(g) Chapter 11 for sure. It also gave
19 us the ability to isolate the liabilities with
20 the subsidiaries. It gave us the ability to
21 have companies that could help to pay for those
22 claims. So we had --

23 Q. To do what?

24 A. It gave us the ability to have
25 choices, I think, is the best -- the best way to

1 RAY PITTARD

2 think of it. Clearly it added flexibility to
3 our ability to make choices.

4 Q. All right. Let me just go back to
5 what -- you said one thing it did was that it
6 enhanced your ability to file Chapter 11 and
7 pursue a 524(g) trust, correct?

8 A. That's correct. But it did other
9 things, too. It gave us flexibility of choices.
10 And that's really what we were seeking to do,
11 was to be able to have alternatives that we
12 could consider and then have the boards --
13 obviously the boards made the robust review and
14 decision on the best choice.

15 Q. So if I'm understanding you correctly,
16 then, the corporate restructuring made it easier
17 to do a Chapter 11 proceeding, but you believed
18 that it also made it easier for you to resolve
19 the asbestos claims through your structural
20 option, and it also made it easier for you to
21 resolve the asbestos claims through the
22 insurance option.

23 Am I correct?

24 A. My understanding is that it gave us
25 the flexibility to -- better flexibility towards

1 RAY PITTARD

2 A. Yeah, I do. Yes.

3 MR. GOLDMAN: All right. Let's go
4 to -- Andrew, help me with the exhibit
5 number of the presentation.

6 THE WITNESS: We're done with this
7 document; is that right?

8 MR. GOLDMAN: We're done with that for
9 now, yeah.

10 MR. DEPEAU: Steve, you're looking for
11 the March 15th presentation --

12 MR. GOLDMAN: Looking for the
13 PowerPoint presentation.

14 MR. DEPEAU: Yeah.

15 MR. GOLDMAN: It goes with the
16 March 15th meeting, right.

17 Or May 15th. Excuse me.

18 MR. DEPEAU: I believe it's
19 Committee Exhibit 42.

20 MR. GOLDMAN: You should see that open
21 up in the chat.

22 THE WITNESS: Okay.

23 I have the presentation up. It's
24 quite a long one, so if we have a specific
25 area that you want to talk about, if you

1 RAY PITTARD

2 would give me time to read it, that would be
3 appreciated.

4 MR. GOLDMAN: Yeah. Do you want to
5 take a 10-minute break and just look at it?
6 That may be the best way rather than make
7 you sit there with us all watching you while
8 you do that.

9 THE WITNESS: Yeah. You don't want to
10 watch me read it.

11 MR. JONES: Yeah, we don't want to
12 watch you read it, but we also don't want to
13 extend the day.

14 So let's just be fair. Ray, why don't
15 you take -- we'll take five and see if you
16 can get through it.

17 Or do you want, Mr. Goldman, to tell
18 him where you're going to direct your --

19 MR. GOLDMAN: Well, I would like to
20 walk through it. I mean, it's certainly
21 fair to -- for Mr. Pittard to let him look
22 at the exhibit first before I take
23 individual pages and --

24 MR. JONES: I know. But it's also --
25 if you're going to go through the whole

1 RAY PITTARD

2 thing, I appreciate the candor. We'll look
3 at it, but it's also unfair to have him
4 sit -- give you more time to ask questions
5 while he reads. It's your choice. What
6 would you like --

7 MR. GOLDMAN: I'm not going to exceed
8 the seven hours if that's what you're
9 talking about.

10 THE WITNESS: Thank you.

11 MR. JONES: All right. So let's take
12 five here, Mr. Pittard. You read, and then
13 we'll come back in five minutes.

14 We're going to accommodate each other,
15 and I appreciate it. Thanks.

16 MR. GOLDMAN: We're not looking to
17 make this a longer marathon than it needs to
18 be.

19 MR. JONES: I understand.

20 So we'll come back about 4:35.

21 Thanks, all.

22 VIDEOGRAPHER: We are going off the
23 record. The time is 4:30 p.m.

24 (Recess taken.)

25 VIDEOGRAPHER: We are back on the

1 RAY PITTARD

2 record at 4:37 p.m.

3 BY MR. GOLDMAN:

4 Q. Okay. We're back on the record.

5 Is this Exhibit 42 the PowerPoint that
6 was shown at the May 15, 2020 joint board of
7 directors -- or joint board of managers meeting?

8 A. I believe it is.

9 Q. Okay. And I'd just like to scroll
10 through this with you together and just hit some
11 high points, and if there's any point that you
12 need to look more thoroughly through the
13 document, just say so, or look for something in
14 the document, just say so.

15 So the -- starting with the second
16 page of the exhibit, which is the agenda,
17 there's nothing in that agenda that lists
18 either -- is there any -- well, withdraw that.

19 Is there anything in these agenda
20 items that suggests that this presentation is
21 going to include a discussion of the
22 nonbankruptcy reorganization option? Just
23 looking at the agenda itself. We'll go through
24 the substantive slides afterwards.

25 A. Okay.

1 RAY PITTARD

2 Yeah, as I look at this, this
3 presentation is primarily background information
4 on asbestos, the history of the claims, the
5 evolution of that litigation, some of the tort
6 system realities, a lot of the data, defense
7 costs, reimbursements, and projections. So it's
8 more of a fact base for the board and for the
9 officers, as I recall.

10 Q. So, again, we'll go through the rest
11 of the presentation in a minute, but just
12 looking at the agenda itself, there's nothing in
13 there that suggests to you that this included a
14 discussion of a nonbankruptcy reorganization
15 option; is that correct?

16 A. Not really. It just talks about fact
17 base, as I said.

18 Q. Okay. And would the same be true with
19 regard to the insurance option, that is, that
20 there's nothing in this agenda that suggests
21 that there's a discussion of the insurance
22 option; is that correct?

23 A. This -- as I said, this is a fact
24 base. This appears to me to be a fact base from
25 the agenda.

1 RAY PITTARD

2 Q. And did you consider this presentation
3 to be important to you at the time it was
4 presented?

5 A. Yes, of course. Very important for
6 the board and the officers to have a broad, full
7 picture. So I think the facts were quite
8 insightful.

9 Q. And you knew at the time this was
10 being presented that, ultimately, the board was
11 going to make -- need to make some decisions
12 about which of the three options you've
13 described to -- the two companies should pursue;
14 is that correct?

15 A. Yes. I mean, certainly I think at the
16 time, this particular discussion was to make
17 sure the board was up to speed. And if I go
18 back to our prior conversation on the three
19 agenda topics of that meeting, you know, this
20 background was one of those topics for sure.

21 Q. Okay. And was -- would it be true
22 that one of the things that you needed to have
23 an understanding of in order to make proper
24 business decisions on behalf of Aldrich Pump and
25 Murray was to have an appreciation of the

1 RAY PITTARD

2 amounts of current and future asbestos
3 liabilities -- the dollar amounts of current and
4 future asbestos liabilities?

5 A. I think it's helpful to have a full
6 picture in any business situation. I think
7 there's costs that go with any option, and I
8 think it's always important to know the
9 economics and the facts behind it. So I think
10 that is a part of it for sure.

11 Q. So certainly before putting either or
12 both of these companies into a bankruptcy, you
13 would want to have at least some rough
14 estimation of their current and future asbestos
15 liabilities; would that be correct?

16 A. I think you'd want -- I think for any
17 option you would want to know that. I mean, I
18 think you have to know the magnitude of the
19 problem is not a significant problem. You would
20 want -- that could change your decision on what
21 best alternative you might pick. So I think
22 it's very important that you would know that for
23 any option that you would select.

24 Q. So let's go on -- see -- if you will
25 bear with me and just scroll through this

1 RAY PITTARD

2 PowerPoint and we can just look at what the
3 slides address and just ask you to stop when I
4 have a -- you know, when we have something to
5 discuss in more detail.

6 But the introductory slide just gives
7 a background of the history of Aldrich and
8 Murray with asbestos and how much it paid to
9 defend and settle asbestos cases up through, it
10 looks like, September 2019; is that right?

11 A. That's what it looks like, yes.
12 That's correct.

13 Q. Okay. And then the next page sort of
14 gives some additional background on that, at
15 least the part that's not redacted; is that
16 correct?

17 A. Page 4?

18 Q. Page 4.

19 A. Yeah, Page 4 appears to indicate
20 there's no end in sight, so it's going to
21 continue.

22 Q. And do you have a recollection -- and,
23 again, I'm not going to ask you to give me
24 the -- you can answer this yes or no -- of what
25 the redacted sections -- what subject the

1 RAY PITTARD

2 redacted sections address?

3 A. I don't recall. My presumption is it
4 would support the words on the page. That's the
5 only thing I would assume, but I don't recall.

6 Q. Okay. If we go on to Page 5, same
7 question about the redacted section.

8 Do you have a recollection of what
9 that --

10 A. Yeah, I do not. I don't recall.

11 Q. We'll just keep scrolling down.

12 On Page 6, you've got general
13 background information about asbestos and
14 liability claims coming out of exposures to
15 asbestos; is that right?

16 A. That's -- that seems to be the case,
17 yes.

18 Q. And that continues on Page 7; is that
19 correct?

20 A. Yes, that's correct. It seems to
21 continue to have general background.

22 Q. And Page 8 is the history of Aldrich
23 and Murray's use of asbestos; is that right?

24 A. Yes, correct. That's correct.

25 Q. Okay. And that continues on Page 9

1 RAY PITTARD

2 and 10 and goes through Page 15; is that right?

3 A. That seems correct, yes.

4 Q. Okay. And then starting on Page 16,
5 that describes the evolution of asbestos -- or
6 progress or history of asbestos litigation
7 starting in the 1970s and -- is that right?

8 A. That's correct.

9 Q. And then that history continues on
10 Page 17; is that right?

11 A. That's correct. It continues the
12 evolution, so it goes into the second wave of
13 lawsuits, as it discusses.

14 Q. And then Page 18 begins to describe
15 Aldrich and Murray's involvement, and that
16 continues through Page 19, 20, and -- 20; is
17 that right?

18 A. Yes, it goes through the small amount
19 of claims and the accelerating claims, and then
20 it appears to go through the claims filings up
21 through, it looks like, the first quarter of
22 2020, and highlights the claim numbers in the
23 Tananbaum declaration that's a little more
24 detailed.

25 Q. The next four pages bear the title --

1 RAY PITTARD

2 starting on Page 21, it says "Tort System
3 Realities," and Page 22 is the same title, as is
4 Page 23, and as is Page 24.

5 Do you recall what the substance of
6 that part of the presentation was?

7 A. Well, as, you know, the majority of it
8 is redacted, it's hard for me to give you much
9 detail behind this. But the high level is that
10 the reality of the tort system was not very
11 effective or efficient. That was the -- it
12 really didn't serve the clients or the companies
13 either way. It's redacted, so I don't have the
14 specifics.

15 Q. Right. I was just wondering what --
16 whether it was redacted because it contains
17 legal advice or redacted for some other --

18 MR. JONES: I will share that I can't
19 imagine it was redacted for anything other
20 than privilege, and we should not go into
21 the details of the substance of the redacted
22 text, to the extent the witness can even
23 recall.

24 A. I don't recall, so it's --

25 Q. Okay. Well, if you don't recall, I

1 RAY PITTARD

2 won't --

3 A. I don't recall.

4 Q. -- won't bother you with it.

5 And then we go to Page 25, which talks
6 about claims dismissals. And Page 26, again,
7 there's -- there's some redactions.

8 You can answer this yes or no. Do you
9 have a recollection of what those addressed?

10 A. I do not. I don't remember what the
11 conversation that's redacted was on that
12 particular piece.

13 Q. And starting on Page 28, it says the
14 title is "Total Indemnity Over Time."

15 That would be important information to
16 any board member, I gather, right?

17 A. Yes. I think as I described, it shows
18 that the total indemnity paid since inception
19 is -- you know, is 835 million, 406 for Murray
20 for asbestos cases, you know, with the details.
21 So it gives you a good sense of the -- in the
22 text, it does describe specifically on the
23 second part about meso, about the indemnity paid
24 from the inception of cases through the first
25 quarter of this past year.

1 RAY PITTARD

2 Q. Okay. And Page 30 shows the
3 historical costs of defense; is that correct?

4 A. That was the section I hadn't gotten
5 to quite yet, so let me just --

6 Q. Take your time.

7 A. Yes, that appears to be the defense
8 costs paid. The timing is a little different.
9 As you noticed, it was first quarter of last
10 year on the other pages. Here it's through
11 February 29th of 2019. So it's not exactly
12 correct, but it -- order of magnitude is
13 correct. It's quite material, as you see.

14 Q. And Page 31 shows the insurance
15 reimbursements to date, right?

16 A. That's correct.

17 Q. Okay. There's no discussion on this
18 page about the insurance option that you --

19 A. No. This is purely -- this page is
20 about the reimbursements and how they were paid
21 over time or not paid in case they were not
22 steadily -- did not come steadily over time as
23 costs were incurred.

24 Q. The next page, 32 and 33, are both
25 titled "Future Defense Costs."

1 RAY PITTARD

2 Well, let's start with Page 33.

3 Excuse me. Sorry.

4 Page-- let's start with 32. It says
5 "Future Liability Forecasts."

6 And that was pretty critical
7 information to the board members to know what
8 the future liability forecasts were in order to
9 make informed decisions about what to do with
10 the company; is that correct?

11 A. Yeah, that's correct. Because,
12 obviously, if the liability continues, which it
13 clearly, as indicated earlier in the nonredacted
14 section, it's expected to go until 2050. So,
15 yes, that's important information.

16 Q. Right.

17 And then the next page, which is
18 "Future Defense Cost Forecasts," that was also
19 critical information for the same reason; is
20 that correct?

21 A. That's correct.

22 Q. Now, let me -- without asking you
23 exactly what was said in these forecasts, were
24 there numbers that were provided to you on the
25 future liability forecasts as to whether -- what

1 RAY PITTARD

2 the future liability of Aldrich and Murray were
3 projected to be if there were no bankruptcy?

4 And you can answer that yes or no. Don't give
5 me any numbers right now, just --

6 THE WITNESS: Jim, I just want to make
7 sure it's okay for me to --

8 MR. JONES: You can answer whether you
9 were provided numbers. You cannot advise
10 Mr. Goldman what the numbers were or any
11 advice surrounding.

12 THE WITNESS: Okay.

13 MR. JONES: If you recall.

14 A. I recall there were numbers. There
15 were numbers that were future liability
16 forecasts, which were numbers.

17 Q. Were there also numbers provided for
18 future defense?

19 A. Yes.

20 Q. Okay. And were those numbers -- were
21 they used when the bankruptcy was filed?

22 MR. JONES: Object to foundation;
23 form.

24 I don't know what that means.

25 A. I'm not sure I understand what you're

1 RAY PITTARD

2 asking.

3 Q. Let me ask a different question.

4 Do you have an understanding of who
5 prepared those numbers?

6 A. I don't actually know who actually was
7 the particular person that did that. I don't
8 know who put it together. I presume -- I have
9 an assumption it was our legal team.

10 MR. JONES: I'm going to ask you,
11 Mr. Pittard, not to presume or to assume.

12 THE WITNESS: Pardon me.

13 MR. JONES: If you know.

14 A. Yeah, I don't know the individual that
15 put those together.

16 Q. Do you know if there was an actuary or
17 professional accounting or consulting firm that
18 was involved in putting those numbers together?

19 A. Yeah, I don't know. I don't know. I
20 have confidence in the people that shared it
21 with us that they would have done their
22 homework, but I don't know the source.

23 Q. And then if we look at Page 34, do you
24 know the nature of the -- not the substance, but
25 the nature of the redacted information were?

1 RAY PITTARD

2 A. I don't. I don't remember.

3 Q. And Page 35, I gather, appears to just
4 summarize the preceding pages we just discussed.

5 Does that appear to be the case to
6 you?

7 A. Yes. It just appears to be a summary
8 of the prior pieces we just talked about.

9 MR. GOLDMAN: All right. Thank you
10 for bearing with me through that exhibit.
11 You can close that one out. Thank you.

12 Q. All right. Let's quickly go through
13 the other board minutes, and then we'll be close
14 to finished.

15 MR. GOLDMAN: If we can bring up
16 Exhibit 32, or put that in the chat, which
17 is...

18 MR. DEPEAU: Okay. Exhibit 32 is in
19 the chat.

20 MR. GOLDMAN: These should be the
21 board minutes for joint meeting on May 22nd,
22 a week later.

23 (Witness reviews document.)

24 THE WITNESS: Okay.

25