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1 APPEARANCES (via Microsoft Teams continued)

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EXHIBITS:

Marked

Received

Plaintiffs/debtors' exhibits
provisionally admitted

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

2 (Call to Order of the Court)

3 THE COURT: Okay. Have a seat, everyone. And good
4 morning.

5 We are back in the Aldrich and Murray cases with
6 regard to both the summary judgment, which was argued
7 yesterday, the debtors' motion, and today we continue with the
8 preliminary injunction motion.

9 With that in mind, we are -- I understand we may have
10 different attorneys. We're doing this by video and, to a
11 certain extent, teleconferencing. For those who can't see me,
12 I'm Judge Whitley.

13 Given that we have a moving cast of attorneys
14 participating here, I thought we would do again today by way of
15 announcements what we did yesterday and I would simply call on
16 the lead attorney for each participatory group, each group of
17 parties, to make the announcements of who is appearing today on
18 behalf of their clients and then we'll pick any clean-up up.

19 So are there -- who will be announcing for the
20 debtors?

21 Mr. Erens? Mr. Hirst?

22 MR. HIRST: Mr. Erens is muted. So I can, I can do it
23 if you want today. It's Morgan Hirst for the debtors.

24 THE COURT: All right.

25 MR. HIRST: Brad Erens, Brad Erens is with us today.

1 I think attorneys for the debtors who you will hear from today,
2 your Honor, are Michael Evert and David Torberg, Michael Evert
3 from Evert Weathersby and David Torberg from Jones Day --

4 THE COURT: Okay.

5 MR. HIRST: -- in addition to potentially me,
6 Mr. Erens and myself.

7 THE COURT: Anyone else needing to announce, though,
8 just for purposes of the record for the debtors? That got it?

9 MR. MILLER: Good morning, your Honor. Sorry. Jack
10 Miller, Rick Rayburn here as local counsel as well.

11 THE COURT: Okay, very good.

12 MR. JONES: Your Honor, Jim, Jim Jones for the debtor
13 is present as well, though I don't expect to speak.

14 THE COURT: Okay.

15 Anyone else on the debtors' side?

16 MR. HAMILTON: Yes, your Honor. Robert Hamilton is
17 here, but I will not be speaking today.

18 THE COURT: Okay, very good.

19 Okay. How about for the ACC?

20 MR. MACLAY: Your Honor, it's Kevin Maclay from Caplin
21 and I would expect that today you'll be hearing from, from two
22 lawyers for the ACC. One is Jim Wehner from Caplin and one is
23 David Neier from Winston & Strawn.

24 THE COURT: Okay.

25 Anyone else that needs to feel, need to announce,

1 actually, for the ACC?

2 (No response)

3 THE COURT: Okay.

4 How about for the FCR?

5 MR. GUY: Good morning, your Honor. It's Jonathan
6 Guy. I'm with my colleague, Debbie Felder. And I believe
7 Mr. Grier is also dialed in as well.

8 Thank you.

9 THE COURT: And for the affiliates?

10 MR. MASCITTI: Good morning, your Honor. Greg
11 Mascitti, McCarter & English, on behalf of Trane Technologies
12 Company LLC and Trane U.S. Inc. And we're joined by our local
13 counsel, Stacy Cordes.

14 THE COURT: Okay, very good.

15 Anyone else? Other parties?

16 (No response)

17 THE COURT: Okay. Well --

18 MS. ABEL: I, I'm sorry, your Honor. The Bankruptcy
19 Administrator is also here, but just observing today.

20 THE COURT: Thank you, Ms. Abel.

21 Anyone else? Anyone we missed that feels the need to
22 announce as counsel?

23 (No response)

24 THE COURT: All right. Are there any preliminary
25 matters before we get started?

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1 MR. HIRST: Your Honor, Morgan Hirst again for the
2 debtors.

3 As far as I know, there are none.

4 THE COURT: Okay.

5 Anybody got anything else we need to talk about before
6 we get right to the witness testimony?

7 (No response)

8 THE COURT: All right. I believe we were talking
9 about the expert witnesses today. Who was the debtor proposing
10 to call next?

11 MR. HIRST: So we're going to call Laureen Ryan next,
12 your Honor. And Mr. Mascitti from McCarter & English is going
13 to be taking her through her direct.

14 THE COURT: All right.

15 All right, Ms. Ryan. If you'll raise your right hand.

16 LAUREEN RYAN, PLAINTIFFS/DEBTORS' WITNESS, ADMINISTERED OATH

17 THE COURT: All right.

18 Mr. Mascitti, the witness is with you.

19 MR. MASCITTI: Thank you, your Honor.

20 VOIR DIRE EXAMINATION

21 BY MR. MASCITTI:

22 Q Please introduce yourself to the Court.

23 A Yes. I am Laureen Ryan.

24 Q Ms. Ryan, where are you currently employed?

25 A I am employed at Alvarez & Marsal, a global professional

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1 services firm.

2 Q And what is your current position with Alvarez & Marsal?

3 A I am a Managing Director.

4 Q What are your responsibilities as a Managing Director?

5 A So Managing Director at Alvarez & Marsal is equivalent to
6 like a partner at a law firm and so I'm responsible for all
7 aspects of business development, to secure new engagements,
8 leading teams, also deliver the quality services to our
9 clients, and building strong teams that help to service those
10 clients.

11 Q Please provide the Court with a brief description of your
12 education and professional qualifications.

13 A Sure.

14 I have a Bachelor of Science from the State University of
15 Oswego in Accounting and Economics. And I am a Certified
16 Public Accountant. I hold that license. I also have some
17 accreditations. I am a Accredited Business Valuer. I'm also a
18 Certified Distressed Business Valuer. I also am a Certified
19 Fraud Examiner and a Certified Insolvency Reorganization
20 Advisor.

21 Q Please provide a brief description of your employment
22 history for the Court.

23 A Sure.

24 Upon graduating college, I joined Ernst & Whinney, which
25 then became Ernst & Young and I spent eight years there. Upon

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1 leaving there, I joined a boutique litigation, or litigation
2 and restructuring firm called Kahn Consulting, which I spent
3 another eight years there, and then we sold ourselves to FTI
4 Consulting, which is another global professional services firm.
5 Upon leaving FTI Consulting, I stayed affiliated with them for
6 a couple years under a banner of Turning Point Consulting and
7 then eventually, I joined Alvarez & Marsal, where I have been
8 for just over 12 years.

9 Q What is your area of specialization?

10 A So I work on a variety of engagements, but I specialize in
11 bankruptcy-related matters, evaluating and quantifying the
12 financial and economic impacts of various transactions in a
13 variety of industries.

14 Q Please provide some examples of the bankruptcy matters that
15 you've been involved in during the span of your over 25-year
16 career?

17 A So I worked on more than 40 different bankruptcy cases over
18 my, over my career. Some of the more notable ones include
19 Caesars Entertainment, Nortel Networks, Intelsat more recently,
20 The Tribune Company, Colonial Bancorp, Chrysler Group, General
21 Motors, Acosta. Those are some of the, some of the more
22 notable ones.

23 Q And just generally, what were your roles in those cases?

24 A So they were of a variety. For example, in the Caesars
25 case I led the financial advisory team to the examiner that was

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1 appointed in that case. I generally am a financial advisor or,
2 in some cases, hold a fiduciary position.

3 Q Have you ever been engaged in a bankruptcy matter involving
4 asbestos liability?

5 A Yes. I actually have a number of cases that I have that
6 have involved asbestos liabilities. One of the more notable
7 ones is I was a chapter 11 trustee of a company called Raymark
8 Industries and Raymark Corp. And in that case it was over \$6
9 billion of asbestos claims that ultimately were channeled into
10 a 524(g) trust pursuant to a plan of reorganization. And that
11 was a case in which the asbestos liabilities were separated
12 into an entity outside the main operations without a funding
13 agreement and significant years of litigation ensued.

14 MR. MASCITTI: Your Honor, I offer Ms. Ryan as an
15 expert in the areas of financial restructuring and bankruptcy-
16 related matters, including impacts and costs of a company
17 filing bankruptcy.

18 I also note, your Honor, that the parties have
19 consented to the qualifications of the experts in this case.

20 MR. NEIER: That's correct, your Honor.

21 THE COURT: Everyone good with her qualifications and
22 certification?

23 (No response)

24 THE COURT: All right. I'll treat her as an expert.

25 Thank you.

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1 MR. MASCITTI: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. MASCITTI:

4 Q Is Alvarez & Marsal currently engaged in this matter?

5 A Yes. Yes, we are.

6 THE COURT: Hang on. Hang on one moment.

7 We're getting a reverb here. I'm, I don't know if
8 everyone else is hearing an echo, but we need to try to figure
9 out --

10 MR. MASCITTI: I am. I am, your Honor. I'm hearing
11 it. It's a little distracting.

12 THE COURT: Let's, let's just take a brief recess and
13 we'll see if we can't figure out the problem. We'll go off the
14 record for the moment. Just everyone sit tight, though.

15 (Off the record from 9:42 a.m., until 9:43 a.m.)

16 THE COURT: Now I'm reverbing.

17 BY MR. MASCITTI:

18 Q Ms. Ryan, do you have a headset?

19 A I don't readily have a headset. Usually, I don't have any
20 problem with it. Can you hear me okay?

21 THE COURT: And we had no problems yesterday.

22 Yes, ma'am. You're coming through clearly, but now it
23 seems that I'm the problem. We didn't have any of this
24 yesterday. So I'm not sure what's going on.

25 But as I mentioned to everyone yesterday, we're brand

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1 new in the courtroom with totally new equipment.

2 THE WITNESS: Would you like me to go try and find a
3 headset? I can possibly do that. I don't know if I'm the
4 problem, but --

5 THE COURT: No, you're not.

6 THE WITNESS: Okay. Okay.

7 MS. (INDISCERNIBLE): Your Honor, this is
8 (indiscernible). I think we have people on the phone who may
9 not be muted. So if people on the phone will be sure to mute
10 themselves, that will be helpful.

11 THE COURT: Everyone is muted. I'm told that
12 everyone's muted except the two speakers and myself. But it
13 only seems to be coming from me.

14 UNIDENTIFIED SPEAKER: For what it's worth, when we
15 see the screen when you speak, your Honor, Ms. Ryan's screen
16 also lights up if she's speaking. So I don't know if maybe a
17 headset might solve the problem.

18 MR. FREEMAN: Ms. Ryan, do you have a headset
19 available?

20 THE WITNESS: Let me go see. If you can hang on one
21 sec, please.

22 Thank you.

23 THE COURT: All right. We're going to take about a
24 ten-minute recess, or as long as it takes to straighten this
25 out.

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1 (Recess from 9:45 a.m., until 9:55 a.m.)

2 AFTER RECESS

3 THE COURT: Okay. Have a seat, everyone.

4 Ready to proceed? That sounds much better.

5 MR. MASCITTI: Yes, your Honor.

6 THE COURT: Very good. All right.

7 MR. MASCITTI: Okay.

8 THE COURT: Mr. Mascitti.

9 MR. MASCITTI: Thank you, your Honor.

10 BY MR. MASCITTI:

11 Q Ms. Ryan, is Alvarez & Marsal currently engaged in this
12 matter?

13 A Yes, we are. Can you hear me?

14 Q Yeah. I'm getting a little bit of a delay. I don't know
15 if anyone else is.

16 A Yeah. I'm getting a delay on your end, too.

17 (Distortion)

18 THE COURT: Pardon?

19 MR. FREEMAN: It was -- she was just clear when we
20 tested it.

21 MR. NEIER: Maybe we should try it without the
22 headset.

23 (Distortion)

24 THE COURT: How are we doing it now, Kevin? Is she on
25 the headset or not?

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1 MR. FREEMAN: She was on the headset. We tested it
2 and everything was fine and now --

3 THE COURT: Now it's not. Okay.

4 Let's go off record for a moment.

5 (Off the record from 9:56 a.m., until 10:06 a.m.)

6 THE COURT: I think this may take us all back to the
7 sixties rock concerts and whether you had the microphone too
8 close to the amp, but different technology, same problem.

9 Are we ready to go on, back on record then? We'll try
10 it again.

11 That's not it? We're getting the echo again on my --

12 Perhaps -- can, can people hear me clearly enough to
13 understand what I'm saying?

14 THE WITNESS: Yes.

15 THE COURT: Why don't we try this. I will try to say
16 as little as possible during the testimony.

17 If -- Mr. Mascitti, if you will speak and if you're
18 not getting a reverberation, we'll let the two of y'all have
19 the colloquy and, and then we'll see where we go on cross.

20 But I'll just try not to say anything. Want to try
21 that?

22 MR. MASCITTI: I'm certainly willing to give it a
23 shot, your Honor.

24 THE COURT: Okay. Let's go back on record for the
25 moment. We're continuing Ms. Ryan's testimony.

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1 And, Ms. Ryan, you remain under oath.

2 Go ahead, Mr. Mascitti.

3 BY MR. MASCITTI:

4 Q Ms. Ryan, is Alvarez & Marsal currently engaged in this
5 matter?

6 A Yes, we are.

7 Q Who engaged Alvarez & Marsal?

8 A McCarter English engaged Alvarez & Marsal on behalf of
9 Trane Company Inc. and Trane USA.

10 Q Is that Trane Technologies Company LLC and Trane U.S.,
11 Inc.?

12 A Yes.

13 Q When did this engagement begin?

14 A In November 2020.

15 Q What was the scope of your engagement?

16 A So I was, or A&M was asked at the time to review documents
17 and information to determine the financial and other negative
18 impacts that might occur as a result of putting the old
19 entities into a bankruptcy setting.

20 Q When did you begin that analysis?

21 A Shortly after being retained in November 2020.

22 THE COURT: Let me interrupt.

23 MR. MASCITTI: Your Honor -- yeah, I'm hearing it as
24 well.

25 THE COURT: We're getting it from your side now,

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1 Mr. Mascitti, and I'm worried about the recording. We better
2 take a recess at this point.

3 Mr. Evert, if you will see what we can do about the
4 next witness, if need be. I think we're going to need to pull
5 IT people in to have this conversation between themselves.

6 And let's just take ten minutes to see what is and
7 isn't possible.

8 MR. EVERT: Will do, your Honor. So we're going to
9 call at 10:20?

10 THE COURT: Right. We're going to -- if you will keep
11 someone on the line so we can have a conversation between the,
12 the IT professionals.

13 Yeah. Let's take at least till 10:20, or whenever we
14 can get this fixed.

15 (Recess from 10:09 a.m., until 10:22 a.m.)

16 AFTER RECESS

17 (Call to Order of the Court)

18 THE COURT: Have a seat, everyone.

19 All right. Ready to proceed with Ms. Ryan's
20 testimony. Hopefully, that will be the end of our tech issues
21 this morning, but it's early in the day.

22 So go ahead, Mr. Mascitti. Ask your next question.

23 MR. MASCITTI: Thank you, your Honor. I'm going to go
24 back a little bit so we can sort of start from where we were
25 going.

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1 BY MR. MASCITTI:

2 Q Ms. Ryan, is Alvarez & Marsal currently engaged in this
3 matter?

4 A Yes, we are.

5 Q Who engaged Alvarez & Marsal?

6 A McCarter & English engaged Alvarez & Marsal on behalf of
7 Trane Technologies Company LLC as well as Trane U.S.

8 Q When did that engagement begin?

9 A The engagement letter was signed in November of 2020.

10 Q What was the scope of your engagement?

11 A We were asked to review various materials and, and perform
12 analyses to help determine the impact of putting Old Trane and
13 Old IRNJ into a bankruptcy filing and what the negative impacts
14 as well as maybe some of the incremental costs that might be
15 incurred.

16 Q And when did you begin that analysis?

17 A Shortly after being engaged in November 2020.

18 Q Did others assist you with that analysis?

19 A Yes. I had a team of people who regularly work with me
20 that supported my efforts in this work.

21 Q Please describe, generally, how you and your team performed
22 that analysis.

23 A There was a number of things that were done. In addition
24 to bringing my years of experience in the business, I, I and my
25 team performed research and prepared analyses. We looked at

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1 metrics of various other companies that were in a bankruptcy
2 setting. I also interviewed certain Trane personnel and that
3 included Mark Majocha, who is the Vice President of Finance of
4 the Commercial HVAC Americas business, as well as Chris Kuehn,
5 who is a Senior Vice President and Chief Financial Officer.

6 And then, of course, I reviewed various materials and
7 information that was produced in this case.

8 Q When did you complete your analysis?

9 A So I completed my affirmative report on February 5th of
10 this year when it was filed and then I also prepared a rebuttal
11 report to Mr. Diaz's report that was filed in February 26,
12 2021.

13 Q You indicated that you were engaged to analyze a
14 hypothetical bankruptcy filing by certain entities in the Trane
15 organization.

16 Why were you engaged to perform that hypothetical analysis?

17 A So going back to the 2020 corporate restructuring, you
18 might recall that there were two entities that ceased to exist.
19 That was referred to as Old IRNJ and Old Trane. And then also
20 as part of the corporate restructuring four new entities were
21 created. Two of them are the debtors, Aldrich and Murray, and
22 the other two were New Trane and New Trane, New Trane U.S. and
23 New Trane Technologies, to, to call them short. I think that's
24 been used, those terms have been used in the proceeding thus
25 far.

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1 After those four entities were created some of the assets
2 and liabilities were allocated to the two debtors, including
3 the asbestos claims, and then over 90 percent of the assets and
4 over 90 percent of the liabilities were allocated to the other
5 two companies, New Trane and New Trane Technologies, which are
6 the nondebtors in this case.

7 Shortly thereafter, or, I should say, in June, couple
8 months later, the, Aldrich and Murray filed for bankruptcy in
9 an attempt to permanently and globally fully resolve all the
10 asbestos claims. They thought that was the best option, given
11 it has availability of a 524(g) trust and then putting it into
12 a bankruptcy. However, certain claimants in this case have
13 challenged this corporate restructuring, this 2020 corporate
14 restructuring, and I understand that the Asbestos Claimants'
15 Committee contends that if there was going to be a bankruptcy
16 at all, that the bankruptcy should have included Old IRNJ and
17 Old Trane.

18 So given that hypothetical, I was asked to assess the
19 impact of putting those two older entities into a bankruptcy
20 setting and whether or not that was a sensible option.

21 Q Based on your analysis, what did you conclude?

22 A That given the negative impacts and the costs that I
23 identified in, in conjunction with my analysis, that a filing
24 of Old IRNJ and Old Trane was not a sensible option.

25 Q Did you prepare slides today to assist with your

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1 presentation of testimony?

2 A Yes, I did.

3 Q Okay.

4 MR. MASCITTI: Could we put the slides up, please?

5 All right. And let's look at Slide 2.

6 BY MR. MASCITTI:

7 Q As a result of the work that you performed in connection
8 with your analysis of a hypothetical bankruptcy filing, have
9 you become familiar with Trane's business operations at the
10 time of the corporate restructuring?

11 A Yes, I have.

12 Q Please describe for the Court Trane's principal business
13 operations at the time of the corporate restructuring.

14 A Sure.

15 So there are key areas of products and services that Trane
16 performed. One is residential heating, ventilation, and air
17 conditioning and HVAC, for short. Also, they have a
18 significant business in commercial HVAC systems and products as
19 well as transport refrigeration systems. And they conduct
20 their operations in three major segments. One is the Americas,
21 two is EMEA, and three is Asia Pacific.

22 The net revenues in 2020 was about \$12-1/2 billion of which
23 78 percent was in the Americas. So you can appreciate that a
24 substantial amount of the business is in the United States or
25 in the Americas and they have a significant employee base.

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1 They have over 35 [sic] employees globally of which 26,000
2 reside in the United States and that also includes about 4500
3 service technicians that are in the field day to day, you know,
4 kind of the, the folks that you and I might encounter in, in an
5 installation of, of an air conditioner, for example.

6 The company is also, also has around 45,000 active customer
7 contracts and about 4,000 contractors across North America that
8 they rely on for their product, to deliver their products and
9 services.

10 And then in a certain sector of the business, they, which
11 they refer to as Thermo King which is, you know, provides
12 services and, products and services to trucks and more of a
13 commercial nature, they have a lot of family-owned
14 distributorships that help provide, help deliver the products
15 and services for that customer line and that have over 180
16 locations.

17 They also rely on over 15,000 trade creditors to help
18 source their business and provide services.

19 And then, finally, there's about 2600 record shareholders
20 that have an interest. It's a public company.

21 Q Please describe Trane's reputation in the marketplace.

22 A Trane enjoys a wonderful reputation. They are one of the
23 best-selling brands out there. They're, they're commonly
24 known, some of the brands you might be familiar with is
25 American Standard or Ameristar or Thermo King and, and Trane,

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1 but they're very well known for their quality parts, their
2 excellent service, and their excellent quality. And part of
3 their reputation is, is built upon the fact that they stand
4 behind their products through warranties and services that are
5 provided in the after-market business. And customers hold
6 their products for a long period of time.

7 So a strong reputation is very, very key to their business.
8 Many of -- in fact, also, you know, sort of other people who
9 rely on Trane's reputation include their contractors and their
10 business partners. They really rely on Trane's reputation and
11 financial strength in their own operations to support their own
12 businesses.

13 Q Please describe the competitive nature of the industry in
14 which Trane operates.

15 A So Trane operates in a highly competitive industry. It has
16 about four or five major competitors such as Carrier and
17 Lennox. And then they operate in many bidding processes. So,
18 for example, under the government contract area where they,
19 where they have to bid to be a public project, for example,
20 it's very highly competitive and, quite frankly, a bankruptcy
21 would negatively impact that ability. Trane also competes
22 annually thousands, I mean, like 70 or 80,000 of bids each year
23 in the contracting business and also have to, you know, secure
24 licenses in that business.

25 So it's, it's a very heavily competitive market, although

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1 they're really a, a stellar company in that business and one of
2 the top. They have people on the heels of them trying to
3 compete for the same business.

4 Q What are the areas of the business that you analyzed for
5 purposes of determining the impact of a hypothetical
6 bankruptcy?

7 A So there were four areas that I focused on. One is I first
8 looked at the impact on the debt structure. Two is I looked at
9 the impact on the operations and the revenue. Three is I also
10 looked at the impact on other stakeholders. And then, finally,
11 given all those impacts, I analyzed the additional costs and
12 complexity of a hypothetical bankruptcy and I did some
13 quantification of the additional fees that might be incurred.

14 MR. MASCITTI: Let's start with Trane's debt structure
15 and look at Slide 3.

16 BY MR. MASCITTI:

17 Q What was Trane's debt structure at the time of the
18 corporate restructuring?

19 A So at the time of the corporate restructuring Trane had
20 over \$5 billion of debt and that debt was held with a number of
21 facilities and, actually, it's probably about 17 or 18 public
22 debt agreements that were mostly held by unsecured notes and
23 debentures.

24 So it's, it's a significant amount as well as a number of
25 parties that were involved.

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1 Q Please describe for the Court how hypothetical bankruptcy
2 filings by Old Trane and Old IRNJ would have impacted the
3 companies' debt structure.

4 A So you, you have to first start with the understanding that
5 Old IRNJ and Old Trane represents about 80 percent of the
6 business. So if you put those two entities in a bankruptcy who
7 are primary -- who -- and, and each of those entities are
8 either the issuer of the debt or a guarantor of the debt --
9 that you would basically end up dragging the rest of the
10 enterprise in. And the reason that is is because of the
11 covenants within the indentures of the debt instruments.

12 So the first thing is there is an event of default that
13 upon the commencement by the issuer or the guarantor of a
14 bankruptcy, then it immediately triggers an acceleration of the
15 debt, meaning it's due and owing in full, immediately due and
16 payable. So by putting the two entities, Old IRNJ and Old
17 Trane, into a proceeding and given the fact that there is
18 cross-guaranties between and among all of the entities in the
19 Trane enterprise, you would effectively draw all of the other
20 entities into a bankruptcy or an insolvency proceeding.

21 MR. MASCITTI: Let's look at the impact on Trane's
22 operations and revenue next and move to Slide 4.

23 BY MR. MASCITTI:

24 Q Please describe for the Court how hypothetical bankruptcy
25 filings by Old Trane and Old IRNJ would impact Trane's

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1 operations and revenue.

2 A So given this big enterprise, there would inherently be a
3 decline in the products and, a decline in the demand, I should
4 say, a decline in demand for the products and services that the
5 company provides and a loss to its competitors. I mean, given
6 the nature of the products and services they provide, it's, the
7 bankruptcy filing would really result in disruptions to the
8 business.

9 So, for example, here in the contracting business, which is
10 about 25 percent of the revenue stream, they're very reliant --
11 there's about 4,000 contractors and they're very reliant on
12 licenses. Actually -- and, and in a contracting business,
13 there's actually about 4, 45,000 customer, active customer
14 contracts and all of these -- just going back to the point
15 about the licenses -- they all require a number of different
16 licenses to be issued for them to actually provide the products
17 and services and these licenses are a very technical nature.
18 They cover contractors' licenses, mechanical licenses, plumbing
19 and fitting, HVAC, repair licenses. I mean, the, the list is
20 long and they're very technical and many of these licenses have
21 to be renewed every one to two years. And they're critical for
22 them to be able to provide the products and services.

23 So any disruption in their ability to secure the licenses
24 or even get the licenses would really impact their ability to
25 operate.

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1 Secondly, under the government contracts, they do a lot of
2 work for municipalities, schools, just things under the
3 umbrella of government contracts, and that's also a public
4 bidding process. So their ability to effectively compete with
5 others who they're, who are also bidding on those same
6 contracts would be diminished.

7 The other thing is that the government contracts have
8 default clauses in some cases. So, for example, upon filing a
9 bankruptcy there would be a requirement in the contract to
10 notify the contracting officer or the Government that they had
11 filed a bankruptcy and that would trigger a review because the
12 Government would be, is, is required to conduct that review to
13 ensure that Trane now that it's in bankruptcy still has the
14 ability to provide the products and services under this long-
15 term contract. And so that would also be a, a harm and a
16 disruption to the business.

17 Q Please describe the competitive disadvantage that would
18 arise from a hypothetical bankruptcy filing.

19 A So Trane, like I mentioned, bids on significant, you know,
20 70-to-80,000 contracts a year. And so their ability to win the
21 new work with an overhang of the bankruptcy would be
22 significantly diminished.

23 Q Okay.

24 MR. MASCITTI: Let's look at the impact on
25 stakeholders next and move to Slide 5.

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1 BY MR. MASCITTI:

2 Q Who are the stakeholders that would be impacted by a
3 bankruptcy filing?

4 A So as, as shown on the screen here, there's a lot of
5 different stakeholders that would be impacted. That includes
6 their employees, their creditors, various suppliers and
7 vendors, the customers, their business partners and their
8 shareholders and all of them would have negative impacts as a
9 result of a hypothetical Trane bankruptcy.

10 Q How would Trane's 26,000 employees in the Americas be
11 impacted?

12 A So the bankruptcy can -- what -- could -- will impact the
13 workforce. I mean, many of these employees will be concerned
14 about their wages and benefits and their future employment and,
15 quite frankly, would not want to work for a company in
16 bankruptcy, you know. They currently work for a healthy,
17 sound, financially stable company and the perception of being
18 in a bankruptcy might lure them to be, might lure them away to
19 a competitor and that would also, might lure some of the
20 business away to the, you know, to the, to the customers that
21 they serviced. And the bankruptcy might also interrupt certain
22 incentive or retention programs that were in place.

23 So the other point with the employees is that, I mentioned
24 earlier, there's about 4500 service technicians that are out in
25 the field in some parts of the business that are operating, you

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1 know, day to day locally and they're just not going to
2 understand what the bankruptcy means. So they're going to
3 become, you know, as I talked to some of the Trane personnel,
4 yeah, they really said, "These folks have really become
5 uncomfortable and anxious and not going to understand what's
6 going on and will likely, some of them will go to competitors."
7 So again, that will be a negative impact to its overall
8 employee base.

9 Q How would Trane's over 15,000 trade creditors be impacted
10 by a bankruptcy filing?

11 A So to the extent that the creditors are owed money at the
12 date of the petition, they are going to be stayed. They're
13 going to have to wait to be paid and some of these are mom-and-
14 pop shops or, or just local folks and, you know, not having the
15 regular cash flow will be a negative impact to them. It will,
16 it will hurt their business.

17 In addition, because of these creditors feeling
18 uncomfortable, they will, some of them will likely shorten
19 their credit terms and increase the cost of doing business for
20 Trane.

21 Q How would Trane's suppliers and vendors be impacted by a
22 bankruptcy filing?

23 A So Trane orders goods on a purchase order basis. They're
24 not necessarily under a long-term contract. And as a result,
25 Trane might have difficulty procuring raw materials from its

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1 suppliers who might be unwilling to trade with a company that's
2 in bankruptcy and that could cause a disruption in the supply
3 and the operation of Trane.

4 Q How would Trane's customers be impacted by a bankruptcy
5 filing according, including the 45,000 active contracts?

6 A So Trane provides, you know, given what Trane does, right,
7 it provides heating, ventilation, and air conditioners to
8 public and private sets or customers, to municipalities, to
9 hospitals, data centers, universities, military bases,
10 pharmaceutical distribution companies. So any disruption in
11 their services, in their products and services would have a
12 direct impact. If you think of every business has an air
13 conditioner, every building that we live in has ventilation,
14 and so there could really be a significant impact to its
15 customer base if there's a disruption in their operations.

16 I'd say, also, many of its customers are on a purchase
17 order basis. They don't have long-term contracts with their
18 customers to buy their products and services. So they might
19 have a concern about Trane's ability to service the warranty
20 and often the service contracts that they operate under are
21 reviewed annually. So the customers may start to worry that
22 they're not going to be able to continue to service the
23 products and, and, and revert to a competitor.

24 Q How would Trane's business partners be impacted, including
25 the over 4,000 dealers that Trane relies on?

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1 A So Trane's business partners really rely on the reputation,
2 the financial soundness of Trane to operate themselves and the,
3 and the 4,000 contractors that are, provide the residential
4 space really rely on the Trane brand every single day and in
5 their, and how they service the Trane products.

6 It's the same thing in the Thermo King business where they
7 have like 50 or 60 family-owned distributorships that help that
8 part of the marketplace with 180 locations and that could
9 really cause financial distress for these business partners
10 because they really rely on, again, the brand and the financial
11 strength to operate and they're essential to their particular
12 operations.

13 Q How would Trane's shareholders be impacted by a bankruptcy
14 filing?

15 A So given all the negative impacts that we talked about,
16 it's going to have a negative impact on the stock price. I
17 think that's just a logical next, or logical conclusion and as
18 a result, that might lead to shareholder lawsuits.

19 Q What would the impact be on Trane's foreign-affiliated
20 entities?

21 A So all the negative impacts that we talked about in the
22 Americas would be similar to in, in foreign jurisdictions.
23 They would have some of the same negative impacts already
24 described that I, that I identified for the Americas business
25 and the overall stigma associated with the bankruptcy filing

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1 just could, basically, result in a more challenging environment
2 for the entire enterprise to operate and increase the potential
3 for lost opportunities with the competitors and just strain
4 their relationship with its customers and its suppliers and its
5 business partners and, unfortunately, they might just lose
6 valuable personnel.

7 Q All right. You indicated the last category that you
8 analyzed related to the costs and complexity of a hypothetical
9 bankruptcy filing.

10 MR. MASCITTI: Let's turn to the next slide.

11 BY MR. MASCITTI:

12 Q Please describe how the cost and complexity of hypothetical
13 bankruptcy filings by Old IRNJ and Old Trane would compare to
14 the costs and complexity of the bankruptcy filings by Aldrich
15 and Murray.

16 A So given all of the things that I have talked about, you
17 know, the 45 customer contracts, 45,000 active customer
18 contracts, the number of distributors, the number of employees,
19 the, the, the way they conduct their business under the bidding
20 process, the costs and the complexity of the case would be
21 tremendous. It would tremendously increase from what it is
22 today, from what the Aldrich and Murray debtors are today.
23 It's just, I mean, you just can imagine all the different
24 things that would happen, the number of different initial
25 motions that would have to be filed, the preparation of various

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1 schedules for the various legal entities, the statements for
2 multiple debtors, the, the new committees and, you know, that
3 would have to represent all these constituencies, a
4 significantly larger claims reconciliation process with all
5 those trade creditors alone and just the process of operating
6 under the umbrella of, of this huge enterprise in a bankruptcy
7 setting.

8 So it would, it would be just bigger and more complex. And
9 so what I tried to do is quantify one of the major costs of the
10 advisor fees that would result, given, given that would be,
11 incremental advisor fees that would result from just all those
12 things I just talked about.

13 Q And what was that estimated additional cost for advisor
14 fees?

15 A I estimated that the additional incremental advisor fees
16 would range about 307 million to \$461 million.

17 Q And could you please describe for the Court, generally, how
18 you did that analysis?

19 A Sure.

20 There was a couple steps in the process. First, I looked
21 at the duration of companies that filed with asbestos
22 liabilities that formed, that emerged from bankruptcy with a
23 524(g) trust over the last 20 years with assets greater than
24 500 million -- whoops. If you can go back.

25 Thank you.

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1 Q I think there was an issue with the slide.

2 A Thank you.

3 Q I think there was an issue with the slide deck --

4 A Yes.

5 Q -- that's been corrected.

6 A Okay. Thank you.

7 And, you know, the, the reason I looked at the asbestos for
8 a duration, companies with asbestos for a duration analysis is
9 because this is, you know, given the facts and circumstances
10 here, this is a case that has asbestos liabilities and is
11 contested in nature. And so that's a similar group of
12 companies. And I looked at, with assets over 500 million
13 because, as you know, Trane is a very large enterprise and, you
14 know, I wanted a more comparable group.

15 So after studying -- that was Part 1. I looked at the
16 duration of these larger companies and, that had asbestos and
17 noticed that they were, they were in bankruptcy longer than the
18 typical bankruptcy case.

19 Q All right.

20 MR. MASCITTI: Let's move --

21 THE WITNESS: And then a second -- go ahead.

22 MR. MASCITTI: Let's move to Part 2 and, and look at
23 what you did on the next slide.

24 BY MR. MASCITTI:

25 Q After analyzing the duration of a hypothetical bankruptcy

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1 filing, what did you do next?

2 A So then I looked at the advisor fees that were incurred in
3 publicly traded companies. So I went to Standard & Poor's
4 Capital IQ and pulled publicly traded companies that had
5 emerged from bankruptcy after at least a year because then it
6 wouldn't be a pre-packaged bankruptcy. It'd be more analogous
7 to this set of circumstances. And I looked at those companies
8 with assets greater than 15 billion. Trane as a comparable
9 company, you know, so that it could drive a comparable company
10 group because Trane has assets between 17 and \$18 billion.
11 Many of these studies that I looked at that looked at the level
12 of advisor fees in bankruptcy settings looked at a metric of
13 the total fees compared to the assets as a, you know, as
14 deriving a percentage.

15 And so I used that same kind of metric. I calculated the
16 percentage of advisor fees against the assets in each of these
17 cases for the whole duration of the case and then the median of
18 all of those companies was (distortion) percent of assets. And
19 the fees were (distortion) percent. So the total fees
20 (distortion).

21 THE COURT: All right. We're breaking up a little
22 bit. Let's take a second and see if we can figure out why.

23 Go off record for the moment.

24 (Off record from 10:51 a.m., until 10:52 a.m.)

25 THE COURT: Mr. Mascitti, if you want to ask your next

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1 question.

2 MR. MASCITTI: Sure.

3 So let's move to Slide 8.

4 BY MR. MASCITTI:

5 Q And after calculating the median of fees as a percentage of
6 assets, what did you do next?

7 A So now I took into consideration the two analyses that were
8 performed. One is related to the duration of the asbestos, the
9 companies with asbestos liabilities, noting that they were of a
10 longer duration, as well as the, the fee percentage for the
11 publicly traded companies and given -- I estimated based upon
12 those analyses that this bankruptcy, a hypothetical Trane
13 bankruptcy would take longer than the typical case -- that I
14 multiplied the .9 percent by figuring it would take two or
15 three times the amount of time and multiplied that out against
16 the assets of Trane. And that is how I derived the 307-to-461
17 million range of fees, incremental fees that would be incurred
18 in a hypothetical Trane bankruptcy.

19 Q In addition to these advisor fees, did you identify any
20 other additional costs arising from a hypothetical Trane
21 bankruptcy?

22 A Yes, I did.

23 Q And what were those?

24 A So some of the other costs that would likely be incurred is
25 things like increased employee costs. In a typical chapter 11

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1 bankruptcy there are compensation arrangements that are put in
2 place like key incentive programs or key retention programs to
3 keep the executive talent and the management team in place in
4 the duration of the bankruptcy.

5 There would be, also, impact on foreign affiliates. So
6 there would be costs associated with the foreign (distortion)
7 proceedings, again given this is a, they're an Irish-domiciled
8 company with foreign (distortion). All those would be, require
9 some other level of administration (distortion).

10 And then, finally, one other key impact, inherent cost,
11 which is hard to quantify, is just the, the, the diversion of
12 the management team's time. You know, the burden of operating
13 a big, healthy, sound company in a bankruptcy setting would be
14 difficult and the management team that runs its day-to-day
15 operations, their time would be diverted to answer the
16 inquiries and questions from the various constituents, to
17 provide, you know, to perform all the necessary activities
18 under a bankruptcy setting like filing the SOFAs and the
19 schedules and it would really divert their attention from
20 running the day-to-day business.

21 I can't hear you, Greg. You're on mute.

22 Q Sorry.

23 MR. MASCITTI: Let's look at Slide 9.

24 BY MR. MASCITTI:

25 Q Based on your analysis of the impacts of a hypothetical

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1 bankruptcy filing on the companies' debt structure, operations
2 and revenue, and various stakeholders and your analysis of the
3 additional costs and complexity of such a hypothetical
4 bankruptcy filing, what did you conclude?

5 A So at the end of the day, based upon my analysis and
6 research, I concluded that putting Old IRNJ and Old Trane in a
7 bankruptcy filing which, was not a sensible option, you know.
8 As I mentioned earlier, it would, it would trigger the events
9 of default under the debt and throw all the entities into a
10 bankruptcy. It would result in a much more complex and costly
11 bankruptcy filing to put lots and lots of risks on the business
12 and many disruptions and it would really impact all the
13 stakeholders, all its employees, and its suppliers in a
14 negative way. And then, finally, it would just cost more. I
15 mean, you know, the incremental advisor fees would be hundreds
16 of millions of dollars.

17 MR. MASCITTI: Let's look next at the expert report
18 prepared by Mr. Diaz and the Committee and move to Slide 10.

19 BY MR. MASCITTI:

20 Q Did you read the expert report prepared by Mr. Diaz?

21 A Yes, I did.

22 Q Were you asked to prepare a rebuttal report?

23 A Yes, I was.

24 Q In his report Mr. Diaz describes the corporate
25 restructuring as "highly unusual." Do you agree with that

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1 description of the transaction?

2 A So I don't agree with his characterization. The corporate
3 restructuring, you know, overall was notable because it did not
4 limit the assets available to pay the asbestos claimants.

5 You know, there's three, there's three key areas that I
6 (distortion) out. One is there has been a long history of
7 asbestos companies, asbestos bankruptcies, I should say,
8 with --

9 THE COURT: All right.

10 THE WITNESS: -- an attempt to --

11 THE COURT: Hang on a moment.

12 THE WITNESS: Okay.

13 THE COURT: Any thoughts there?

14 MR. FREEMAN: She might need to slow down a little
15 bit --

16 THE COURT: Okay.

17 MR. FREEMAN: -- so it can catch up.

18 THE COURT: All right.

19 I hate to say this but, particularly since I'm
20 probably the slowest-speaking person in the room, if you would
21 speak just a little bit slower, Ms. Ryan, it might help on the
22 transmission.

23 BY MR. MASCITTI:

24 Q And, and, Ms. Ryan, maybe if you're --

25 A I may have to --

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1 Q You're, you're coming through very garbled. So maybe if
2 your microphone is not closer to your mouth, maybe you could
3 just hold it out a little bit so it's not rubbing against
4 anything.

5 IT TECH: Unfortunately, this sounds like a Wi-Fi
6 problem more than a speaker problem. I think we have the
7 speaker problem fixed.

8 MR. MASCITTI: Yeah, I, I agree.

9 THE WITNESS: Can you hear me any better now?

10 BY MR. MASCITTI:

11 Q Well, it goes in and out, but let's give it a shot.

12 THE COURT: All right. Back on record.

13 Please proceed.

14 BY MR. MASCITTI:

15 Q So, Ms. Ryan, let me just repeat that question again.

16 In his report Mr. Diaz describes the corporate
17 restructuring as "highly unusual." Do you agree with that
18 description of the transaction?

19 A No, I do not.

20 Q Why not?

21 A So as I was starting to say earlier, there was three key
22 reasons. One is that there's a, there's a history of
23 companies, of, of companies that had asbestos liabilities of
24 an, who attempted to isolate those claims and resolve them in a
25 separate entity without the overhang of a bankruptcy -- I'm

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1 sorry -- without the overhang on the broader business. And
2 historically, that has been dealt with by separating the assets
3 and operations from those asbestos liabilities, but that often
4 resulted in significant litigation since the assets made
5 available to the, to fund those asbestos liabilities were
6 insufficient. That was all done prepetition.

7 For example, in the Raymark case where I was a chapter 11
8 trustee, they actually did that. They spun off into another
9 entity, that is, Raymark Industries and Raymark Corp., the
10 asbestos liabilities and some of the insurance policies and
11 some, and some property and some operations, but given those
12 assets were insufficient to cover the anticipated \$6 billion of
13 asbestos liabilities, that resulted in significant litigation
14 brought against the other entities.

15 So while this one is, in contrast to other asbestos
16 companies, you know, there is a long history of trying to
17 isolate the liabilities. What is different here, however --
18 and I, quite frankly, I think what Mr. Diaz fails to recognize
19 is that this set of exercise, this construct in this case
20 preserved the value of Old IRNJ and Old Trane's assets via the
21 funding agreements.

22 So first of all, the, the asbestos claims here are
23 contingent. They're not due and owing. They, they're not like
24 trade claims and in this case by putting them into a construct
25 that is with a funding agreement that has the reach to, an

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1 unlimited reach, quite frankly, to, to the assets of the
2 broader enterprise, that's a big differentiating factor here.
3 The funding agreement under the 2020 corporate restructuring
4 didn't put a limit or a cap on the amount available to pay the,
5 the asbestos claims and, quite frankly, they avoided all those
6 negative impacts and the (distortion) that I talked about
7 earlier of the nondebtors and really enhanced the non-debtors'
8 ability to fund those asbestos liabilities. And, you know,
9 they provide a backstop.

10 (Telephone ringing)

11 THE WITNESS: Sorry about that.

12 And then, finally, the corporate restructuring, the
13 2020 corporate restructuring was, in fact, similar to some
14 recent cases used in, you know, in -- in -- some in this
15 courtroom. Mr. Diaz actually mentions those other cases and
16 those include Bestwell [sic], Paddock, Coltec, and DBMP.

17 So those are similar cases that employed a similar
18 type of structure in trying to resolve and isolate their
19 asbestos claims. And, in fact, I understand from talking to my
20 partner who's leading the charge on the Paddock case that
21 recently they resolved, they resolved it through a mediation
22 process that was active to determine the claims estimate and
23 the amount that was going to be set aside to fund the 524(g)
24 trust after consensually agreeing to, to do so.

25 So I think that's, those are all the reasons why I

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1 disagree with his assertion.

2 BY MR. MASCITTI:

3 Q You had described the corporate optimization process that
4 was used in Raymark. How does the corporate restructuring
5 differ from the corporate optimization process that was used in
6 Raymark?

7 A So the most notable difference is this case did not limit
8 the funds available to the asbestos claimants through the
9 funding agreements. I mean, that, that backstop is just a very
10 significant difference.

11 Q All right. Let's --

12 A And it also, it also put them in a forum -- I just want to
13 add -- it put, it put the asbestos claimants in a forum through
14 the bankruptcy process in a transparent and, you know, the, the
15 process that the 524(g) trust is, is, is designed to do, which
16 is to have the input of various parties, have a future
17 claimants' representative, have a transparency about the
18 determination of the estimation of the claims and the amount of
19 funds, and enables the Court to do its job about, you know,
20 determining that the funds set aside for those asbestos
21 claimants are sufficient.

22 MR. MASCITTI: Let's move to Slide 11.

23 BY MR. MASCITTI:

24 Q In his report Mr. Diaz suggests that Old Trane and Old IRNJ
25 could have negotiated a pre-packaged bankruptcy. In your view,

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1 was a pre-packaged bankruptcy a realistic option for Old Trane
2 and Old IRNJ?

3 A So I did see that Mr. Diaz said that. However, he
4 didn't -- he -- he did say that, but he, he said it should have
5 been considered. But he didn't identify any cases that were
6 comparable that, of the nature that were like this one, had the
7 facts and circumstances that are present here. And, in fact,
8 when I did my study of the cases that involved asbestos cases
9 of a, of a comparable size and complexity over the last 20
10 years, I didn't note any of them. Any of the six cases that I
11 identified on the screen earlier, none of those were a pre-
12 packaged bankruptcy.

13 Unfortunately, there's just practical problems associated
14 with this set of circumstances that make it very difficult for
15 a pre-packaged or a prepack or pre-arranged bankruptcy to
16 occur. It would be very difficult to identify, for example, a
17 core group to negotiate with prepetition and plus, a future
18 claimants' representative that might be selected prior to a
19 bankruptcy filing may not get approved once the bankruptcy is
20 filed. So that's another practical problem.

21 You know, the other, which is also, you know, sort of leads
22 into a, a natural practical problem is you have to have a set
23 of parties that is willing to negotiate and the fact that the
24 Asbestos Claimants' Committee currently refuses to negotiate
25 now suggests that they weren't, they wouldn't have any

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1 incentive to negotiate prepetition. In fact, I understand, you
2 know, they have stated on the record that they will not
3 negotiate, not support a plan in this case. So that makes it
4 very difficult to get to a consensual place.

5 And then, finally, I think the most important thing is that
6 right now you have all the ingredients that you might have had
7 in a pre-packaged bankruptcy in a court setting. You have a
8 court-appointed Future Claimants' Representative, you have
9 debtors who have stated -- and I heard Mr. Tananbaum reiterate
10 that yesterday -- that he, they really want to have everybody
11 come to the table quickly and efficiently and, and get to a
12 resolution here. He talked about the fact that he's already
13 been in discussions with the insurance carriers and the Future
14 Claimants' Representative and, you know, continued to invite
15 the Asbestos Claimants' Committee to the table so that
16 everybody could move away from this litigation and try and get
17 a consensual deal and fund the litigation -- I'm sorry -- fund
18 the trust with the, a proper amount that would satisfy all of
19 the creditors fully. And I think that's a big difference here.

20 So I think there's a real opportunity.

21 Q Did your review of Mr. Diaz's report change your conclusion
22 that a bankruptcy filing by Old IRNJ and Old Trane was not a
23 sensible option?

24 A No, it did not. I actually think, inherently, Mr. Diaz
25 agrees with me, that, you know, that all these negative impacts

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1 would, would occur and that it was not a sensible option, you
2 know, for all the reasons of, you know, dragging the entire
3 enterprise in and all the negative impacts and the stakeholders
4 that would be impacted by this filing and the increased level
5 of fees. I just think it's certainly not a sensible option to
6 consider.

7 Q Thank you.

8 MR. MASCITTI: Your Honor, we have nothing further at
9 this time.

10 THE COURT: All right.

11 Were there any questions from the FCR or the debtors?
12 Technically, I think this is Trane's witness, right?

13 MR. MASCITTI: Yes, your Honor.

14 THE COURT: Okay.

15 Anything from --

16 MR. GUY: No, no questions from the FCR, your Honor.
17 Thank you.

18 THE COURT: How about from the debtors' side?

19 MR. HIRST: None, none from the debtors, your Honor.

20 THE COURT: All right.

21 Anyone -- before I get to the ACC, I was going to ask
22 does anyone else wish to question the witness?

23 Cross-exam.

24 (Telephone ringing)

25 THE COURT: Someone's calling, perhaps to do so.

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1 MR. NEIER: No, your Honor. For some reason, my phone
2 keeps on ringing, but I, I've now tried to unplug it.

3 THE COURT: Okay. Thank you.

4 All right. Does the ACC need a break --

5 MR. NEIER: Unfortunately, I have two phones. Can't
6 reach the other one.

7 THE COURT: Does the ACC need a break before cross-
8 examination or you're ready to proceed?

9 MR. NEIER: I'm ready to proceed but if, if, if the
10 Court or Ms. Ryan or anybody else wants a break, that's, that
11 would be good with me.

12 THE COURT: I almost hate to take a break for fear
13 that something else might break loose.

14 Does anyone feel the need to break for comfort?

15 (No response)

16 THE COURT: All right. Let's move on, then. Cross-
17 exam.

18 MR. NEIER: Okay. Your Honor, this is David Neier on
19 behalf of the ACC.

20 CROSS-EXAMINATION

21 BY MR. NEIER:

22 Q Good morning, Ms. Ryan.

23 A Good morning, Mr. Neier.

24 Q Okay. I'm just checking to make sure that everybody can
25 hear and understand.

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1 Now you, you specifically work for the Alvarez & Marsal
2 Dispute and Investigations, LLC subsidiary or practice group of
3 Alvarez & Marsal, is that right?

4 A Yes. I work for Alvarez & Marsal Disputes and
5 Investigations, LLC, but I'm --

6 Q And --

7 A -- also part of the holding company as well as far as an
8 equity holder.

9 Q Got it.

10 And you've worked there, I think you said, I think you
11 testified that you worked there for about 12 years?

12 A Just, Just over 12 years at this point.

13 Q And in addition to other roles, I believe you testified
14 that you also worked at FTI and that was as a Senior Managing
15 Director for eight years in their Dispute and Investigation
16 Practice, is that right?

17 A Yes, that's correct.

18 Q And you specialize in accounting and forensic
19 investigations, disputes with complex economic valuation,
20 solvency, financial and accounting and related issues for, for
21 distressed companies, is that correct?

22 A Yes, it is.

23 Q And you've been engaged on numerous occasions to provide
24 estimates of value in connection with the preparation of
25 solvency analyses related to fraudulent conveyance actions,

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1 preference actions, viability studies, contract disputes,
2 damage calculations, and lending decisions, is that right?

3 A Yes, that's correct.

4 Q And you've held -- I think you testified that you've held a
5 number of fiduciary roles in bankruptcy matters, correct?

6 A Yes.

7 Q And in your fiduciary roles you've conducted
8 investigations, prepared valuation and damage estimates,
9 assisted in the investigation and assessment of potential
10 causes of action related to various transactions and business
11 activities, is that right?

12 A Yes, that is correct.

13 Q And, for example, I think you testified that you led the
14 financial advisory team assisting the examiner in Caesars, is
15 that right?

16 A Yes. In the Caesars Entertainment bankruptcy, I did.

17 Q And in Caesars the examiner looked at over 15 transactions
18 worth over \$3 billion over a five-year period between the
19 debtor and other entities controlled by its parent and its LBO
20 sponsors, correct?

21 A Yes, that description is correct.

22 Q And in Caesars the examiner found there were fraudulent
23 transfers and breaches of fiduciary duty, is that right?

24 A That's correct.

25 Q And you also worked for the examiner in the Firestar

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1 Diamond bankruptcy cases, correct?

2 A Yes, I did.

3 Q And in the Firestar Diamond bankruptcy cases you advised
4 the examiner in the investigation into the alleged \$4 billion
5 fraud against Punjab National Bank, is that right?

6 A That's correct.

7 Q And you currently are the advisor to the litigation trust
8 in that case, or the liquidation trust? I can't remember which
9 it is.

10 Q I believe it's the litigation trust, but yes.

11 Q And --

12 A I am the advisor to the trustee that's been appointed
13 subsequent upon the company emerging from bankruptcy.

14 Q And you assisted the examiner to investigate fraud
15 allegations and related-party transactions in the Samuel
16 Jewelers case, correct?

17 A That's correct.

18 Q And in Samuel Jewelers the -- there was -- you -- you --
19 the examiner found that there were significant inappropriate
20 related-party transactions and diversion of assets and
21 fraudulent conveyances, correct?

22 A Yes, that's correct.

23 Q And you also worked for the Official Committee of Unsecured
24 Creditors in the SunEdison bankruptcy and you're now an advisor
25 to the SunEdison litigation trust, is that right?

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1 A Yes, both.

2 Q And among --

3 A That's correct.

4 Q Thank you.

5 And among other things in working for the SunEdison
6 litigation trust you've commenced or the litigation trust --
7 not you personally -- have commenced fraudulent transfer
8 actions, preference actions, turnover actions, etc., correct?

9 A Yes, but the litigation trust has pursued many causes of
10 action.

11 Q And I did -- I, I think you testified that in addition to
12 being a CPA you hold a number of certifications, including as a
13 Certified Fraud Examiner, is that right?

14 A Yes, that's correct.

15 Q And you've also spoken on panels and written articles on
16 fraudulent transfer issues and the persuasiveness of expert
17 testimony, is that right?

18 A Yes.

19 Q And you're an expert in cases that involve or in matters
20 that involve fraudulent transfers, correct?

21 A I have been an expert in many cases involving fraudulent
22 transfer allegations.

23 Q Okay.

24 Now here, I believe you testified that Alvarez & Marsal was
25 retained in November of 2020, is that right?

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1 A Correct.

2 Q And that was -- the corporate restructuring transaction
3 happened -- I may have gotten that wrong.

4 Did you, did you get retained in November of 2020, is that
5 right?

6 A That's correct.

7 Q Okay. And the corporate restructuring actually happened
8 prior to that in May, May 1, 2020, is that right?

9 A That's my understanding. That's correct.

10 Q So you were retained six, seven months after the corporate
11 restructuring took place?

12 A That's correct.

13 Q And you're not retained by the debtors in these cases. I
14 believe you testified that you're retained by McCarter &
15 English, which is counsel to what we're calling New Trane,
16 correct?

17 A Both New, both New Trane and New Trane U.S.

18 Q Fair enough.

19 A Two entities.

20 Q The two entities.

21 And which are the entities represented by McCarter &
22 English, correct?

23 A That's correct.

24 Q And having not been retained by the debtor, you haven't
25 submitted a retention application to the Court, you haven't

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1 filed your engagement agreement, you haven't put in, you know,
2 an affidavit showing your disinterestedness, and what you were
3 retained to do, correct?

4 A My firm has not filed an application with the bankruptcy
5 court in this case.

6 Q And you're not aware of any financial advisor that has been
7 retained by the debtors, that is, Aldrich Pump and Murray
8 Boiler, that has submitted a retention application to the
9 Court, correct?

10 A I, I didn't look one way or the other who submitted
11 applications. I, I know they retained another expert. I know
12 the debtors retained an expert in this case, but I don't know
13 how that retention was administered.

14 Q Okay. So you're not aware of any other financial advisor
15 that's been retained, but you are aware of another expert
16 that's been retained who, I, I believe, is going to testify
17 after you, correct?

18 A It's my understanding Mr. Mullin will testify after me.

19 Q Okay.

20 And I believe you testified that you were retained to
21 identify certain financial and operational risks and
22 consequences associated with a hypothetical bankruptcy filing
23 of the complete Trane entity on -- and -- and you did that
24 study, your, your analysis, as of the date of the corporate
25 restructuring, May 1, 2020, is that right?

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1 A So I did do the analysis assuming it was May 1, 2020,
2 although that date was really locked in because of the need to
3 calculate fees as of a certain time period. But it would
4 apply, you know, if it was after that date as well.

5 I should mention that the hypothetical is that Old Trane
6 and old IRNJ would be placed into bankruptcy and that would
7 trigger the rest of it going into bankruptcy.

8 Q Right. And so what you --

9 A Just to clarify from your, from your presentation.

10 Q So I, I think that's a good clarification. What you're
11 saying is really what you were looking at is what the entities
12 were prior to the corporate, immediately prior to the corporate
13 restructuring and looking at that as to the hypothet,
14 hypothetical filing, is that right?

15 A Yes, that is correct.

16 Q Yeah. And you were not retained to determine whether the
17 corporate restructuring itself was a fraudulent transfer,
18 correct?

19 A No. I was not retained to look at it as a fraudulent
20 transfer, nor do I -- I, I'm not aware of anyone else who's
21 made a formal allegation that it was. And that wasn't part of
22 Mr. Diaz's report, either, that I was asked to rebut.

23 Q And since the, since the early 19 -- I, I believe you --
24 when you, when you looked at the companies, since the early
25 1980s the debtors -- and this is Old IRNJ and Old Trane in our

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1 lingo -- had paid about \$2 billion in asbestos-related
2 indemnity and defense costs, is that right?

3 A That number sounds about right. I know Mr. Tananbaum
4 testified about how much they've paid for many years and put up
5 some slides showing the costs and defense costs yesterday.

6 Q Just so we get it right.

7 MR. NEIER: Josh, are you on the line? And can you
8 put up Exhibit 194 and go to Page 13? And, and it's the first
9 paragraph, I believe.

10 BY MR. NEIER:

11 Q So, Ms. Ryan, I'm --

12 A Yes.

13 Q -- showing you what's your report and I believe you have a
14 footnote down there to Mr. Tananbaum's declaration in this
15 case. And it says that since the early, since the early 1980s,
16 Old Trane, Old IRNJ and Old Trane have paid almost \$2 billion
17 in asbestos-related indemnity and defense costs, you see that?

18 A Yes, correct.

19 Q And -- and that -- does that refresh your recollection as
20 to what you said in your report?

21 A Yes. Thank you.

22 Q And what we said -- and, and the next line is also
23 important. It's your understanding that the debtors are still
24 paying nearly \$100 million annually to defend and resolve
25 asbestos-related claims in the tort system prior to the

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1 bankruptcy system, prior to the bankruptcy filings and, and the
2 corporate restructuring, I imagine, correct?

3 A Yes. The debtors were still paying as opposed to are. I
4 think you said "are." But yes. Yes, the statement is correct.

5 Q Yeah. Okay, thank you.

6 MR. NEIER: We're done with that one, but you might
7 want to keep the report handy.

8 BY MR. NEIER:

9 Q And it's your understanding that without, if the bankruptcy
10 had not occurred, there would be thousands of additional
11 asbestos-related claims that would have to be filed in the
12 decades to come, correct?

13 A That -- well, I think there will, there will continue to be
14 asbestos-related claims, bankruptcy or no bankruptcy. Is that
15 -- I'm not sure I understand your question. You asked me
16 whether or not there will be bankruptcy claims?

17 Q No. I'm asking you whether there will be thousands of
18 additional asbestos claims in the -- in -- in the future,
19 meaning in the decades to come.

20 A That's, that's the expectation.

21 Q And --

22 MR. NEIER: Now, Josh, if we can go to Ms. Ryan's
23 report again, Exhibit 194, and go to Table 3 on Page 19. Yeah.
24 We can blow that up a little bit.

25 BY MR. NEIER:

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1 Q Now, Ms. Ryan, this is Table 3 in your, in your expert
2 report and can you tell me what we're, what we're looking at
3 here?

4 A Sure.

5 This is a snapshot of the balance sheet of Trane excluding
6 the debtors, meaning it's post the merger, and it shows the
7 total assets of \$17 billion, which I mentioned earlier in my
8 testimony, as well as the liabilities of about \$11 billion,
9 including the long-term debt which is, at that time, you can
10 see it's 4268, which is over \$5 billion.

11 Q Right. And when we look at this, the total equity of Trane
12 -- and when, when we say "Trane," what are we referring to?

13 A Basically, the Trane broader enterprise excluding the, the
14 two debtors.

15 Q And so the total equity of the, of the enterprise excluding
16 the two debtors is, if I, if I'm reading this correctly, 5.959
17 billion, about \$6 billion in total equity, is that right?

18 A That, that's correct.

19 Q Okay.

20 And I don't know if we can, if we can reduce this, but you
21 have a cite up there to Footnote 44.

22 MR. NEIER: Maybe we can show Footnote 44.

23 BY MR. NEIER:

24 Q So your source for this was the, the Trane 10-Q for the
25 second quarter of 2020, is that right?

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1 A Yes.

2 Q Okay.

3 MR. NEIER: Josh, if we can go to Exhibit 198 and I
4 believe it's the table on Page 3 of the SEC filing.

5 BY MR. NEIER:

6 Q Now, Ms. Ryan, I'm showing you an expert, showing you an
7 excerpt --

8 A Okay.

9 Q -- of your -- of the -- of the SEC filing and this is the
10 same excerpt I showed you in your deposition.

11 So are you familiar with it?

12 A Yes, although it would be helpful if it was made a little
13 bit bigger 'cause it's hard to see on the screen.

14 Q Yeah.

15 MR. NEIER: Specifically, can you make that first
16 table a little bigger, Josh?

17 BY MR. NEIER:

18 Q So hopefully, you can read -- so hopefully, you can read
19 these numbers.

20 So this is from that, that same 10-Q that you used in your
21 report and this shows that the company estimated its asbestos
22 liabilities at 508.1 million as of June 17, 2020, do you see
23 that?

24 A Yes.

25 Q Okay. And I believe you were present for when

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1 Mr. Tananbaum testified yesterday?

2 A Yes, I was, for most of it.

3 Q And were you present when he talked about preparing this
4 SEC filing?

5 A I don't recall him talking about the SEC filing, but I
6 wouldn't be surprised.

7 Q You may remember -- maybe I, maybe I can refresh your
8 recollection this way.

9 You may recall that he testified that they intentionally
10 prepared this at the low end of total asbestos-related
11 liabilities, do you recall that?

12 A Yes, I do remember him saying that.

13 Q Yeah. In fact, I believe he also --

14 MR. NEIER: Josh, if you can go to the prior page of
15 the -- of the -- of this exhibit. And if you could blow up the
16 lower part where it says Accounting Treatment, that line down
17 there.

18 BY MR. NEIER:

19 Q So this may, this may refresh everybody's recollection.
20 What Mr. Tananbaum testified to was that they prepared their
21 analysis of asbestos-related liabilities -- and I'm just going
22 to quote here -- it says, "The company recorded the liability
23 at the low end of the range as it believed that no amount
24 within the range was a better estimate than any other amount."

25 Do you recall that?

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1 A Yes.

2 Q Yeah. Okay.

3 So -- and, and Mr. Tananbaum also said that he, that when
4 they prepared their recording of the asbestos-related
5 liabilities they described it as intentionally being at the low
6 end of the range?

7 A Yes, consistent with this language in the 10-Q.

8 Q Okay.

9 MR. NEIER: And if we can go back to the table on the
10 next page, the one we had before with the 508.1 million.

11 THE WITNESS: Uh-huh (indicating an affirmative
12 response).

13 BY MR. NEIER:

14 Q So going to this table, there's a, a line below it which
15 says Total Asset for Probable Asbestos-Related Insurance
16 Recoveries, do you see that?

17 A Yes, I do.

18 Q And that's 270.9 million, correct?

19 A That's what it says.

20 Q And so when you look at the 508.1 estimated total, or the,
21 the estimate of total asbestos-related liabilities, you also
22 have to look at the, the insurance recoveries as well that
23 could be balanced against that, that number, correct?

24 A Right. I think it's a -- I do think it's appropriate to
25 say that there's insurance recoveries that would be available

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1 for those asbestos liabilities.

2 Q Right. And the company's estimating that amount at 270.9
3 million as of the second quarter of June 2020, correct?

4 A Yes, I see that.

5 Q And so based on the company's estimates, the, the, the net
6 amount of asbestos-related liabilities for the company -- and
7 it's really just an estimate -- would be 237.2 million, that
8 is, 500.8 less 270.9, correct?

9 A I'll take your math as being correct, but yes. It's --
10 it's a -- it's a -- all those estimates, that's an estimate of
11 the, the net amount that they would, they might incur over and
12 above the insurance policies, again another estimate.

13 Q Right. And you should never take a lawyer's math as
14 anything other than incorrect, but that's another story.

15 And I believe when you were going through your
16 demonstratives with Mr. Mascitti you, you estimated the advisor
17 fees that would have to be paid in a Trane bankruptcy as 307 to
18 461 million, do you remember that?

19 A Yes, I do.

20 Q So the company's estimate of asbestos-related liabilities,
21 granted it's at the low end of the range, as of June 20, June
22 2020 is actually lower than the, than the amount of advisor
23 fees that would have to be paid in a Trane bankruptcy, correct?

24 A So if you're saying that the hundred to \$200 million net
25 estimate for the asbestos liabilities you presented here is

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1 lower than the estimated incremental additional fees that would
2 be incurred by a hypothetical Trane bankruptcy, yes, the
3 numbers are higher.

4 Q Okay.

5 MR. NEIER: And if we can go back to Ms. Ryan's
6 report, Josh -- I believe it's Exhibit 194 -- and go to Page
7 45, which is Table C of the report.

8 BY MR. NEIER:

9 Q And, Ms. Ryan, I'm showing you what's Exhibit C to your
10 report, which is ACC Exhibit 194.

11 Do you recognize this?

12 A Yes.

13 Q And what are you showing here?

14 A I'm showing the six companies that comprise the analysis
15 related to duration in conjunction with deriving the overall
16 incremental advisor fees with a hypothetical bankruptcy.

17 Q And by "duration," you mean the duration of the bankruptcy
18 cases, correct?

19 A I looked at the duration of these particular cases,
20 correct.

21 Q And you found, if we look at the, the bottom highlighted
22 blue line, that the Trane estimated bankruptcy duration based
23 on your analysis will be 4.3 to 6 years, correct?

24 A So I, I saw that the duration of these cases was 4.3 to 6
25 years. I didn't separately say that the Trane bankruptcy would

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1 take 4.3 to 6 years. I just, I looked at this duration
2 analysis to inform my assessment of the incremental fees that
3 might be incurred.

4 Q Okay. A case, a bankruptcy case, especially one that's in
5 controversy, could take shorter or longer, correct?

6 A That's fair.

7 Q And I believe you, you testified that you were the chapter
8 11 trustee for the Raymark, in the Raymark matter and that
9 bankruptcy was filed in 1989 and the trust wasn't formed till
10 11 years later, in 2001, is that right?

11 A That sounds a little bit longer than I recall, but it
12 was -- I, I think it was seven years, but I, I don't recall
13 specifically.

14 But it was, it was more than a few years.

15 Q Yeah. You mentioned that there were significant litigation
16 when Raymark attempted to isolate its asbestos-related
17 liabilities, right?

18 A Yes. Yes. One of the reasons that that case took so long
19 is because there was the absence of a funding agreement and
20 there was years of litigation before the case could actually
21 move forward in any effective way.

22 Q And do you have any data to show that this bankruptcy case,
23 not of Trane, but of Aldrich Pump and Murray Boiler, is going
24 to take any, any less than 4.3 to 6 years, or even longer?

25 A So I didn't estimate the length of the Aldrich/Murray and,

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1 Aldrich and Murray bankruptcy cases as they stand today, but
2 given, you know, the equivalent Paddock case, which, you know,
3 that, where they reached a consensual deal, that could be, I
4 think that was about a year.

5 So I didn't do a separate analysis to determine how long
6 this case might take. It'll all be dependent on whether or not
7 the various constituencies can -- can get -- get to the table
8 and reach a compromise.

9 Q Uh-huh (indicating an affirmative response). And in the --
10 so you're familiar with the Paddock case. In the Paddock case,
11 the asbestos claimants were not sued, correct?

12 A I'm not sure I understand what you mean "the asbestos
13 claimants" --

14 Q There was no --

15 A -- "were not sued."

16 Q There was no, there was no adversary proceeding commenced
17 against them to get a, a preliminary injunction, correct?

18 A So that is correct in that my understanding is there wasn't
19 a preliminary injunction, but my also --I also understand that
20 there wasn't a need for a preliminary injunction and that there
21 was not any cases filed outside the debtor's during the
22 pendency of the bankruptcy.

23 Q The parties agreed to mediate and they reached a
24 resolution. That what you're aware of, correct?

25 A Yes, I, I am aware that they agreed to mediate and, and

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1 reached a resolution, correct.

2 Q Now turning to your rebuttal report, which is Exhibit 197,
3 ACC Exhibit 197.

4 MR. NEIER: Josh, if you can put that up and go to
5 Page 3 and if we can look at, perhaps, "A" and then "B," but
6 let's look at "A" first.

7 BY MR. NEIER:

8 Q Now, Ms. Ryan, I'm showing you what's your rebuttal report,
9 which is ACC Exhibit 197, and, and this is the Executive
10 Summary portion of your report. You're familiar with that,
11 correct?

12 A Yes.

13 Q And the, the first item, bullet point, if you will, in
14 your, in your Executive Summary is that, "Mr. Diaz
15 mischaracterized the 2020 corporate restructuring by failing to
16 recognize the contingent nature of the disputed asbestos
17 liabilities and account for the value and function of the
18 funding agreements," do you see that?

19 A Yes, I do.

20 Q And then, similarly, if we look at "B," so "B" is,
21 "Mr. Diaz erroneously concludes that the 2020 corporate
22 restructuring resulted in less favorable treatment of asbestos
23 claimants compared to other creditors. Mr. Diaz fails to
24 recognize the asbestos claims are disputed, contingent claims,"
25 and then you have in, in, italicized, "that may never become

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1 due and owing as opposed to other claims, such as trade claims
2 or debt service payments that are undisputed, noncontingent,
3 and paid in the ordinary course of business."

4 Do you see that?

5 A Yes, I do.

6 Q And in, in reaching these conclusions with respect to
7 Mr. Diaz's report or these critiques of Mr. Diaz's report you
8 considered that all of the asbestos liabilities, every single
9 liability related to asbestos to be disputed and contingent in
10 nature, correct?

11 A So as I testified in my deposition when you showed me the
12 schedules that were filed in the Aldrich and Murray cases,
13 every single one of those asbestos claims were checked, had
14 checks next to them that said disputed, unliquidated, and
15 contingent.

16 Q You, you broke up a little bit there, but -

17 A Would you like me to -- I'll be happy to slow down and
18 repeat the answer, if that's okay.

19 Q I think that will be helpful if Mr. Mascitti has no
20 objection or the Court has no objection.

21 THE COURT: No, I think we should.

22 MR. MASCITTI: I agree.

23 THE WITNESS: Thank you.

24 In my deposition, as I testified in my deposition, the
25 schedules that were filed in the Aldrich and Murray

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1 bankruptcies which lists out all of the asbestos claims
2 identified every single one of them as contingent,
3 unliquidated, and disputed.

4 And that is what I, that is why I explained when you
5 asked me that question (distortion - audio drops).

6 THE COURT: Need to take us a break.

7 All right. Let's stop for a moment and go off record
8 and see if we can't figure out why we're getting a garbled
9 sound here.

10 (Off the record from 11:38 a.m., until 11:42 a.m.)

11 BY MR. MASCITTI:

12 Q All of the asbestos-related claims were listed as
13 contingent, unliquidated, and disputed, is that right,
14 Ms. Ryan?.

15 A Yes.

16 Q Okay.

17 MR. NEIER: So, your Honor, we're not going to show
18 the, the full schedules of each of these debtors on the screen
19 because the total schedules are, you know, close to 2,000
20 pages.

21 THE COURT: Sure.

22 MR. NEIER: And once we try and load up 2,000 pages,
23 it will be very difficult.

24 THE COURT: I'll take judicial notice of the
25 schedules.

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1 MR. NEIER: And so we'll show, we'll show a sample,
2 which is what we did in Ms. Ryan's deposition. Because it's a
3 lot easier to load one page than it is to load 2,000.

4 THE COURT: Certainly.

5 MR. NEIER: Josh, can you put up Exhibit 199, which,
6 for the record, is Page 45 from the schedules of Aldrich Pump,
7 Docket No. 207.

8 BY MR. NEIER:

9 Q Ms. Ryan, do you see this, which is marked as Exhibit 199?

10 THE COURT: She can't --

11 THE WITNESS: I do. It's, it's small, but I, I have
12 seen them before. So I have a general understanding of what
13 they say.

14 MR. NEIER: All right, Josh. If we can zoom in on the
15 columns on the far right. It's like the, the columns where
16 there are little "Xs" and then the last column.

17 BY MR. NEIER:

18 Q So, Ms. --

19 MR. NEIER: That's good enough, I think.

20 BY MR. NEIER:

21 Q Ms. Ryan, as you look at Exhibit 199 you'll see that -- and
22 these are the schedules of asbestos-related liabilities filed
23 by Aldrich Pump -- you'll see that there's a column that says
24 Contingent, Unliquidated, and Disputed and they're all with an
25 "X" in front of them, you see that?

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1 A Yes.

2 Q And that's what you mean when you say that all of the
3 claims are contingent, unliquidated, and disputed, correct?

4 A Yes.

5 Q And you see that, where it says Amount of the Claim there
6 are some lines that say Undetermined, but there are other lines
7 that say Confidential Settlement Amount, do you see that?

8 A I do.

9 Q And what is your understanding of where it says
10 Confidential Settlement Amount?

11 A So at the time of my deposition you might recall I didn't
12 know anything further because I had the same information as you
13 did available. Since my deposition I did speak to Mike Evert
14 and I also listened to Mr. Tananbaum's testimony yesterday on
15 this topic and what I've come to learn is that of the thousands
16 of references to Confidential Settlement Amount, they're not
17 actually settled claims, but they, instead, reference umbrella
18 settlement agreements that were entered into with certain law
19 firms under which certain, the claimants that they administer
20 or represent could be supported under a matrix of settlement
21 amounts, you know, if they, if they provided the required
22 documentation, that they could then get a recovery under of a
23 certain amount.

24 Many of these claims, thousands of these claims, actually,
25 over 7,000 of the claims between Murray and Aldrich date back

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1 many, many years. Many of them have been withdrawn on state
2 dockets and others should be withdrawn, but they have been
3 outstanding, probably, for many for a decade and that they are,
4 they continue to be contingent, unliquidated, and disputed
5 claims and may not even ever materialize in amounts due and
6 owing.

7 MR. NEIER: Your Honor, did the, did that come in?

8 THE COURT: Let me ask the court reporter. How
9 clearly did you get that?

10 AUDIO OPERATOR: Not perfect.

11 THE COURT: Okay. The same.

12 All right. I think it came in clearly enough for us
13 to all understand it. It was based on Mr. Evert's and
14 Mr. Tananbaum's testimony about the, the agreements, what the
15 settlement per matrix if documentation was provided and a lot
16 of that had been outstanding and as I recall yesterday, he said
17 something to the effect that from the company's perspective
18 they wouldn't have a deal at this point in time.

19 But that's, that's the gist of it. If you need it any
20 more --

21 BY MR. NEIER:

22 Q Does that sound --

23 THE COURT: Was that -- if you need it any more
24 clearly than that, we better ask again.

25 BY MR. NEIER:

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1 Q Ms. Ryan, as to what the Court sort of summarized its
2 understanding of, of what Confidential Settlement Amount means,
3 does that comport with your understanding?

4 A Yes. I think the only portion that wasn't captured is the
5 fact that these are, still are unsettled, disputed, contingent,
6 and unliquidated claims that may never become due and owing.
7 They're not under any kind of settlement specific to that
8 claimant.

9 THE COURT: Let's --

10 THE WITNESS: There is a (distortion) that if, with
11 the law firm. And so I just want to make it clear that these
12 are not amounts that are due and owing and they may never
13 become due and owing.

14 THE COURT: That was so garbled that it was anything
15 but clear, but --

16 THE WITNESS: Oh, dear.

17 THE COURT: I think we all understand what you were
18 saying, is that these claims are still contingent,
19 unliquidated, and disputed.

20 THE WITNESS: Yes.

21 THE COURT: You said much more than that, but if you
22 want to try again, we'll, we'll see if it comes through this
23 time.

24 Is that sufficient for your purposes, Mr. --

25 THE WITNESS: I think the two -- I think the -- yeah,

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1 yeah. The two points are they are contingent, unliquidated,
2 and disputed and may never become a claim that is due and
3 owing.

4 THE COURT: Got it. That came through.

5 MR. NEIER: Okay.

6 BY MR. NEIER:

7 Q So, so schedules, as you know, are filed under penalty of
8 perjury. They're filed by debtors, correct?

9 A Yes.

10 Q And here, the schedules say Confidential Settlement Amount
11 for 7,700 claimants, correct?

12 A That total sounds around correct --

13 Q Okay.

14 A -- around -- yes. Over 70, around 7800.

15 Q And notwithstanding the use of the term, "confidential
16 settlement amount," your understanding now after your
17 deposition is that these are, in fact, contingent,
18 unliquidated, and disputed?

19 A All these claims with the exception of around 98 claims of
20 the thousands and thousands listed, yes, that's correct.

21 Q And I believe what you said was there was some kind of
22 agreement reached with various attorneys representing a number
23 of, of these claimants and they reached a, some kind of
24 agreement, but the agreement is not the kind that relates to an
25 individual claimant. I think that's what you said, is that

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1 right?

2 A That's correct.

3 Q Okay.

4 A And has to be supported; in other words, the agreement is
5 only in principle. Has to be then papered later for any claim
6 to actually get some recovery.

7 Q Okay. And you never -- nevertheless, you believe that it's
8 appropriate that all of the claims, that is, every single
9 asbestos-related liability, be considered contingent,
10 unliquidated, and disputed based on the schedules, is that
11 right?

12 A I didn't critique the schedules, but I did note based upon
13 Mr. Tananbaum's testimony and my conversation with Mike Evert
14 that around 98 of them relate to settled claims where the check
15 was not cleared.

16 Q And --

17 A Some portion.

18 MR. NEIER: Did that come through, your Honor?

19 THE COURT: No, sir.

20 MR. NEIER: Okay. I think -- did the Court say no,
21 sir? Is that what you said?

22 THE COURT: That's what I said. It, it came through
23 except 98 where the check was -- and then we lost you.

24 THE WITNESS: Was not cleared.

25 THE COURT: Got it.

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1 MR. NEIER: Okay.

2 BY MR. NEIER:

3 Q And you also believe that it's appropriate to say that all
4 asbestos liabilities are contingent even though the debtors are
5 paying a hundred million dollars annually to both defend and
6 resolve asbestos claims, correct?

7 A Correct.

8 Q And you believe it's appropriate to say that all asbestos
9 liabilities are contingent even though the debtors stated in
10 the SEC filings that we reviewed that as of June 17, 2020 Trane
11 had estimated liabilities of 500., 508.1 million at the low
12 end, correct?

13 A I'm not clear what the question is.

14 Q The question is you believe it's appropriate -- do you
15 believe it's appropriate to say that all asbestos liabilities
16 are contingent even though the debtors have stated in SEC
17 filings, not -- I'm sorry. I take it back. I apologize. Let
18 me repeat -- let me -- let me withdraw that question and try
19 again.

20 You believe it's appropriate to say that all asbestos
21 liabilities are contingent even though New Trane stated in its
22 SEC filings that as of June 17, 2020 there were asbestos-
23 related liabilities estimated at 508 million, 508 million at
24 the low end, correct?

25 A Yes, I, I, I do. I think it's correct to list them as they

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1 were listed in the schedules.

2 Q And I, I don't want to go back to the SEC filing, but we
3 can if you want. Are you familiar with ASC 450?

4 A Yes. You're talking about generally accepted accounting
5 principles.

6 Q Right. And the estimate that was done at the low end of
7 the asbestos-related liabilities was done pursuant to AS 450
8 [sic], is that correct?

9 A That's correct.

10 Q And under ASC 450 when you list a liability or an estimate
11 of a liability, that makes it probable, correct?

12 A So it doesn't make it probable, but to (distortion) --

13 Q I'm sorry. I'm sorry. We can't hear you. I'm sorry.

14 Can we try one more time?

15 A Just to clarify. If -- if -- if a -- if a -- if a
16 contingent liability is estimated of probable (distortion)
17 financial statements.

18 THE COURT: Folks, I'm wondering whether this is a
19 good time for a lunch recess, just to see if conditions change.
20 I hate to do that, but we're not getting anything at the
21 moment.

22 MR. NEIER: Yeah. It's, it's, it's obviously not
23 helpful to us, your Honor.

24 THE WITNESS: Do you want me to unplug and see if that
25 works?

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1 MR. MASCITTI: Ms. Ryan, I, I think when we take the
2 next break, you should try to move your computer closer to
3 whatever your, your Wi-Fi connection is. Because I think
4 it's --

5 (Distortion)

6 MR. MASCITTI: -- I think it's a Wi-Fi issue.
7 So changing your location, hopefully, will, will help.

8 THE COURT: If there's a way to get --

9 THE WITNESS: Okay.

10 THE COURT: -- closer to the router.

11 THE WITNESS: I, I will do that. I'm pretty close,
12 but I will do that.

13 MR. NEIER: Or tell somebody to stop playing Fortnite
14 while you're testifying. That's another option.

15 THE WITNESS: (Distortion.)

16 THE COURT: Okay. Again, we, we lost that.

17 THE WITNESS: Okay.

18 THE COURT: Does anyone have a problem with taking the
19 recess now? I hate to interrupt in the middle of cross-
20 examination.

21 MR. NEIER: Yeah. I would ask, obviously, your Honor,
22 that the witness not talk to counsel during, during a break
23 during the middle of cross-examination.

24 THE COURT: Regarding her testimony, not
25 connectivity --

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1 MR. NEIER: Regarding her testimony, of course.

2 THE COURT: -- right.

3 If anyone has any help on the computer issues, please
4 do so.

5 And what would you rather they do at this point? Do
6 you want to do some testing before we start?

7 IT TECH: Yes.

8 THE COURT: Could we take an hour's break and about 15
9 till, Ms. Ryan, try to do whatever you're going to do, and then
10 let's do a little testing before we start.

11 THE WITNESS: Okay.

12 THE COURT: That work? Nod your head, please.

13 THE WITNESS: That works for me.

14 THE COURT: We're not getting the, the sound clearly.
15 Okay. An affirmative there.

16 Any other matters before we take a recess?

17 (No response)

18 THE COURT: All right. Hopefully, things will improve
19 after lunch, but we'll take a break until 1:00 Eastern, okay?

20 MR. NEIER: Thank you.

21 (Lunch recess from 11:57 a.m., until 12:59 p.m.)

22 AFTER RECESS

23 (Call to Order of the Court)

24 THE COURT: Have a seat, everyone.

25 Okay. I would assume there were some efforts made

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1 over the, the lunch recess to work on connectivity.

2 I see a different background for you, Ms. Ryan, so.

3 THE WITNESS: You like this one better?

4 THE COURT: I don't know about liking it better, but
5 it sounds better, so.

6 THE WITNESS: Great, excellent.

7 THE COURT: All right.

8 Are we all ready to go?

9 MR. MASCITTI: I believe so, your Honor.

10 THE COURT: All right.

11 If you will proceed with your cross-examination, sir.

12 BY MR. NEIER:

13 Q Ms. Ryan, before we, we experienced technical difficulties,
14 let's say, I think I was asking you about ASC 450 and when,
15 when we say something is contingent under ASC 450 that, in
16 fact, means that the liability, while it is still contingent,
17 is probable. Does that refresh your recollection as to what we
18 were talking about?

19 A Yes, it does.

20 Q Okay. And would you agree with me that when we say
21 something is contingent under, under ASC 450, which is the, I
22 believe you said is GAAP, that, in fact, means that the
23 liability, while it is contingent, is probable?

24 A Yes. What it means is that it's estimatable and probable,
25 but not due and owing.

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1 Q And, and as we looked at that SEC filing earlier where we
2 had the ASC 450 estimate of 508.1 million at the low end, that
3 means that that liability is, as you said, probable, but not
4 due and owing, is that right?

5 A That's right. If you might, you might recall that, as you
6 said, it's a contingent liability and that means it's
7 contingent in nature. It -- it is -- it is not adjudicated or
8 settled or it's just an estimate of what might be due and owing
9 in the future based on historical payouts.

10 Q Okay. And is it also fair to say that even though there's
11 this estimate of 508 million of asbestos-related liabilities
12 and as a result of the bankruptcy there are no payments being
13 made to, with respect to the asbestos-related liabilities, you
14 have no opinion as to whether there is harm to the asbestos
15 claimants in these cases, correct?

16 A So what I said in my deposition is, when you asked me that
17 question, was that not necessarily that the, that the claimants
18 are harmed because, as I said earlier, these are contingent,
19 unliquidated, and disputed claims and the forum that's
20 available in a bankruptcy setting and a trust that could be
21 formed might be very advantageous to these claimants because
22 they can get processed and paid in a more effective and
23 efficient manner as opposed to fighting for years through the
24 court system.

25 Q But won't there be a fight through the court system in any

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1 event since you've already estimated that cases with these
2 kinds of significant liabilities take 4.3 to 6 years?

3 A No. I actually did not say that this case should take 4.3
4 to 6 years. In fact, this case, hopefully, will take very
5 short if everybody comes to the table. Because the, the fight
6 and the reason some of those cases took so long was because
7 there was a lot of litigation and that litigation was related
8 to the fact that there were assets or the assets that were spun
9 off with the asbestos liabilities were insufficient to pay
10 those liabilities. Here, there's a funding agreement. Those
11 cases didn't have a funding agreement with unlimited capacity
12 and intention to pay the asbestos liabilities in full.

13 Q But you were not retained to determine whether or not the
14 transaction isolating asbestos liabilities from other, from the
15 assets and from the other liabilities that are being paid in
16 the ordinary course, you were not retained to determine whether
17 or not that was a fraudulent transfer, correct?

18 A No. I think you asked me that earlier and that there has,
19 to my understanding, I haven't been retained to do that as of
20 this juncture because there's no active complaint alleging that
21 it was a fraudulent conveyance and the rebuttal report that I
22 responded to from Mr. Diaz similarly didn't have any kind of
23 assertion that the transaction was a fraudulent conveyance. So
24 there was nothing to respond to.

25 Q And you have no opinion as to whether there'll be a

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1 hindrance and a delay of paying asbestos creditors while these
2 cases pursue, while these cases go on with respect to, with
3 respect to the bankruptcies?

4 A If you're asking me if I have a separate opinion as to
5 whether or not there'll be a hindrance and delay, that's, I, I
6 don't, you know. That's all dependent on the constituents.

7 Q But nevertheless, the schedules have tens of thousands of
8 asbestos claims listed and every single one of them is listed
9 as contingent, unliquidated, and disputed despite the SEC
10 filings that say that there's a probable liability of 508
11 million at the low end, correct?

12 A Yes, it's true that the SEC filing has an estimate in it of
13 \$508 million, but the schedules that were filed in the
14 bankruptcy court do not equate to the 508 million. You're --
15 you're -- while they're on the same topic, they're not the same
16 thing. The estimate, the estimate that was done for the SEC
17 filing is based upon a set of criteria of the historical
18 payouts that the company incurred over a vast number of years,
19 whereas the schedules are a list of all of the claims that have
20 been filed at some point. And as Mr. Tananbaum testified to,
21 of those 7800 claims, all which, most of which are, are not
22 even identified as an amount owed, right, there's zero, a blank
23 in the database, they are contingent, disputed, and
24 unliquidated and, and a significant portion, over 7,000 of
25 them, which is probably, I don't know, greater than 90 percent,

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1 95 percent, actually 90, more than 95 percent, are, you know, a
2 decade old. And a number of them are withdrawn on dockets
3 because they're inactive and other ones have been inactive.

4 So they -- they're just -- you can't compare the two, the
5 two as the schedules. The schedules contain a lot of claims
6 that were asserted at one time that either may have been
7 withdrawn and may be withdrawn, may never be resolved as due
8 and owing, will go away. And, and likewise, there'll be future
9 claims which is why the 524(g) trust is a wonderful avenue to
10 resolve this entire situation.

11 Q And while the bankruptcy is going on and if the preliminary
12 injunction is granted, there'll be no payouts whatsoever to the
13 asbestos claimants even though there have been, based on
14 historical, as you just said, based on history, there have been
15 payouts in the past which say, which give you an estimate of
16 508 million at the low end due and owing right now, or
17 probable, I should say?

18 A So if your question is will, if the preliminary injunction
19 is granted, that the bankruptcy by virtue of its, the stay, you
20 know, all creditors are stayed and won't be paid that are
21 pending at the petition, you know, that's true. The, the
22 intent of the case is to resolve those claims and put them into
23 a trust so that they can be processed for payment, to the
24 extent that they're valid claims. I mean, again, I just want
25 to focus on the fact that all that, that long list that you put

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1 in front of me contains significant amount of claims that will
2 never get paid because they're just not supported.

3 Q But nevertheless, there are also claims that are supported,
4 correct, and they're not going to be paid?

5 A On that list there's very few that are supported. That's
6 the --

7 Q Do you think a company that has thousands of claims listed
8 in the 1500 pages of the schedules, all listed as contingent,
9 unliquidated, and disputed, you think there are very few that
10 deserve payment? That's your, that's your position.

11 A My understanding is today there are less than a hundred
12 that have been supported and are eligible for payment.

13 Q Going back to your rebuttal report -- well, let me ask you
14 about -- let me -- what is the basis of your understanding?

15 A That there's less than a hundred that are due and owing?

16 Q Yes.

17 A Couple things. I had a conversation with Mike Evert who
18 administers, who's in charge of the national trial team, and
19 Mr. Tananbaum also testified yesterday to some of that
20 information as to the composition of what's in those schedules.

21 Q So your position is based on the defend, the, the debtors'
22 positions and the position of the, the non-debtor affiliates,
23 New Trane?

24 A It's based upon my understanding from them. I -- when you
25 say "position," I mean, unless they -- yes. It's based upon

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1 their representations of the documentation that has or has not
2 been provided in support of those claims.

3 Q You've done no separate analysis to test those positions,
4 correct?

5 A No, I have not.

6 MR. NEIER: Can we go to your rebuttal report, Page --
7 well, it's ACC Exhibit 197. If we can go to Page 4, please,
8 Josh, if you're online, hopefully. Can we blow up so that it
9 can be read (e) on that page?

10 BY MR. NEIER:

11 Q Ms. Ryan, I'm showing you what's been marked as ACC Exhibit
12 197 and this is, once again, part of your Executive Summary in
13 your rebuttal report. And you have here, "Mr. Diaz erroneously
14 concludes that the 2020 corporate restructuring was highly
15 unusual based on a flawed methodology and ignores other cases
16 that affected transfers of asbestos liabilities through similar
17 types of restructuring transactions. Indeed, characterizing
18 the transaction as unusual, Mr. Diaz identifies four other
19 cases in which similar strategies were executed," you see that?

20 Now --

21 You nodded, but you have to say, you have to say yes or no.

22 A Yes.

23 Q Okay.

24 A Yes.

25 Q I wanted to make sure the audio wasn't cutting out.

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1 Now you say that his conclusion is erroneous that this --
2 the -- that the corporate restructuring was unusual or highly
3 unusual because of flawed methodology.

4 Did you perform your own methodology to determine what
5 other cases are out there?

6 A No, I did not.

7 Q And you, you point to a fact that there are four other
8 cases in which similar strategies were executed and those cases
9 were Bestwall, Paddock, DBMP, and Coltec-Garlock, correct?

10 A Yes.

11 Q And then you added one more today, which was Raymark, the
12 case where you were a chapter 11 trustee?

13 A Well, when you say I added one more, I'm talking about --
14 if you're --

15 Q Another case where, where, a similar type of restructuring
16 transaction where liabilities are isolated from assets.

17 A So I, I did identify Raymark as in, in the bucket of the
18 history of cases in which companies attempted to isolate the
19 liabilities into a separate entity with some level of assets
20 and separate them from the rest of the business and operations.

21 I separately said that the difference of those long history
22 of cases -- and there's a long list of them that we've all,
23 we're all very familiar with -- there is four cases that you
24 mentioned and listed that have similar restructuring to the
25 divisional merger that was done for the 2020 corporate

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1 restructuring and Mr. Diaz actually identified those in his
2 report. And those are --

3 Q And because --

4 A Those are different because they all had a funding
5 mechanism which historically the other cases did not.

6 Q Uh-huh (indicating an affirmative response). And all of
7 those cases, except for Paddock where there was no funding
8 agreement but there was also no adversary proceeding and no
9 attempt at an injunction, all involved significant litigation,
10 correct?

11 A Are you talking about the four cases?

12 Q Yeah. Let's talk about Bestwall. Bestwall is still
13 pending and it's now four or five years old. Are you familiar
14 with that case?

15 A Generally. I'm not working on the case, but I'm generally
16 familiar with it.

17 Q Is it, is it, is it fair to say that there's significant
18 litigation in the Bestwall case?

19 A There is litigation in the Bestwall case.

20 Q And DBMP, which is also pending before this Court, are you
21 familiar with that case?

22 A Yes, I'm generally familiar with the case.

23 Q And there's an adversary proceeding and a motion for a
24 preliminary injunction and significant litigation in that case,
25 correct?

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1 A There is litigation in that case as well.

2 Q And certainly, the Garlock case had significant litigation,
3 correct?

4 A My understanding is the Garlock case also had litigation.

5 Q And, therefore, I'm saying -- and you mentioned the Raymark
6 case. The Raymark case also had significant litigation. I
7 believe you testified to that earlier.

8 A Yes, it did.

9 Q So the only case that didn't have significant litigation
10 was Paddock even though there was no adversary proceeding, no
11 preliminary injunction, no funding agreement?

12 A Paddock did have a funding agreement. It didn't need a
13 preliminary injunction, I understand, and the parties agreed to
14 a mediation.

15 Q So --

16 A That was more of a consensual nature which is an
17 opportunity here.

18 Q And you testified earlier that there were no lawsuits
19 against the non-debtor affiliates in, in, you know, which is
20 Owens Illinois, that there were, there were no lawsuits.

21 What's your basis for saying that?

22 A Speaking to my partner who's running that engagement on
23 behalf of Alvarez & Marsal.

24 MR. NEIER: If we can go back to Page 15 of Exhibit
25 197. Well, actually, actually, I, I take it back.

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1 Josh, instead of looking at this, can we look at the,
2 the demonstratives, the last page of the demonstratives that
3 were used on the direct testimony.

4 BY MR. NEIER:

5 Q Now here, here are the demonstratives that Mr. Mascitti had
6 you look at during your direct testimony, correct?

7 A (No audible response.)

8 Q And the third bullet point says, "The ACC's refusal to
9 negotiate now suggests that any pre-petition effort to
10 negotiate would not have timely produced an agreement in
11 principle."

12 On what basis do you say that the ACC has refused to
13 negotiate?

14 A I believe there's a reference, actually, in my report. If
15 you want me to find it, I can do so, which actually --

16 Q We -- we can -- we can actually do that for you because
17 that's what I was going to point to, but I, I notice that you
18 also had this in your demonstratives.

19 MR. NEIER: Can we go back -- I, I apologize, Josh.
20 Can we go back to what I was suggesting, is we go back to
21 Exhibit 197, Page 15, I believe it is. If you could blow up
22 the paragraph, that's the first full paragraph on that page. I
23 believe it begins with, "A pre-packaged bankruptcy."

24 BY MR. NEIER:

25 Q Now this says -- this is part of your rebuttal report,

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1 Ms. Ryan, and it says, "A pre-packaged bankruptcy is
2 unrealistic and unworkable when a debtor is dealing with a
3 constituency that is unwilling to negotiate, as is the case in
4 this proceeding."

5 Is that what you were referring to?

6 A Yes. And Footnote 42 will give you the source. And that's
7 part --

8 Q And --

9 A -- part of the reason --

10 Q And you

11 A -- part of -- if I could just finish my answer.

12 Q Sure.

13 THE COURT: Please.

14 THE WITNESS: It's, it's both based on the reference
15 in this report and then, in addition, Mr. Tananbaum yesterday
16 testified again that he, that he, although he is open to having
17 this discussion, that the ACC is still unwilling to negotiate.

18 BY MR. NEIER:

19 Q Okay.

20 A So it just, that brings it up to date.

21 MR. NEIER: And just for reference, Josh, if you could
22 bring up Footnote 42 so we can see the source of this.

23 BY MR. NEIER:

24 Q Is this the footnote you were referring to, Ms. Ryan --

25 A Yes --

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1 Q -- as the source?

2 A -- it is. Yes.

3 Thank you.

4 Q And, and this is, this is a, a response to a comment that
5 Mr. Guy made at a hearing earlier in this case on January 28,
6 2021, is that right?

7 A This is in a transcript, yes. This is from a transcript
8 from January 28, 2021.

9 Q And there's no other basis in your report, correct, for
10 this statement that the, that the ACC is unwilling to
11 negotiate?

12 A At the time of my report it was based upon this statement
13 as well as my discussions with counsel that said there's been
14 no, there's been no reach out to -- to -- in an effort to
15 negotiate. The fact that there's an adversary proceeding is
16 further evidence of that and then, most importantly,
17 Mr. Tananbaum yesterday reconfirmed the fact that there has
18 been no willing to engage in a discussion from the ACC yet.

19 Q So the, the basis that you're now talking about is,
20 essentially, discussions with your client, with representatives
21 of your client and with your counsel and representatives of the
22 debtors, is that right?

23 A And this statement right here.

24 Q You have no personal knowledge of any unwillingness to
25 negotiate, correct?

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1 A The sources of information I, are what we just talked
2 about, is basically that someone said it in a, in a courtroom
3 in, in a transcript and the testimony that was provided
4 yesterday, again in this courtroom, as well as discussions with
5 counsel. That is the sources of my information.

6 Q And if you read --

7 A So if there is other sources, if they are willing to
8 negotiate, then that would be terrific.

9 Q And if you read the, the footnote that you reference here,
10 which is in response to some comment from Mr. Guy --

11 A Uh-huh (indicating an affirmative response). Yes.

12 Q -- it says -- and it doesn't say who said this -- but it
13 says, "which is obviously something at this point," at this
14 point, "the ACC and its constituents do not support and all do
15 not" -- "at all and do not expect they will support," you see
16 that? And what the --

17 A Yes, I do.

18 Q What the person, whoever it is, is referring to -- and we
19 don't know who that person is -- is a promise by Mr. Guy that a
20 524(g) plan would be filed, you see that?

21 Are you frozen or --

22 A No, no. I'm read, I'm reading what you're saying.

23 So it says -- I think it's -- I think what it says speaks
24 for itself. It says "at that point the ACC and its
25 constituents do not support at all and do not expect that they

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1 will support" --

2 Q And this is --

3 A -- "a 524(g) plan."

4 Q This is an argument by an unidentified person in response
5 to, I believe, if I heard Mr. Guy, who promised the Court we're
6 willing, we're going to get a 524(g) plan, you see that?

7 A Yes, I do.

8 Q And that was filed on -- that was stated, supposedly, on
9 January 28, 2021?

10 A Correct. That's a quote from --

11 Q And no 5 --

12 A -- a transcript.

13 Q And no 524(g) plan has been filed, correct?

14 A Not yet.

15 MR. NEIER: Your Honor, if you give me a minute here.

16 THE COURT: Yes, sir.

17 (Pause)

18 BY MR. NEIER:

19 Q We can go back to this, the, the sentence above where what
20 you're criticizing -- this is a sentence in, in your, your
21 rebuttal report, Exhibit 197, Page 15 -- that "a pre-packaged
22 bankruptcy is unrealistic and unworkable because the debtor is
23 dealing with a constituency that's unwilling to negotiate," you
24 see that?

25 A Yes.

RYAN - CROSS

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1 Q And a pre-packaged bankruptcy, obviously, would have taken
2 place or a discussion concerning a pre-packaged bankruptcy
3 would have taken place prior to any May 1, 2020 corporate
4 restructuring, correct?

5 A That's the assertion.

6 Q And you were not hired until November of 2020, six, seven
7 months after the corporate restructuring?

8 A That's correct.

9 Q And you have no personal knowledge as to whether anybody
10 even attempted to negotiate a pre-packaged bankruptcy from your
11 client's perspective, correct

12 A I don't believe there was any, any attempt.

13 Q Yeah.

14 MR. NEIER: I have no further questions, your Honor.

15 THE COURT: Okay.

16 Others of this witness? Anyone who has not had a
17 chance to cross?

18 (No response)

19 THE COURT: Any that -- any redirect here?

20 MR. MASCITTI: No. Thank you, your Honor. We don't
21 have any redirect.

22 THE COURT: Any other questions of this witness?

23 MR. GUY: Your Honor, I have a short question, if I
24 may.

25 THE COURT: Mr. Guy.

RYAN - REDIRECT

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1 MR. GUY: And it follows from the line of questioning
2 about the quote from the bottom of the, the report.

3 REDIRECT EXAMINATION

4 BY MR. GUY:

5 Q That's not a quote from me. It's a quote from Ms. Ramsey
6 because, as you can see, it says, "Mr. Guy said."

7 Does that refresh your recollection, Ms. Ryan?

8 A Yes, that's correct.

9 MR. NEIER: Yeah. You know, for the record I didn't
10 say otherwise. I said it was an unidentified person responding
11 to Mr. Guy.

12 MR. GUY: Yes, sir. I --

13 BY THE COURT:

14 Q Do you know, ma'am, that, that it was Ms. Ramsey?

15 THE COURT: I mean, we can go back and look at the
16 transcript, but that sounds like a non-material point.

17 MR. GUY: It's just to clear up the record, your
18 Honor, but it was Ms. Ramsey speaking at that, on that issue.

19 THE COURT: I see you shaking your head yes --

20 THE WITNESS: Yes, thank you.

21 THE COURT: -- Ms. Ryan, so.

22 THE WITNESS: Yes, thank you.

23 THE COURT: All right, very good.

24 Any other questions of this witness?

25 (No response)

1 THE COURT: All right.

2 You have effectively stepped down. Thank you, ma'am.

3 Sorry we had such a time of it.

4 THE WITNESS: Yes. Thank you, your Honor.

5 THE COURT: Very good.

6 Okay. Where are we? Do we need a break or we're

7 ready to go into the next witness?

8 MR. EVERT: Your Honor, Michael Evert for the debtors.

9 Up to you. Our next witness is Dr. Charles Mullin. I think
10 he's on the line, but whatever the Court prefers.

11 THE COURT: Well, that was what I was really
12 intending, is he on and available?

13 MR. EVERT: I believe he is.

14 THE COURT: Okay.

15 Anyone else need any kind of a recess? Ready to go to
16 the next witness? We'll take a mid-afternoon break probably
17 about 3:00.

18 (No response)

19 THE COURT: Okay.

20 All right. Let's proceed, Mr. Evert.

21 MR. EVERT: Can you see Dr. Mullin, your Honor?

22 THE COURT: I do not.

23 MR. EVERT: He has come up.

24 Charlie, why don't you say a couple of words and see
25 if that makes something happen?

MULLIN - VOIR DIRE

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1 DR. MULLIN: Hello, Michael.

2 MR. EVERT: There we go.

3 THE COURT: I'm still waiting.

4 Keep talking.

5 DR. MULLIN: Okay.

6 MR. EVERT: Maybe try "Mary had a little lamb."

7 THE COURT: All right. Now we're good, Mr. Mullin, or

8 Dr. Mullin. Let's get you sworn. If you'll raise your right

9 hand.

10 DR. CHARLES MULLIN, PLAINTIFFS/DEBTORS' WITNESS,

11 ADMINISTERED OATH

12 THE COURT: All right, Mr. Evert. The witness is with

13 you.

14 MR. EVERT: Thank you, your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. EVERT:

17 Q Would you state your name for the record, please?

18 A Charles Henry Mullin.

19 Q And, Dr. Mullin, could you briefly describe your

20 educational background?

21 A I received my undergraduate degree from the University of

22 California at Berkeley in mathematics and economics. I went

23 from there to the University of Chicago where I received a

24 Ph.D. in economics.

25 Q And in what year did you receive your Ph.D.?

MULLIN - VOIR DIRE

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1 A 1998.

2 Q And when, when you left school what was your first job in
3 the working world?

4 A I accepted a position on the faculty at Vanderbilt
5 University in the Economics Department.

6 Q And how long were you there?

7 A I was on the faculty there for five years, although one
8 year I was on leave and I spent that year at UCLA.

9 Q And what did you do when you left the academic world?

10 A I left the academic world in 2003 and I joined Bates White
11 where I remain today.

12 Q What is your title at Bates White?

13 A I'm the Managing Partner of Bates White.

14 Q And how large a firm is Bates White?

15 A About 250 people at this point.

16 Q And its expertise is in economic consulting, is that right?

17 A Correct.

18 Q What other types of work, before we talk about asbestos,
19 what other types of work have you done outside of asbestos in
20 economic consulting at Bates White in other mass torts?

21 A I worked on a large array of mass torts to this point.
22 It's got a disproportionate focus on asbestos just 'cause it's
23 the largest mass tort and has the most litigation around it.
24 But at this point I've dealt with a number of different product
25 liability matters, pharmaceutical matters, more recently

1 opioids, sexual abuse cases, talc litigation.

2 So an array of different mass torts as well as insurance
3 litigation and reinsurance litigation. That's the bulk of my
4 work.

5 Q And Bates White has been retained as an expert by the
6 debtors in this case, is that right?

7 A Correct.

8 Q Have you published in the field of economics?

9 A Yes.

10 Q What kinds of things have you published?

11 A Most of my peer-reviewed publications stem from the time
12 when I was at Vanderbilt and was actively doing academic
13 research and they really focused on the area that's referred to
14 as robust estimation techniques, which is a subfield of
15 econometrics and it, as opposed to trying to give one precise
16 numerical answer to a question, robust estimation takes into
17 account the uncertainty that may exist in the world to try to
18 describe the neighborhood that we're very confident the answer
19 resides in as opposed to invoking assumptions that we may not
20 think are correct to get to an exact number.

21 Q Now you, you mentioned econometrics. Tell us what that is.

22 A It's, it's really just statistics, but statistics is a
23 very, very broad field and it's the area of statistics that's
24 most applicable to the types of problems that economists are
25 most commonly facing.

MULLIN - VOIR DIRE

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1 Q And is it one of the now considered, sort of one of the
2 three branches, along with microeconomics and macroeconomics?
3 Is that a fair, or is that, or is that a lawyer
4 oversimplification?

5 A Correct, in that most graduate school programs start
6 teaching microeconomics, macroeconomics, and econometrics is
7 the totality of your first-year caseload -- not caseload.
8 Sorry -- course load and then in your second year you may
9 specialize in some fields.

10 But everybody does those three and then people pick
11 different fields to complement on top of those three.

12 Q And in the -- I think, I think you said this, but just to
13 be sure -- the articles that you published in the field of
14 economics were all published -- or not all -- most all
15 published in the peer-reviewed economic literature, is that
16 right?

17 A Correct.

18 Q Have you also previously served as an expert in litigation?

19 A Yes.

20 Q Tell me, generally, about that experience, if you will.

21 A At this point I've probably filed around a hundred expert
22 reports, testified in around 50 different matters.

23 Q And as you indicated earlier that a large percentage of
24 those matters in, in mass torts has involved the asbestos
25 litigation, has this caused you to engage in substantial

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1 research in the asbestos litigation arena?

2 A Yes. Bates White, more broadly, not just myself, but as an
3 institution we have an active research agenda that supports all
4 of the work we do in this field.

5 MR. EVERT: Your Honor, as noted by Mr. Mascitti
6 earlier, the parties have stipulated on the expertise of the
7 various experts in the cases. So we'd offer Dr. Mullin as an
8 expert in statistical and econometric analysis, economic
9 modeling as it relates to asbestos-related personal injury
10 claims, and valuation and analysis of asbestos and other mass
11 torts.

12 THE COURT: Anyone opposed?

13 MR. WEHNER: No objection, your Honor, from the ACC.

14 THE COURT: Only tell me if you do object.

15 Okay. All right. We'll, we'll designate him as such.

16 MR. EVERT: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. EVERT:

19 Q So, Dr. Mullin, as, as background, the debtors asked you to
20 apply your expertise in connection with this hearing to
21 evaluate two things from an economic perspective, the potential
22 financial impact of a preliminary injunction on the asbestos
23 claimants and the economic benefits of resolving asbestos
24 claims through an administrative trust rather than through the
25 tort system, is that basically right?

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1 A Correct.

2 Q Did you form opinions to a reasonable degree of scientific
3 certainty in the field of economics on those subjects?

4 A Yes.

5 Q Tell me what those opinions are.

6 A With regard to the first, the potential financial impact of
7 a delay on claimants, that, that would not have a material
8 economic impact on the claimants.

9 And with regard to the second, the types of 524(g) trusts
10 that historically have emerged from the bankruptcy process
11 provide a more efficient -- by that I mean, lower transaction
12 costs so more of the money will go into the pockets of the
13 claimants as opposed to the professionals -- so it's a more
14 efficient system to compensate claimants and it's a more
15 equitable system to compensate claimants.

16 Q Okay. Let's delve into both of those.

17 So starting with your opinion that the potential delay in
18 payment resulting from a preliminary injunction will not be
19 material in the context of other recovery available to the
20 typical claimant, did you assume for purposes of that opinion
21 that the nondebtors protected by the preliminary injunction
22 would, in fact, be liable for the Aldrich and Murray asbestos
23 claims?

24 A Initially, I viewed it as there being three potential
25 outcomes where one, as I understand, the debtors' position is

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1 that the non-debtor affiliates don't have liability. If the
2 debtor's correct in that position, then the injunction can't
3 harm the claimants 'cause there was no liability there in the
4 first instance. So that becomes a moot point. So I don't need
5 to consider that scenario.

6 The second is if the preliminary injunction weren't
7 granted, there would be litigation over whether or not there
8 was liability for the non-affiliate debtor, the nonaffiliates.
9 And if it is granted, there'll be litigation in the bankruptcy
10 leading to resolution. If the bankruptcy were to result faster
11 than the litigation to determine whether or not the
12 nonaffiliates had liability, it would also be a moot point
13 'cause we'd be moving faster in the bankruptcy.

14 So I'm really focused on the scenario of comparing where
15 there is liability of the non-debtor affiliates and the
16 claimants could get to resolution more quickly through that
17 avenue and receive compensation faster than through the
18 bankruptcy court avenue.

19 Q So with, with the assumption that the nondebtors actually
20 have liability for the Aldrich and Murray asbestos claims and
21 with that assumption that they would be able to be successful
22 in pursuing that liability faster than they would be in the
23 bankruptcy system, what data did you primarily use to analyze
24 this question of material financial harm?

25 A So primarily, two distinct sets of data, my first being the

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1 debtors' database of historical tort resolutions and the second
2 being the publicly available data through the Garlock
3 proceeding about the, and particularly, the magnitude of total
4 recoveries -- so how much money in the aggregate do claimants
5 receive -- so I could compare aggregate recoveries to what
6 portion of that is coming through the two debtors.

7 Q Okay. Well, before we get to those numbers, let me just
8 level set a bit.

9 Why, why is the Garlock data so unique and important to
10 this process?

11 A So the asbestos tort, the typical claimant sues numerous
12 parties. The typical claimant also recovers compensation from
13 numerous trusts. So there's been very few instances where the
14 total recovery of a claimant across all of those different
15 potential avenues has been made publicly available and the
16 Garlock bankruptcy is one of those instances and most
17 importantly, it's an instance where through the court a random
18 sample of a thousand claimants was selected. So not only did
19 you get that information, you received it through a formal
20 statistical sampling process which allows you to draw more
21 valid inferences about a population than if you just get it
22 anecdotally through different sources.

23 So it's really the statistically, most sound information
24 available in the public domain about claimants' total
25 recoveries.

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1 Q And so when you looked at the Garlock data in this context
2 on a gross level, what did you find?

3 A So the Garlock data ends up documenting that, on average,
4 claimants back in the, about ten years ago 'cause that case is
5 probably about ten years ago now, were collecting in the
6 aggregate about \$1.2 million and approximately half of that
7 money was collected through tort-based claims and about half of
8 that money was collected through the various trusts that have
9 been established through the bankruptcy process to compensate
10 asbestos claims.

11 Q And was the process, then, to compare that collection to
12 the average collection in the history for Aldrich and Murray?

13 A Correct.

14 So Aldrich and Murray, the average resolution value of a
15 claim for mesothelioma combined across the two debtors is about
16 \$35,000. It's actually been about \$35,000 for a decade
17 straight.

18 So if you were to take today, claimants get, on average,
19 \$35,000 out of that \$1.2 million total. So that's about 3
20 percent of the total recovery of the typical claimant is coming
21 through these two debtors.

22 Q So on average on a gross basis, as I understand what you
23 just said, a mesothelioma claimant receives about 3 percent of
24 the recovery from Aldrich and Murray, is that, on average, is
25 that right?

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1 A Correct, on average.

2 Q And why did you focus on mesothelioma claimants?

3 A Well, consistently, about 80 percent of the debtors'
4 expenditures prepetition was on mesothelioma claimants and so
5 that's where the bulk of the money is being spent.

6 Q Okay.

7 So after this gross-level analysis, were you, were you able
8 to take more granular data from the Aldrich and Murray claims
9 databases and compare it to the Garlock data?

10 A Yes. So the Garlock data comes with enough attributes
11 about the claimants that if you have Social Security numbers in
12 a debtor's database -- the Garlock data comes with the last
13 four digits of Social Security. Doesn't have the entire Social
14 Security number -- but that really allows you to match claims
15 in conjunction with other characteristics like the identity of
16 the plaintiff law firm, other fields that are available.

17 So within the sample from Garlock I'm able to identify the
18 subset of claimants that named the predecessors of Murray or
19 Aldrich.

20 Q Okay.

21 MR. EVERT: I'm going to -- Jon, I'm going to ask you
22 to pull up Debtors' Exhibit 38 and, and draw the Court's
23 attention, if I can, to Debtors' Exhibit 38. Jon, if you're
24 out there and can take control of the screen. 'Cause it's far
25 beyond -- there we go.

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1 BY MR. EVERT:

2 Q I'm going to ask you, Dr. Mullin -- this is Debtors'
3 Exhibit 38 -- if you would describe for the Court -- I think
4 this, if I'm interpreting correctly, applies to the answer you
5 just gave -- and if you can describe to the Court what this is.

6 A So there's 627 claims in the Garlock sample that I'm able
7 to match to the Murray and Aldrich data as claimants who also
8 pursued a claim against at least one of Murray and Aldrich and
9 potentially both. Within those 627, I wanted to look at that
10 subset because maybe the claims that pursue Murray and Aldrich
11 are different from a typical claim. And we actually see some
12 small differences. So where, in total, there's \$1.2 million
13 was the average recovery. If you look at the total column
14 farthest on the right, the total recovery for claimants that
15 named Aldrich or Murray is about 1.1 million. So it's a little
16 bit less than the 1.2 million in average. Those claimants, the
17 627 claimants, their average payment was 34,800. So almost
18 identical to the average of 35,000 that we see today and it's
19 at 3.2 percent instead of 3 'cause it's 1.1 million now in the
20 denominator instead of 1.2, but qualitatively, we're really
21 seeing the same story. There's a bit more than a million in
22 the total recovery, about 3 percent of that comes from
23 Aldrich/Murray, and the total recovery is split about half from
24 tort defendants and half from trusts.

25 Q So this more granular look at the Garlock data melded with

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1 the Aldrich and Murray data was essentially confirmatory. Is
2 that essentially what you're saying?

3 A Correct. It, it tells me there's no selection of facts
4 going on that are changing the aggregate recoveries of
5 claimants in a material way that pursue claims against Aldrich
6 and Murray versus all the claims in the tort system.in the
7 aggregate.

8 Q And did you able -- did you go or were you able to go one
9 level deeper with the Aldrich and Murray data in regard to its
10 comparison to the Garlock data?

11 A Yes. I wanted to address the second question, which
12 this -- when you look at all 627 claims, that includes claims
13 that received zero compensation from Aldrich and Murray. So
14 they were dismissed without payment. A claim that's dismissed
15 without payment in the tort system clearly isn't going to be
16 harmed by a preliminary injunction. 'Cause deferring getting
17 paid zero doesn't hurt you.

18 So I wanted to subset to the claimants that did get
19 compensation to see when I look only at the claimants that do
20 receive money in the tort system, what do they look like. So I
21 -- there's about 300 and, if memory's serving right, 347.

22 Q Yeah. Let me -- let me -- let me interrupt --

23 A The --

24 Q Let me interrupt you, Dr. Mullin --

25 A Okay.

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1 Q -- and have us put Defendants' Exhibit 39, which I think
2 illustrates what you're talking about and you can walk the
3 Court through it.

4 MR. EVERT: Your Honor, this is Defendants' Exhibit
5 39, which you would find in your book.

6 THE COURT: Right.

7 BY MR. EVERT:

8 Q Go ahead, Dr. Mullin. I'm sorry to interrupt.

9 A Of the 627 claims, 347 were paid. The others were not. So
10 the total payments is the same 21.8 million that was there
11 before, but the average payment, instead of being about 35,000,
12 is, when you remove all the dismissed claims, is now closer to
13 63,000. It turns out that other defendants also tend to pay
14 these claims more. So instead of collecting a little bit more
15 than half a million, we're getting closer to 650,000 from other
16 defendants and the total recovery now, instead of being 1.1
17 million, is about one and a quarter million dollars.

18 So amongst the claimants that were being compensated by
19 Aldrich and Murray, Aldrich and Murray constitute about 5
20 percent of the total recovery between the two debtors combined.

21 Q And so this three-level analysis of the Garlock data, did
22 you see all of that as confirmatory of your conclusions or do
23 you have another view?

24 A Well, this was really the foundation building up to my
25 conclusions. I didn't have the conclusions before I started

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1 looking at the data. So this is more part of the process I was
2 going through to reach that opinion.

3 Q Now did this data give you any indication of whether
4 there's a meaningful percentage of cases where the debtors,
5 Aldrich and Murray, are a claimant's primary source of
6 recovery?

7 A That is a question these data allow you to address because
8 you have the data claim by claim. So you can compute what
9 percentage of each claimant's total recovery came from
10 Aldrich/Murray. And so while it's 5 percent, on average,
11 amongst all the paid claims, if I back up and say amongst all
12 claims, 98-1/2 percent to the claimants, or all but 10 in the
13 data that's available to me, received less than 20 percent of
14 their total recovery from Aldrich and Murray, 10, which was
15 about 1-1/2 percent, received more than 20 percent, but nobody
16 received more than 50 percent.

17 MR. EVERT: Jon, you can take Exhibit 39 down.

18 BY MR. EVERT:

19 Q So, Dr. Mullin, the, the statistics that we just went
20 through on the, on, on the two tables as well as your testimony
21 just now concerning the very, very few number of claimants that
22 had substantial claims against Aldrich and Murray, how do, how
23 does all this inform your analysis of whether the claimants
24 would be harmed from an economic perspective if a preliminary
25 injunction is entered?

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1 A Well, it's telling me that the preliminary injunction is
2 affecting a small percentage of the aggregate cash flows that
3 are available to a claimant. So if you're only affecting a
4 small percentage of somebody's cash flow, that's very different
5 than if you're affecting a large percentage of it.

6 So the first was to determine, you know, how much of that
7 was actually coming into play through the preliminary
8 injunction and this demonstrates that in totality it's around 3
9 percent, it's around 5 percent for the compensated claims, and
10 we're talking about deferring that.

11 So in general, if a claim is high value in the tort system,
12 the trust that ultimately gets established at the end of the
13 bankruptcy process would also view that as a higher-value
14 claim. So we're really talking about deferring 5 percent of
15 their cash flow, not eliminating it. And so you're -- if it,
16 say, hypothetically took two years, if the preliminary
17 injunction wasn't granted, for a claim to get through the tort
18 system and get paid and this process took five, you'd be
19 talking about a three-year delay on 5 percent of their cash
20 flows.

21 Q So did you -- were you able to look at any other
22 information specific to the case in an effort to try to confirm
23 this analysis of the Garlock and the debtors' data?

24 A So I wanted to do an assessment of, as much as I could with
25 the current claims. So the very first thing I did, did

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1 consider current claims 'cause I started with the average
2 resolution value in 2019, was that \$35,000. So that, that very
3 high aggregate number is still representative of the current
4 claims, but I really wanted to affirm the claimant
5 characteristics were still generating the same type of money
6 from the trusts and ideally, that the total recoveries, were
7 they still around 1.2 million or had they gone down materially
8 or gone up materially.

9 So I asked the, through debtors' counsel if they could get
10 me any discovery related to those and I think, I believe they
11 sought discovery from the members of the Asbestos Claimants'
12 Committee.

13 Q All right. And then did, did you also look at reports of
14 a, of a third-party vendor in terms of projections of
15 recoveries that the ACC members might receive from asbestos
16 trusts?

17 A Yes, I did.

18 Q And who was that?

19 A So the third-party vendor was KCIC, who did an evaluation
20 of probable recoveries from the asbestos trusts for eight of
21 the ACC members.

22 Q And who is KCIC?

23 A So I interact with them in two different contexts. They
24 are a third-party claims administrator for underlying asbestos
25 defendants in the tort system. They also do policyholder

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1 coverage work in insurance litigation and I interact with them
2 in both of those contexts.

3 Q They're, they're one of the firms that perform this kind of
4 service in the, in the asbestos litigation field, is that
5 right?

6 A By "this," you mean in terms of estimating --

7 Q Trust recovery --

8 A -- recoveries from trusts?

9 Q I'm sorry.

10 A Yes.

11 Q An inartful question. An artful answer to an inartful
12 question.

13 So what did your analysis of the KCIC information tell you?

14 A It was very affirmatory of the Garlock data. So when
15 looking at those eight claimants, they're averaging more than
16 half a million dollars of expected recoveries from the trusts,
17 which is what we saw in the Garlock data. And, you know, based
18 on my understanding of the tort system, that's what I expected,
19 is that that really hadn't changed but as opposed to just going
20 on expectations, it's good to see that in the actual data as
21 well.

22 Q And were you able to obtain from the discovery sent by the
23 debtors total recovery information in regard to the claimants'
24 recoveries in the tort and trust system as you described?

25 A No. I believe there were objections to providing that in

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1 response to the discovery request.

2 MR. EVERT: Jon, let me ask you to put up Defend,
3 Debtors' Summary Exhibit 7.

4 BY MR. EVERT:

5 Q And we can walk through that, I think, Dr. Mullin. It
6 might make this easier to follow.

7 So, Dr. Mullin, can you see Debtors' Exhibit 7?

8 A I do.

9 Q And let me just walk, let's walk through the columns to
10 make sure we understand and I think this will help summarize
11 your testimony.

12 So the first column is the ACC Members Anonymized by
13 Number, is that your understanding?

14 A Yes.

15 Q Now this second column, Trust Claims Estimated by KCIC,
16 what does that mean?

17 A So the KCIC reports match claims to trusts and put them in
18 three categories. They have strong matches and then they have
19 two categories that get successively weaker underneath that.
20 The strong matches are really the focus. That's where there's
21 a high probability that the claimant would collect from that
22 trust. The other ones are materially lower. So -- and those
23 are constructed largely off a claimant's work history.

24 So the trusts, not all, but most have what are referred to
25 as site lists. These are locations where the predecessor

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1 companies of the trusts have conceded, in essence, that their
2 products were at those sites. So if a claimant was at those
3 sites, signs an affidavit that says they believe they were
4 exposed to the, the products that the trust is providing
5 compensation on behalf of, and they have a work history that
6 lines up to something on the site list, that's considered
7 presumptive evidence to corroborate their affidavit and they
8 get paid.

9 So for the ones that have site lists you can really go
10 through and see who was working at sites where the product at
11 the site's been conceded and that's a very likely collection.
12 And that's really what this is doing. It's just taking those
13 strong matches.

14 Q And is that the generally recognized methodology for making
15 these estimates, that is, matching available information to
16 published site lists?

17 A Correct. That is in terms of the strongest matches.
18 People will also do it based on products or on direct
19 testimony, if you have it, in interrogatories or a deposition,
20 but often these projects are done when really all you know is
21 the work history information.

22 Q And do those matches to the site list of the various trusts
23 then result in the dollars that appear in Column 3?

24 A Correct. So for each trust there's rules for, if you
25 qualify for compensation, how much compensation you receive.

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1 Most trusts have what's referred to as a scheduled value and
2 the majority of claimants receive that scheduled value. And a
3 minority of claimants will go through what's referred to as an
4 individual review process and receive more than the scheduled
5 value. And so the average value's usually about 25 percent
6 higher than the scheduled, but the vast majority of claimants
7 get the scheduled value and a small minority can get materially
8 more than that scheduled value bringing the overall average up.

9 So what's really in the third column here is it assumes
10 that nobody in this group would get individual review. So it's
11 not taking the average values from the trusts. It's taking the
12 scheduled value. So it's really a floor on what their
13 recoveries could be. 'Cause to the degree anybody actually did
14 seek individual review, they might get more, but there's really
15 not a way to reliably estimate that based on just their work
16 history information. So it's putting them really at that floor
17 of compensation level and it's also taking into account the
18 payment percentage of any given trust.

19 So some trusts, if the claim is valued at a hundred
20 thousand dollars, the claim actually gets paid a hundred
21 thousand dollars. They're paying hundred cents on the dollar.
22 Other trusts are not doing that. They might pay 20 cents on
23 the dollar. So if the claim's valued at a hundred thousand, it
24 actually only receives 20,000 in consideration. This is
25 looking at that scheduled value multiplied by the payment

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1 percentage. So it's the actual amount of cash that a claimant
2 would receive.

3 Q And in the fourth column, we, we move to the discovery from
4 the KCIC reports. We move from the KCIC reports to discovery,
5 is that right? So tell me what that column represents.

6 A So that's five of the eight claimants provided a, have
7 pursued trust claims, at least partially, and responded with
8 how many trust claims they were pursuing.

9 So, for Claimant No. 1, has disclosed they have submitted
10 25 trust claims. KCIC had estimated that, or had calculated
11 they had 23 strong matches. So in general, that's very
12 consistent. You have the strong matches and then you may have
13 a couple of the weak matches as well, but that's a very
14 consistent outcome. If you were to add up for all the ones
15 that have pursued trust claims to date, KCIC estimated for the
16 five claims in Column, five claimants in Column 2 that have
17 pursued trust claims, estimated that they would pursue 95 trust
18 claims in total. The, the five claimants have pursued 94 trust
19 claims.

20 So, you know, not every claimant's exactly right, but when,
21 if you're looking at this in the aggregate, you're, the numbers
22 are lining up. And then three of them have elected not to
23 pursue any trust claims to date. It doesn't mean that they
24 aren't eligible for them. It just means as of the date that
25 they responded to discovery they had not submitted any yet.

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1 Q So in terms of number of trust claims pursued, did you find
2 that generally confirmatory of the KCIC estimates?

3 A Yes, I did.

4 Q And the last column, of course, has to deal with the
5 dollars and I think you indicated that we were unable to get
6 that information. So you were unable to have any confirmatory
7 information in regard to Column 3, is that right?

8 A Correct. I mean, I'm aware, generally, that the plaintiffs
9 typically represent that, if anything, total collections have
10 risen, not declined since 2010. So the 1.2 million is
11 represented as having potentially risen, which, if, if that's
12 true, then Aldrich and Murray represent less than 3 percent of
13 the total because the total's bigger and the 35,000 in the
14 numerator is what they were actually paying, on average, in
15 2019. But I don't actually have any data to support that
16 contention.

17 So I was hoping to get some data to look at that, but that
18 was unavailable.

19 Q Dr. Mullin, this is -- this is eight -- the, the eight ACC
20 members who are making a mesothelioma claim that was filed
21 against the debtors prepetition. So it's eight claims.

22 Of what use is this limited amount of information?

23 A It was a tractable group to look at. It's not a huge
24 sample size. It's affirmatory, but the large sample size is
25 the Garlock data where there was an original sample of a

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1 thousand claims, 850 of which responded, and then the large
2 sample of actual resolutions in the debtors' own databases.

3 But this was really done as a cross-check to see if there
4 was an indication of a material change and this doesn't
5 indicate that any such changes occurred.

6 Q I note in the fourth column that three of the eight ACC
7 claimants have, have not made any bankruptcy filings to date.
8 Is, is this consistent with what you found in the Garlock data?

9 A It is. If you'd asked me before I saw the data how many
10 would have filed claims and how many wouldn't've, my guess
11 would have been five have filed and three haven't. 'Cause in
12 the Garlock data you see that about 40 percent of the claims
13 and three-eighths is 37.5 percent. But 40 percent of the
14 claims are delaying their trust filings by more than a year
15 post their tort filing.

16 So you see around 40 percent of the claimants are pursuing
17 those trust claims materially later in time than they filed
18 their tort claim.

19 MR. EVERT: So, Jon, let me ask you to put up Debtors'
20 Exhibit 40.

21 BY MR. EVERT:

22 Q Which I think relates to the Garlock data, Dr. Mullin, on
23 this issue.

24 So will you, can you expand on your comment a minute ago
25 and describe for the Court what is illustrated here in this

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1 figure?

2 A So this is taking data from the Delaware Claims Processing
3 Facility. That's what DCPF stands for in the title of the
4 figure. And that facility manages a large number of asbestos
5 trusts, but that's the facility for which discovery was granted
6 in the Garlock matter.

7 So it's saying relative to the trust claims filed against
8 trusts managed by the Delaware Facility, what was the length of
9 delay from when a tort claim was filed to when a trust claim
10 was filed. Eighty percent of the claimants had a delay. So 80
11 percent of the trust claims were filed after the tort claim.
12 Of those 80 percent that were filed later, that is what is in
13 the table here.

14 So it says how much later conditional and being later, how
15 much later? And 15 percent are within 90 days. There's not
16 much of a material difference of the ones that are within 90
17 days, but almost 50 percent of the ones that delay are delaying
18 by more than a year, you know. About 31 percent are in the
19 one-to-two year range and almost 18 percent are delaying for
20 two or more years.

21 Q So just want to make sure I'm following you. So, so 20
22 percent of the claimants in the Garlock data filed their trust
23 claims either before or essentially contemporaneous with their,
24 with their tort claim filing, is that what I heard you say?

25 A Correct.

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1 Q And, and this table tackles the other 80 percent who filed
2 after the tort claim, is that right?

3 A Correct.

4 Q And what is this -- well, let me ask you.

5 Are, are you aware of any factors that would result in
6 these significant delays in trust claim filings?

7 A There's definitely factors that can. Probably the most
8 important is each trust has a date when it first becomes
9 operational and starts accepting claims. So if you file your
10 tort claim and that trust doesn't become operational till two
11 years after your tort claim, clearly you couldn't have filed
12 until two years later.

13 So I've only considered trusts that were operational at the
14 time the tort claim was filed so that I've taken that reason
15 for a delay out of the data.

16 Then the other is, I think all the other reasons that I'm
17 aware of really don't differentiate between the ability to file
18 a tort claim or the ability to file a trust claim. So the
19 reason I'm dating from when was the tort claim filed, all the
20 conditions were met such that the attorney was able to file the
21 claim on behalf of the claimant in the tort system and I'm not
22 aware of any type of systematic explanation where you'd be able
23 to file the tort claim and simultaneously not be able to file
24 the trust claim as long as the trust is operational.

25 So that's really why I'm not dating things, for example,

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1 from time of diagnosis where you first have to go hire an
2 attorney and if the person is deceased, you may have to appoint
3 a trustee. There may be different steps in the way but if you
4 look at it from the date the tort claim was filed, you know
5 that those other things are taken care of 'cause they have the
6 permissions and ability to file that tort claim.

7 Q Essentially, the theory is if you can file a tort claim
8 against 50 defendants, then you also ought to be in a position
9 to file your trust claim. Is that essentially what you're
10 saying?

11 A Correct.

12 Q All right.

13 MR. EVERT: Jon, you can pull that down.

14 BY MR. EVERT:

15 Q So what, what does this delay in trust, in the filing of
16 trust claims mean to you as an economist from an economic
17 perspective of revealed preferences?

18 A So I think of it as, the first step was to say how much
19 money's getting delayed and then the second, once you know how
20 much money is getting delayed, is how much does that delay cost
21 the claimant? And as I understand the plaintiffs' hypothesis,
22 is that these claimants are very sensitive to delay, that delay
23 is costly for them.

24 And so if you take that as your null hypothesis in the
25 classic scientific method and say if my null hypothesis now is

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1 delay is very costly, an implication of that is that if there's
2 a avenue to get money quickly, you would expect people for whom
3 delay is costly to vigorously pursue that avenue. And the
4 trusts create such an avenue. The trusts, many of them can pay
5 within 90 days of submission of your materials. In the tort
6 system, the average payment comes close to, you know, 1-1/2, 2
7 years after you file your tort claim.

8 So you can get money more quickly through the trusts and so
9 you'd expect claimants, if time value of money was what was
10 really motivating them and that had a lot of value, to
11 prioritize the collection of the trust claims because they can
12 get that quickly and as we saw, that's half the money. But
13 instead, we see that 80 percent of them are prioritizing the
14 tort claim, which takes longer to collect than the trust claim.

15 So it really ends up rejecting that null hypothesis, that
16 for the vast majority of the claimants the time value of money
17 isn't what is motivating their decisions and there's not this
18 really high cost associated with it 'cause their behavior
19 doesn't reflect such a cost.

20 Q So how does that revealed preference factor into your
21 overall opinion that the potential delay in payment resulting
22 from the preliminary injunction will not be material to the
23 typical asbestos claimant?

24 A I think maybe the easiest way to say it is we have almost
25 half the claimants delaying their trust recoveries by a year or

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1 more. A one-year delay of your trust recoveries has the same
2 financial impact as a ten-year delay in your Aldrich/Murray
3 recoveries. And the delay that we're looking at between
4 granting or not granting the preliminary injunction is a lot
5 less than ten years, you know. They're both litigated
6 outcomes. Maybe it's two, three years faster if there was
7 liability and it could be established in the tort system.

8 So they revealed that they're willing, at least half of
9 them, to already make financial decisions that are equivalent
10 of a ten-year delay. So a few-year delay is showing that
11 that's really not material in their decision-making process.

12 Q And that, and that few-year delay is on a small percentage
13 of their recovery, right?

14 A Correct. It's a few-year delay on what's typically 5
15 percent of the total recoveries.

16 Q All right, Dr. Mullin. Changing gears to the more, the,
17 the, the public policy issue that's the subject of your second
18 opinion, you indicated earlier you have an opinion as an
19 economist that the bankruptcy reorganization provides for a
20 more efficient and equitable venue than the tort system for
21 resolving asbestos claims, right?

22 A Correct.

23 Q All right. So let's tackle efficiency first. Did you do
24 an analysis of the relative transaction costs of the resolution
25 of asbestos claims in the bankruptcy system or bankruptcy trust

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1 system versus in the asbestos litigation tort system?

2 A Yes. It's been documented in a number of places the
3 inefficiencies of the asbestos litigation in the tort system.
4 Brand has a major study on it, I think, going back almost 20
5 years now and it really hasn't gotten much better through time.
6 So if you -- the majority of the expenditures in the tort
7 system don't end up in the possession of claimants.

8 So if we look at Aldrich and Murray specifically, as
9 mentioned earlier they were spending collectively close to a
10 hundred million dollars a year in the tort system. Twenty-five
11 million of that, or 25 percent, was going to defense fees.
12 Seventy-five million was going to paying claimants, but when
13 you pay the claimant there's still the plaintiff expenditures
14 that come off and the plaintiff attorney contingency fees.
15 Those contingency fees tend to be a third or more. So even at
16 a third, a third of the 75 million is another \$25 million and
17 then there's the expenditures. So that's at least 50 million
18 and if the contingency fee is 40 percent and you take
19 expenditures off, maybe that's as much as 60 million.

20 So 50 to 60 million of that hundred million dollars of
21 expenditures is going, largely, to the attorneys, both defense
22 and plaintiff, and 40 to 50 million is going to the claimants.
23 If you compare that to a trust, a trust does about 20
24 percentage points better. Instead of putting 40 to 50 cents of
25 every dollar ultimately into the possession of the claimants,

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1 it puts 60 to 70 cents of every dollar into the possession of
2 the claimants. The trusts all file annual reports. You can go
3 through those reports and look at what are the costs of
4 operating a trust and they're, for almost all the trusts, 10
5 percent of the total expenditures, frequently as low as 5.

6 So 90 to 95 percent of the money is going out in payments
7 to claimants. There's still plaintiff attorney contingency
8 fees, but many trusts elect to cap those fees at 25 percent.
9 The economic rationale for that is it's an administrative
10 process so there's a lot less work than in the tort system and
11 it's a very predictable process. So you're not going to file
12 claims that appear meritorious and get them rejected a lot, all
13 right? So there's not really the risk of you need an inflated
14 fee on the ones you win to cover for the ones you lose, all
15 right?

16 So many cap at 25 percent. If they cap at 25 percent and
17 the trust administrative costs are around 5 percent, that's
18 what's getting you to about 70 cents of every dollar ending up
19 in the possession of the claimants. For the trusts that don't
20 cap the contingency fees, then you're going to be, it's going
21 to drop from about 70 cents of every dollar down to 60 cents.
22 But, you know, it's a big swing in, from 40 to 50 cents of each
23 dollar of expenditure going to claimants up to 60 to 70 cents
24 of each dollar.

25 Q And, and is this particularly applicable to the asbestos

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1 litigation because it's been going on for such a long time?

2 A Well, it, it explains a number of things. So asbestos is a
3 very mature tort. It's been over 40 years of litigation in
4 this tort and torts of that nature have very different
5 litigation processes that, potentially, a new tort. In
6 particular, each claim that comes along, that claimant has a
7 unique exposure profile to different companies' asbestos-
8 containing products. The claimant is the one that knows their
9 own exposure profile and they educate their plaintiff attorney
10 on that and then the defendants are the ones at the
11 informational disadvantage. They need to try to figure out
12 what that exposure profile is to see is there product ID to
13 their product and if there is, what share of the total exposure
14 is to theirs. So are they a large share for this particular
15 claimant or are they a small share? So are they liable and if
16 liable, what's a reasonable amount to pay in settlement?

17 The economic incentive of the process is, actually gives
18 the plaintiffs' side an incentive to make that a drawn-out and
19 expensive process in the tort system. That just provides
20 settlement leverage. There's a whole lot of economics
21 literature that looks at these questions and that settlement
22 leverage allows them to get larger settlements for their
23 clients.

24 In contrast, if you flip to a trust framework, you really
25 align all the parties' economic incentives. Trusts typically

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1 have a fixed amount of funding and if you have a fixed amount
2 of funding, the less you spend on administering the trust the
3 larger fraction of the amount goes to claimants. The larger
4 fraction goes to claimants. The larger fraction goes to
5 plaintiffs' attorneys 'cause they're, they're taking a
6 percentage of what's going to the claimants.

7 So everybody now has aligned incentives to make this as
8 efficient as possible. And that's really the big difference.
9 There aren't aligned incentives in the tort system. There are
10 aligned incentives once you get to the trust framework and then
11 you see a smooth administrative process, typically. There's a
12 set of rules that are established as part of the trust. Those
13 rules lead to a claim form which solicits all the key
14 information to evaluate a claim. That claim form is typically
15 fully populated by the plaintiff attorney and handed to the
16 trust. There's no litigation back and forth to learn those
17 characteristics. 'Cause everybody has an incentive now aligned
18 to streamline that evaluation process and get it done as
19 quickly and efficiently as possible.

20 Q Does that process also allow in some instances for a, for,
21 for a claimant to make their own applications to the trust
22 directly?

23 A Right. The typical trust as a mechanism for claims that
24 are outside of the norm. So a typical claim is to go through
25 an individual review process. That could be either for a claim

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1 that normally wouldn't be compensated at all. Does it meet the
2 default criteria as it believes they should be? Or it could be
3 for a claimant who believes they should be compensated at a
4 particularly high level.

5 So they have a disproportionate share of their exposures
6 from a given product that this trust is compensating on behalf
7 of.

8 Q All right. So let's turn to the economic equity issue you
9 described a minute ago. What -- tell me what that means.

10 A So from an economist's perspective, you know, it's not a
11 value judgment. I'm not, it's not a moral judgment 'cause an
12 economist is looking at it. An economist is going to use that
13 term and how I'm using that term as do similarly situated
14 claimants get similar compensation. Think of it more like a
15 wage discrimination case. If I have two groups of workers who
16 were doing comparable work, they should be getting comparable
17 pay and if you discriminate against one group because of some
18 characteristic that has nothing to do with productivity, you
19 can get a wage discrimination suit 'cause they're being treated
20 inequitably. It's in that sense that I'm using the term.

21 Q All right. Well, then, let's, let's apply that term with
22 that definition of economic equity specifically in regard to
23 asbestos claims and as you described, the, the maturity of that
24 tort and the long history there to the bankruptcy trust system
25 as opposed to the tort system.

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1 So does -- is a, is the bankruptcy trust system more
2 economically equitable than the tort system in regard to
3 asbestos litigation?

4 A It is. As I mentioned before, the trusts set up a common
5 set of criteria that applies to virtually all claims for how
6 they get compensated and because that's negotiated once, that's
7 part of the efficiency, but it's a common set of rules for all
8 the claimants and that creates much more uniform treatment.

9 Now some can still go through this individual review
10 process and there's some subjectivity in that individual review
11 process. So it's not going to -- you know, maybe that
12 subjectivity there are things that you do want to take into
13 account, things outside of the norm. But for the most part,
14 it's going to, that common set of rules is what creates that
15 much more uniformity of treatment of people with the same fact
16 pattern.

17 Q And how does that differentiate from what's, what occurs in
18 the asbestos litigation in the tort system?

19 A The tort system doesn't have a common set of rules as you
20 go across jurisdictions, right? So there is not that common
21 set of rules. And so you observe very disparate treatment for
22 claimants with similar fact patterns.

23 MR. EVERT: So, Jon, I'm going to ask you to put up
24 Debtors' Exhibit 44.

25 Your Honor, which you also have a copy, but I think

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1 this'll tell you what you need to know, or show you what you
2 need to see.

3 THE COURT: Uh-huh (indicating an affirmative
4 response).

5 BY MR. EVERT:

6 Q So, Dr. Mullin, what does Debtors' Exhibit 44 represent?

7 A So this is just meant to be illustrative of the type of
8 variation that can manifest in the tort system. So this is
9 looking at mesothelioma plaintiff verdicts from 2011 to 2020.
10 I have intentionally restricted it to people who were between
11 the ages of 71 and 75 at that age of diagnosis. 'Cause one of
12 the things that does make a big difference in what asbestos
13 claimants get paid is their age at diagnosis. So a 55-year-old
14 is going to be compensated, typically, materially higher than
15 an 80-year-old. And so we want to look at a narrow age range
16 to try to account for that difference 'cause it's the biggest
17 driver in an observable characteristic.

18 And then it's looking at what is the range of plaintiff
19 verdicts for the total damages, right? This isn't about
20 whether a company's liable. This is about what is the total
21 damages that a jury assigns to a person who is dying of
22 mesothelioma. And there's actually one verdict omitted from
23 this chart which it's omitted because that verdict received \$70
24 million and if you put that verdict on the chart, then
25 everything else just looks very squashed near the bottom.

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1 So there's one verdict at 70 million in this time period
2 and you see the really large variations. A lot of verdicts are
3 under \$4 million, another group is in the four-to-eight million
4 range, and then we have one at 13 and one at \$70 million.

5 Q Now some of this may be obscured, Dr. Mullin, so I want to
6 make sure that, at least for the Court's benefit, we're aware
7 exactly what this is.

8 At the top, at least I can see partially, these are
9 plaintiff verdicts from 2011 to 2020, is that right?

10 A Correct.

11 Q With claimants in the age range of 71 to 75 years old?

12 A Correct.

13 Q So this does not include defense verdicts, I presume?

14 A No. There's also a number of defense verdicts that, in the
15 same time period for the same age range.

16 Q And where's this come from, this data?

17 A So verdicts are out in the public record. And so Bates
18 White attempts to collect all of those verdicts into a database
19 that we maintain. And so we've been tracking that for at least
20 15 years at this point.

21 Q And the purpose for controlling by age, that is, only
22 looking at verdicts from 71 to 75, is what?

23 A It gets a much more common set of economic loss. So almost
24 everybody in the 71-to-75 age range is no longer working. So
25 you don't have the lost wage component that you may have if you

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1 were to take a 58-year-old. But it's getting the economic loss
2 in a much more common framework. So within -- if you were to
3 look at -- there's about a thousand Aldrich/Murray claimants in
4 this age range for whom we can look at the economic loss and if
5 you were to compare the 10th percentile to the 90th percentile
6 for that, it's only about a 30 percent range.

7 So the economic loss in this age range is not that broad.
8 So they aren't identical, but it's about a 30 percent
9 difference between the 90th percentile and the 10th. In
10 contrast, there's about a 30-fold difference between the 10th
11 percentile verdict and the 90th percentile verdict. So there's
12 a 30 percent difference in economic loss. There's a 30-fold
13 difference in the verdicts.

14 Q You said Aldrich/Murray claimants. I think you meant
15 Garlock claimants.

16 A There are Aldrich/Murray claimants that overlap with
17 Garlock. So I have the data to do it. So it's -- they're
18 both.

19 Q Right.

20 A Yes.

21 Q And, and the data for that economic loss, again, came from
22 this publicly available Garlock data?

23 A Correct. 'Cause those claimants had to provide a lot of
24 additional information as part of that discovery process.

25 Q And, and I'm sorry. Again, it was my mistake.

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1 But the difference, the spread in verdicts versus the
2 spread in economic loss is what?

3 A It's about a 30-fold difference in verdicts between the
4 10th and the 90th percentile. It's about a 30 percent
5 difference in economic loss.

6 Q So how, how does that relate to this concept of economic
7 inequity?

8 A So verdicts are a backdrop.

9 MR. EVERT: And, Jon, you can pull that down.

10 THE WITNESS: Yeah. It's, it's actually very rare for
11 a case to go to verdict. That's what happens if you don't
12 reach settlement. So almost by definition verdicts are
13 outliers. It's where the two sides can't agree on a value, all
14 right?

15 But this just gives a sense at if you were to actually
16 go and get a verdict, it has that spread. Settlements are much
17 narrower, but still show much more disparity than a trust.

18 So, for example, the debtors prepetition, a little bit
19 more than 50 percent of the claims for mesothelioma that were
20 filed against the debtors were filed in Illinois and claims
21 filed in Cook County, Illinois, on average, receive about four
22 times the compensation of claims filed in Madison County,
23 Illinois, same state law.

24 So in theory the same law is adjudicating the Madison
25 County claim and the Cook County claim, but the average

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1 recovery in Cook County is four times the average recovery in
2 Madison County. That's a lot less than the 30-fold difference,
3 but four-fold is still a pretty big difference.

4 BY MR. EVERT:

5 Q So do the, the asbestos bankruptcy trusts eliminate this
6 variability that you're describing in the tort system whether
7 it, it comes in the tort system in the form of verdicts or
8 whether it comes in the tort system in the form of settlements?

9 A They don't entirely eliminate it and some of the variation
10 should be there. So it shouldn't be entirely eliminated,
11 right? But they heavily mitigate it.

12 So the vast majority go through some type of standard
13 review or expedited payment framework which is based on a
14 common set of evaluation criteria. Each trust has a slightly
15 different flavor of that, but they go through a common set of
16 criteria, which means two claimants that have the same inputs
17 to that criteria get paid the exact same amount. And then a
18 small subset will go through that individual review, which is
19 really intended for the ones that had something that's
20 materially different from the norm.

21 Q So we talked earlier about this economic concept of the
22 revealed preference that economists study. Does that have any
23 application in the context of equity and efficiency in the
24 bankruptcy trust system?

25 A It does. So the trusts, you don't have to reach agreement

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1 with the trust as a claimant to what your claim is worth. You
2 can reject the trust's evaluation of your claim and you can
3 ultimately go to a jury trial and have a jury value your claim
4 and then the value the jury assigned is taken back to the trust
5 and there's criteria for how that would be paid by the trust.
6 And so what we can tell, we can't tell exactly how often that
7 happens. The trusts don't disclose in their annual reports and
8 give a number of people who've opted for that, but what they do
9 disclose is their litigation fees.

10 So you can see if they're spending money on attorneys and
11 trials are expensive. So you can see they're spending very
12 little money on it and I'm not aware of a single verdict that's
13 come from that mechanism and we track all the verdicts. We may
14 miss some, but I'm not aware of any.

15 So to the degree people reject the trust offers and want a
16 jury trial, it's very rare. In the tort system, 1 to 2 percent
17 of claims go to a trial. It appears in the trust system
18 basically zero do, which is just revealing that the settlement
19 offers that are being, that are coming through this standard
20 process are settlements that, ultimately, the claimants are
21 accepting.

22 Q So in, in addition to your view that the, that the asbestos
23 bankruptcy trust system provides more equitable recoveries as
24 defined by economists and lower transaction costs as defined by
25 economists, is it also more efficient in terms of achieving

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1 payments to the claimants from an economic perspective?

2 A It is, and there's the overall efficiency that the
3 transaction costs are low, but it also occurs much faster.

4 So while there may be a delay for some of the currently
5 pending claims today to get the trust established and set up,
6 the future claimants will get the benefit of a faster payment
7 than the tort system. So it's not that, you know, those
8 claimants are going to, could get paid, as I said, many of
9 these trusts once they're up and running, can pay claims in 90
10 days. So instead of doing a multi-year tort litigation, those
11 future claimants could get paid in 90 days.

12 Q Thank you, Dr. Mullin.

13 MR. EVERT: With that, your Honor, we'll pass the
14 witness.

15 THE COURT: Any other --

16 THE WITNESS: Thank you.

17 THE COURT: -- proponents that have questions of this
18 witness?

19 MR. GUY: I do have some questions, your Honor.

20 THE COURT: Mr. Guy.

21 MR. GUY: Thank you.

22 DIRECT EXAMINATION

23 BY MR. GUY:

24 Q Good afternoon, Dr. Mullin. Can you hear me okay?

25 A Good afternoon.

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1 Q Can you hear me okay?

2 A I can hear you. I can't see you. I don't know if I'm
3 supposed to see you.

4 Q You should see me and I can see me. So that means that
5 others can, too. But I don't think we need hold up on that.

6 A Okay.

7 THE COURT: For whatever it's --

8 BY MR. GUY:

9 Q As long as you are comfortable.

10 THE COURT: I know what you look like, Mr. Guy, but I
11 don't see you, either.

12 MR. GUY: Okay. I don't think it's the repeat of the
13 problem last time.

14 MR. EVERT: No, I, I see him, your Honor. Can I get
15 on the list of people that can't, though? Because I --

16 MR. GUY: Yeah, I didn't need that.

17 THE COURT: I think we needed that for the afternoon.

18 MR. EVERT: Just, just kidding, Jon.

19 MR. GUY: I need to stop. Okay. Something's wrong.

20 THE COURT: Go ahead and proceed, Mr. Guy. I don't
21 think --

22 MR. NEIER: Mr. Guy is going to appear as a kitty
23 next, so.

24 MR. GUY: Right, right. That would be impressive.
25 Anyway.

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1 BY MR. GUY:

2 Q So, Dr. Mullin, I heard you say at the beginning that
3 there's no economic harm for an asbestos claimant if the claim
4 is resolved quicker in bankruptcy than it would be in the tort
5 system, correct, you know, from a preliminary injunction?

6 A Well, he's not going to be harmed in the form of a delay,
7 right, if the bankruptcy gets resolved faster than resolving
8 whether or not the other parties had liability in the tort
9 system.

10 Q So you talked before about there not being material harm
11 because there were recoveries against other parties but if it's
12 resolved quicker, then there's going to be zero economic harm,
13 correct?

14 A Very good. There wouldn't be a delay in that instance. So
15 yes.

16 Q Right.

17 So I want to pose a hypothetical for you. There's a
18 company that has significant asbestos liabilities from previous
19 sales of a friable product, insulation, and that company files
20 for bankruptcy in the end of December 2019 and all parties work
21 towards a consensual resolution. There's no litigation about
22 anything that happened before the pre-petition restructuring
23 and they reach agreement in April of 2021 on an amount to be
24 funded in a trust.

25 In that scenario, assuming that there's an asbestos trust

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1 promptly created out of that process, would you agree with me
2 that there'd be no harm?

3 A So there's -- there is -- there is a gap in that they
4 weren't paying claims for a period of time. So it depends what
5 you're saying no harm relative to, right? So no harm relative
6 to a contested process as to whether or not affiliates of the
7 debtor have liability? Yes. Relative to having never filed
8 bankruptcy? Maybe not. There may still be some claimants who
9 had some delay relative to not filing the bankruptcy proceeding
10 at all.

11 So depends what your counterfactual is.

12 Q The counterfactual is the scenario we're dealing with here
13 with the preliminary injunction.

14 So the comparison between that hypothetical and litigation
15 over whether the non-debtor affiliates are liable or not.

16 A Correct. Then there'd be no harm.

17 Q Can you think of a bankruptcy in the real world that
18 matches that hypothetical?

19 A I think it filed in January and not in December, but
20 otherwise, yes.

21 Q And can you help the Court with which company that would
22 be?

23 A I mean, you're describing a fact pattern that, if not
24 identical, is very similar to whether you call it Owens
25 Illinois or Paddock.

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1 Q Thank you.

2 Now in that case we've heard from the ACC that there was
3 consensual discussions, the Paddock case, between all the
4 parties and they were able to reach agreement. Is that your
5 understanding, too?

6 A So I'm going to disclose. I'm retained in that matter.

7 Q Okay.

8 A And so I'm directly involved in some of that. I'm happy to
9 answer whatever questions I can on what is purely in the public
10 domain but if I'm not a hundred percent positive that the
11 information I have comes from the hundred, comes from the
12 public domain, then I'm not at liberty here to really confirm
13 or check.

14 So I'm going to err on the side of maintaining
15 confidentiality, but I'm happy -- otherwise, I'm happy to
16 answer questions.

17 Q Of course. And I only have one or two.

18 The parties were able to reach consensual agreement and
19 resolve it in an amount to be fund, an amount to be funded to a
20 trust, correct?

21 A My, my understanding is they've reached such an agreement.

22 Q Would you agree with me that the determination as to
23 whether there is economic harm to asbestos, current asbestos
24 creditors is, in that case, largely in control of the ACC
25 itself? Because in the Paddock case they were able to reach

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1 agreement, they were willing to reach agreement. They got
2 together, they mediated, they reached agreement on a number.
3 In this case, we have the opposite scenario where we're in
4 litigation over just about everything, sadly.

5 So from an economic perspective, is it in the ACC's control
6 to determine whether its constituency is harmed by the
7 preliminary injunction or not?

8 A They definitively have influence. I'm not in a position to
9 know the motives of each party. So if the predicate is the
10 debtors here are willing to do that and motivated, the FCR is
11 willing to do that, and the party who isn't willing to do it is
12 the ACC, then it's in the ACC's control.

13 But I'm not in a position to vouch that that predicate is
14 correct, right? I'm -- you know, it, it takes all parties
15 being willing to enter that negotiation to get to resolution
16 and clearly, in the Paddock matter all parties were willing.
17 In the current matter, at least one party, it's being
18 represented to me, is not, but I don't have first-hand
19 knowledge that's the only party.

20 Q Understood.

21 Dr. Mullin, what's your understanding as to who the FCR
22 represents, generically, at a high level?

23 A Future claimants.

24 Q The class of future claimants as a group?

25 A Correct. I'm not the attorney. So I'm not going to get

MULLIN - DIRECT

1 all the terms necessarily correct. But yes, the class of
2 future claimants.

3 Q And the Asbestos Creditors' Committee, they represent the
4 class of current claimants, correct?

5 A My understanding is the Committee's supposed to represent
6 the interests of all the current claimants, is my
7 understanding.

8 Q Can you think of an economic justification as to why a
9 class fiduciary, whether it be the ACC or the FCR, in any case,
10 would argue for an exit to the tort system over a prompt exit,
11 or a prompt exit into a trust, bankruptcy trust system?

12 A I mean, the only rationale is if they believe they would
13 get considerably more money in the tort system than they would
14 get through the bankruptcy system, right? Their -- if their
15 fiduciary obligation is to pursue the interests, the financial
16 interests of the pending claims, it would have to be that they
17 believe that the pending claims would receive materially more
18 money if they could exit to the tort system than if they
19 quickly established a trust.

20 Q As a class, correct?

21 A Correct, as a class.

22 Q Right.

23 How about the individuals, though? If you're an individual
24 claimant and you're in Cook County, you might get a lot more in
25 the tort system than you would in an asbestos trust, correct?

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1 A Potentially. That depends. Typically, the, some of the
2 outlying claims that get more money would go through the
3 individual review process for the trust.

4 So that doesn't necessarily follow, but it does follow that
5 if you -- if -- if the litigation rules in the venue you're in
6 not be characteristics of the claim allow you to extract more
7 money from defendants because it's higher cost to litigate in
8 that jurisdiction, those differences are some of the
9 differentiations that get mitigated by a trust.

10 So there may be some individuals that see some of these
11 litigation windfalls associated with the transaction costs will
12 shrink while other people may see an increase in their
13 compensation.

14 Q So from an economic equity perspective, the interest of
15 individual claimants and their law firms could diverge from the
16 interests of the fiduciary representing the class, correct?

17 A Correct. I mean, I, I don't know if this is the same as
18 class certification. I've done some class certification work.
19 But if it's, you know, if you're looking at common versus
20 individual issues, clearly asbestos claimants have a large
21 number of individual issues, in addition to their common
22 issues.

23 MR. GUY: No further questions.

24 BY MR. GUY:

25 Q Thank you, Dr. Mullin.

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1 THE COURT: Any of the other proponents have
2 questions --

3 THE WITNESS: Thank you.

4 THE COURT: -- of this witness?

5 (No response)

6 THE COURT: Then why don't we take about a ten-minute
7 recess and then we'll get cross-examination by the ACC, okay?

8 I'm showing, oh, 22 till. Let's make it as close to
9 about ten till as we can, all right?

10 (Recess from 2:38 p.m., until 2:50 p.m.)

11 AFTER RECESS

12 (Call to Order of the Court)

13 THE COURT: Everyone ready to proceed?

14 Have a seat, all.

15 All ready to go? All right. Ready for cross.

16 MR. WEHNER: Good afternoon --

17 THE COURT: Mr. Wehner.

18 MR. WEHNER: -- your Honor. Oh. Jim Wehner for the
19 ACC.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY MR. WEHNER:

23 Q Good afternoon, Dr. Mullin.

24 Do you have a copy of your expert report and a copy of the
25 deposition we did at hand?

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1 A I have a printed-out copy of the expert report and I can
2 pull up a copy of my deposition on a second monitor, if there's
3 something you want me to look at.

4 A Great. Thank you.

5 Dr. Mullin, you were retained by the debtor and asbestos
6 defendant in the DBMP bankruptcy, right?

7 A Correct.

8 Q Yeah. And you were retained by the debtor and asbestos
9 defendant in the Paddock bankruptcy, correct?

10 A Technically, in that one I was retained as a consultant to
11 Latham as opposed to through the bankruptcy court itself.

12 But in the spirit of your question, yes.

13 Q You were retained by the debtor in the Bestwall case, is
14 that right?

15 A Correct.

16 Q You were retained by the debtor in the Garlock bankruptcy,
17 is that correct?

18 A Correct.

19 Q And you were retained by the debtor in the Bondex or
20 Specialty Products case, is that right?

21 A Correct.

22 Q All of those are, were asbestos defendants, is that right?

23 A Yes.

24 Q You were retained by excess insurers with exposure to
25 asbestos liability in the Kaiser Gypsum bankruptcy, is that

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1 correct?

2 A Yes, that's correct.

3 Q And I didn't think you testified in that one for various
4 reasons, but you were retained?

5 A I did deposition testimony, but I didn't give any testimony
6 in court.

7 Q Right.

8 You were retained by insurers of asbestos claims in the
9 Leslie Controls bankruptcy, is that right?

10 A Now we're going back.

11 Q Uh-huh (indicating an affirmative response).

12 A That's correct.

13 Q That's correct? I'm sorry?

14 A Yes, I believe that's correct.

15 Q And you were retained by insurers with exposure to asbestos
16 liability in the Plant bankruptcy?

17 A Correct.

18 Q And you were retained by insurers with asbestos exposure in
19 the Thorpe bankruptcy, is that right?

20 A I have to go back and check. I know I, I worked on that.
21 I don't know it was technically in the context for insurers in
22 the coverage litigation or the bankruptcy.

23 But I was retained by insurers to resolve, help them
24 resolve that matter.

25 Q Fair to say your recent work in the asbestos arena has been

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1 for asbestos defendant/debtors or insurers with asbestos
2 exposure?

3 A In (audio skips) Motors liquidation we were retained by the
4 Unsecured Creditors' Committee, but, by and large, we're
5 retained by an insurer, unsecured creditor, I think, if I were
6 to go back and look, occasionally equity, but, or the debtor.

7 Q Right.

8 Dr. Mullin, in your analysis of the impact of the
9 preliminary injunction on current asbestos claimants it's fair
10 to say you focused on the economic aspects, right?

11 A Broadly speaking, yes.

12 Q Right. I mean, you just testified about no material
13 economic impact, right?

14 A In terms of the financial impact with, of a delay.

15 Q Right.

16 A Yes.

17 Q And some of the asbestos claimants in this case with
18 mesothelioma that are going to be affected by the preliminary
19 injunction in this proceeding are alive today, would you agree
20 with that?

21 A Yes. A minority of the pending mesothelioma claimants
22 would be alive today, that's correct.

23 Q And within three years virtually all of those mesothelioma
24 claimants will be dead, correct?

25 A Unfortunately, probably even sooner than that.

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1 Q In your work here you have not assessed whether any current
2 claimant will be alive or dead at any date in the future, is
3 that right?

4 A Not beyond my general knowledge of what the survival curve
5 looks like for individuals with mesothelioma, but I, I haven't
6 looked at any individual claimant and tried to make any
7 prediction along those lines.

8 Q If claimants go back to the tort system, there are
9 jurisdictions where their damages claims might be affected by
10 whether they are alive or dead, is that right?

11 A That is correct.

12 Q You discussed with Mr. Evert your analysis of asbestos
13 claimants' recoveries from other sources and in that analysis,
14 if I recall it correctly, you matched up the debtors' claims
15 data with the Garlock data, is that right?

16 A That is one of the things that I did, correct.

17 Q I think you referred to it as the "public Garlock data,"
18 right?

19 A Correct. There's publicly available data and that's all
20 that we're using in this context.

21 Q The Garlock data that you used here is based on complaints
22 filed sometime before June 5, 2010, is that correct?

23 A At least a complaint filed against Garlock prior to their
24 petition date, that's correct.

25 Q You had data on about 850 meso claimants in that Garlock

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1 data and you found 627 claims that matched up with the Aldrich
2 and Murray data, is that right?

3 A Correct.

4 Q That 627 claim sample is not necessarily statistically
5 representative of all mesothelioma claimants against the
6 debtors here, is it?

7 A It's close, but it's not perfect. That's true.

8 MR. WEHNER: Cecilia, could you --

9 Would it be all right if we put a, an exhibit on the
10 screen, your Honor?

11 THE COURT: Absolutely.

12 MR. WEHNER: Yeah.

13 Cecilia, could you put up Debtors' Exhibit 38, please?

14 BY MR. WEHNER:

15 Q Dr. Mullin, I've put up on the screen Debtors' Exhibit 38,
16 which you used just a few minutes ago. Do you see it?

17 A I do.

18 Q Now on this chart, the, there's a column Trusts, do you see
19 that?

20 A I do.

21 Q The numbers in the Trusts column aren't just reports of
22 actual trust recoveries that have been paid, but include
23 estimates made by Bates White of trust recoveries that had not
24 been paid yet and from trusts that would be established in the
25 future, is that correct?

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1 A At the time of the Garlock proceeding, that was correct.

2 Q Yeah. And those are estimates of trust recoveries that
3 Bates White made back in about 2012 or 2013, is that right?

4 A It would have been in that timeframe, correct.

5 Q And you have not updated those estimates, is that correct?

6 A For the purpose of this, that wasn't going to have a
7 material impact. So I didn't incur the time or expense on the
8 estate of going through that process. That's correct.

9 Q Dr. Mullin, you discussed some reports from KCIC that you
10 got to examine the questions that you were discussing about
11 trust recoveries, is that right?

12 A Yes.

13 Q You got KCIC reports on eight claimants, is that right?

14 A On, yeah, eight of the Committee members, that's correct.

15 Q Right. Even if we step back to all 11 Committee members,
16 those 11 Committee members are not statistically representative
17 of the claimant population as a whole, are they?

18 A No. It would be a convenient sample. It wouldn't be
19 statistically representative of the entire population.

20 Q With respect to the contents of the KCIC reports, you don't
21 know whether KCIC has ever tested these reports to see if
22 they're accurate, do you?

23 A I don't know what KCIC has done. I know Bates White has
24 done similar analyses in the past and we have had the ability
25 to test that in different circumstances. And so I know that

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1 the methodology they're employing is reliable, but I haven't, I
2 don't know what they have done to test any of that themselves.

3 MR. WEHNER: Cecilia, could you put up Debtors'

4 Exhibit 7?

5 BY MR. WEHNER:

6 Q Dr. Mullin, this is going to be exhibits you just used in
7 your direct testimony. Do you recognize it?

8 A I do.

9 Q Okay. It, it compares the KCIC estimated trust claims with
10 those set out in the discovery from Committee members, right?

11 A Yes.

12 Q The KCIC estimates show more trust claims than the
13 discovery responses do, is that right?

14 A For the ones that have actually started filing trust
15 claims, FCIC had 95 trust claims and the Committee members have
16 disclosed 94 trust claims.

17 So there's one more and clearly, for the three that have
18 not filed any trust claims to date, there's really not a basis
19 for comparison 'cause we don't know how many trust claims they
20 will file.

21 Q These discovery responses are a snapshot of the situation
22 that asbestos claimants that got these discovery responses were
23 in when they filled them out, is that right?

24 A Correct.

25 Q So there's 94 disclosed in discovery responses estimated to

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1 date, is that right?

2 A Yes. Five have submitted 94 trust claims as of today. Or,
3 really, as of their response date to the discovery.

4 Q Is it fair to say that on average, then, the discovery
5 discloses about, well, I calculate it as 11.75 claims, trust
6 claims for claimant? I mean, you'd round it up to 12.

7 A If you treat the none to date as a zero, that may be the
8 math, but that's not a meaningful statistic. Because as we see
9 more generally in the data, about 40 percent of the claimants
10 routinely delay filing any of their trust claims for more than
11 a year, but they don't file less trust claims once they get
12 around to filing them.

13 So these are people that just haven't started the process
14 and so, while the other is an estimate of what it will look
15 like at the end of the process. So clearly, if you compare
16 somebody who hasn't started to a projection of where they'll be
17 at the end, those two numbers won't line up.

18 Q Right. Just as a matter of math, that number 12, on
19 average, is, or 11.75, is a lot less than the average number of
20 payments you see in your Exhibit 18 Trusts column and in your
21 Exhibit 39 Trusts column, right?

22 A I think you misspoke 'cause you said payments and I don't
23 think we have any payments to compare to.

24 Q Right. So these trust claims in this column, they're just
25 claims that have been submitted to trusts, not, not payments,

1 right?

2 A Correct. It's counts of submitted claims.

3 Q Not every trust claim is paid, is it?

4 A No.

5 Q But as far as trust claims submitted, we have about 12, on
6 average, with the discovery responses and you have 20 in your
7 Exhibit 38, is that right?

8 A You're doing the math for the people who've done none to
9 date as a zero?

10 Q That's correct.

11 A Right. Which doesn't have any statistical meaning in this
12 context, but that probably is about 12 to 20. If you omit
13 those, it's about 20 to 20.

14 So for the people who've actually started the process, they
15 line up. And I said before, for the people who haven't started
16 the process yet, clearly they're not going to because they
17 filed zero and the other is an estimate of how many they'll
18 eventually file when they finish the process.

19 Q Right.

20 A So, and the data makes perfect sense but if you're going to
21 bundle together those two groups, you're really just putting
22 forward a confounded statistic that doesn't have meaning.

23 But it is 12 to 20 if you do the math that I think you're
24 trying to do.

25 Q You don't know why any of these Claimants 1 through 8 have

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1 not submitted trust claims, do you?

2 A Them specifically? No.

3 Q Okay. And your analysis more broadly doesn't distinguish
4 between claimants who decide voluntarily not to file a trust
5 claim by a particular time or is prevented by some circumstance
6 from filing a trust claim, is that right?

7 A I, I don't think that's correct and I described on my
8 direct that I took a number of steps to control for that
9 possibility. So I don't have the information to control for it
10 perfectly. So if you -- I will gladly concede that I don't
11 perfectly control for that. But for the vast majority of that,
12 I have. I've eliminated the trusts that weren't accepting
13 claims as of their tort date and I've controlled for the fact
14 that they were capable of filing a tort claim. So I'm doing it
15 relative to their tort filing date.

16 So all the conditions to file a tort claim were met and the
17 room between being able to file a tort claim and file a trust
18 claim is, you know, you'd have to, for 80 percent of the people
19 that fall in that gap, nobody's ever given me any hypothesis
20 and I can't come up with one that wouldn't, would explain that
21 gap.

22 MR. WEHNER: Cecilia, could you pull up Debtors'
23 Exhibit 40, please?

24 BY MR. WEHNER:

25 Q Dr. Mullin, I've put up on the screen Debtors' Exhibit 40,

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1 which you just used in your direct. Do you recognize that?

2 A I do.

3 Q I was just a little bit confused because I believe that I
4 heard when you testified on direct that you said that more than
5 half of claimants delay filing their trust claims for more than
6 a year.

7 Did I hear that correctly? Is that what you testified to?

8 A If I said that, I misspoke. What I tried to make clear is
9 80 percent file later. Of the 80 percent, about half within
10 that 80 percent -- so 40 percent of the total population -- but
11 half of the claimants within the 80 percent that have a delay
12 delay for a year or more.

13 So those are the, how the pieces were supposed to go
14 together. If I misspoke at some point, I apologize.

15 Q So this chart, Figure 3, Debtors' Exhibit 40, this doesn't
16 show the claimants who filed, about 20 percent of claimants who
17 filed their trust claims before or at the same time as their
18 tort claim, is that right?

19 A Correct.

20 Q You, you left those off this chart?

21 A Correct.

22 Q And if we put those claimants back in, we'd have to stick a
23 line up after the top there that said "filed on or before" and
24 it would be a 20 percent, right?

25 A Correct.

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1 Q And then we'd have to adjust all those other figures below
2 that in the percent column down by multiplying them by .8, is
3 that right?

4 A Correct.

5 Q And then if, I guess, we looked at one year to two years or
6 two years or more, we'd see that together they make up, as you
7 say, about 40 percent, is that right?

8 A Right. We'd see about 30 percent were filed on, before, or
9 within 90 days; about another 30 percent filed between 90 days
10 and a year; and 40 percent are filed a year or more later.

11 Q Dr. Mullin, you described in your direct testimony some
12 efficiency benefits from moving, generally, from a tort system
13 way of resolving asbestos claims to a trust system of resolving
14 asbestos claims, is that right?

15 A Yes.

16 Q The -- just thinking about the efficiency benefits, the
17 efficiency benefits can depend on the particular dollar amount
18 of trust funding that the, that the trust gets, right?

19 A Potentially, yes.

20 Q Okay. And then thinking about the equity benefits, it --
21 it -- the equity benefits of moving to a trust system can also
22 depend on how much you give the, the trust as overall funding,
23 would you agree?

24 A I think we talked about this in my deposition. If you fund
25 a trust with \$1, the other arguments become kind of pointless.

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1 So yes, the funding level's going to matter.

2 Q And you talked very generally this afternoon about the
3 benefits of moving to a, to a trust system, but, but as part of
4 your, your testimony, your thinking on the subject, you did not
5 assume any particular amount of trust funding here, is that
6 right?

7 A I have not tried to predict what this case will ultimately
8 resolve at a funding level of, correct. I've not tried to put
9 a precise number on that.

10 Q Likewise, you didn't make any specific assumptions about
11 how many dollars that a trust here would pay asbestos claimants
12 of a particular type, right?

13 A No. I think that's really premature. I don't even have
14 the right data and discovery to answer that question right now.

15 So down the road, that may be a question I'm in a
16 position --

17 Q Right.

18 A -- have the available data to address, and be asked to
19 address, but at this stage, even if asked, I don't have --
20 you'd need extra discovery before you could address those types
21 of questions.

22 Q You didn't make any assumptions about what the criteria for
23 claims would be or anything like that?

24 A Not the precise criteria. We do have a large number of
25 established trusts and while they all aren't identical, there's

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1 a couple different manners in which trusts have been
2 structured. So the basic assumption is that this trust will
3 parallel one of those structures that has been the result of
4 every other asbestos-related bankruptcy to date.

5 So in that sense, there, there's a framework in mind, but
6 there's not the very specifics of exactly what a scheduled
7 value would be, what an age adjustment parameter may be,
8 anything of that nature has -- no, I haven't tried to precisely
9 identify those items.

10 Q Right.

11 If we go back to efficiency for a minute -- and, and I
12 think you might have testified to this, about this in your
13 direct, but I just want to be clear -- the more a trust spends
14 on administration, the less efficient it is in the sense that
15 you're describing, right?

16 A You need to be -- it's a little more subtle than that, but,
17 for example, if a trust receives a thousand non-meritorious
18 claims that all parties believe are non-meritorious claims, if
19 they decide to pay those claims half the money of the trust, an
20 economist would review that as highly inefficient. Because
21 you're paying claimants that had no legal right to any of the
22 funds. That's not paying the money into the legitimate claims.

23 So if the trust is filtering -- so it's paying claims for
24 which there's actually liability -- then I think your statement
25 is true. If your trust is going to pay a bunch of claims which

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1 there is no liability, that's not efficiency. That's throwing
2 money in a direction for which there wasn't any liability and
3 taking it away from the claims for which compensatory award was
4 deserved.

5 And so there is a tradeoff in the process to, you still
6 need to filter. You still need some of these transaction costs
7 so that you can filter, by and large, to claims that are
8 meritorious and filter out the claims that aren't meritorious
9 against a particular debtor.

10 MR. WEHNER: Cecilia, you can take down Exhibit 40.

11 Thank you.

12 BY MR. WEHNER:

13 Q You showed us, Dr. Mullin, a, a chart with (inaudible -
14 shuffling paper) all over the place reflecting the jury
15 verdicts, is that right?

16 A I'll accept that description.

17 Q Well, I'm not trying to be dismissive.

18 A Oh, fine. You're fine.

19 Q And in your view, the variation that is reflected in jury
20 verdicts makes those jury verdicts inequitable. Have I
21 summarized your opinion correctly?

22 A Through the lens of an economist, a process that takes two
23 identical claimants and pays one 20 times the other would be
24 viewed as inequitable and the jury process can do that. It has
25 certain benefits. So I'm not saying we should get rid of a

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1 jury process, right? But from, if you're looking at it through
2 the lens of equity, there's a reason courts put a priority on
3 encouraging settlement, right? It gets, it mitigates some of
4 that inequity. We know that if we try a case, same case may
5 get a defense verdict once and get a big plaintiff verdict
6 another time, right, and get a small plaintiff verdict a third
7 time.

8 So there's a lot of just uncertainty in what any given jury
9 that gets impaneled is going to do. That uncertainty or that
10 variation puts risk on a claimant. It put risk on a defendant
11 and, in general, individuals and corporations don't like risk.
12 They buy insurance to get rid of risk. Both individuals do and
13 corporations. So that's, that's an attribute from an
14 economist's perspective. That variation, it's a negative
15 attribute, right? It's creating that spread and, you know, it
16 -- you could say it's equitable 'cause each person got a jury
17 trial but if that jury trial has a very large spread in
18 outcomes, then they get very different levels of compensation
19 at the end of the day and an economist just looking at that
20 aspect is going to say they may end up with inequitable
21 treatment even if it's an equitable process that's leading to
22 that. They all have an equal probability of getting those
23 different numbers.

24 Q The predecessors to the debtors here virtually never tried
25 asbestos claims, right?

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1 A That's correct.

2 Q And the settlement that the predecessors to the debtors
3 here entered into had less variation in the sense you're
4 talking about than jury verdicts, is that correct?

5 A Correct. I gave the example they went away, which is about
6 half of their, the claims are in Illinois and you get that
7 four-fold variation across two counties.

8 So there's still material variation, but settlements
9 mitigate a lot of the variation that would otherwise occur if
10 you were to try all the cases.

11 Q So in the sense that you're discussing, settlements are
12 more equitable than jury verdicts?

13 A In general, correct. The parties tend to settle at
14 something closer to the expected outcome of a jury verdict
15 'cause that's the backdrop against if you don't try a case. If
16 you don't settle, you have to try the case.

17 So it's taking more of an expectation, which is going to
18 minimize the variants. They may not always end up in the same
19 place, but it's going to be a lot more concentrated in outcomes
20 than if you try the cases.

21 Q Just a few odds and ends, Dr. Mullin, before I wrap up.

22 You mentioned in your direct -- and I was writing fast --
23 did you say that most trusts cap contingency fees?

24 A I think I said many.

25 Q Okay. Do you know how many?

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1 A I don't remember the exact number. I think it was in my
2 report.

3 Q Yeah.

4 A On the order of 10, maybe it 8, maybe it was 12. I don't
5 remember the exact number.

6 Q In your expert report at Page 20, I think it's Footnote 41,
7 you list and identify eight trusts. Does that sound correct?

8 A Well, that's was --

9 Q And --

10 A -- one of the three numbers I tried. So yes, eight.

11 Q How many trusts are there out in the world that are
12 operating?

13 A There's, there's a much larger number than that in terms of
14 -- there's, there's a relatively small subset that have most of
15 the money and then there's a large number of actual trusts.
16 The number of trusts is probably 80, hundred. I don't know the
17 exact number and probably 20 of those have the vast majority of
18 the funds in them.

19 Q Dr. Mullin, you're not a lawyer, right?

20 A No, I'm not.

21 Q You're not an expert on legal ethics, is that right?

22 A Nope.

23 Q And not an expert on the fiduciary duties of FCRs or
24 Official Committees, I take it?

25 A No.

1 Q Right.

2 That's all I have. Thank you very much.

3 A Thank you.

4 THE COURT: Other parties of this witness?

5 MR. GUY: Your Honor, I have a very quick follow-up
6 question, if I may.

7 THE COURT: You want to hold redirect until then?

8 MR. EVERT: No redirect, your Honor.

9 THE COURT: Okay.

10 Go ahead, Mr. Guy.

11 REDIRECT EXAMINATION

12 BY MR. GUY:

13 Q Dr. Mullin, I won't keep you much longer. Thank you for
14 your time.

15 A This time I can see you.

16 Q Yeah.

17 Mr. Wehner talked about how the tort system values
18 claimants differently as to whether the victim is alive or
19 dead, correct?

20 A Correct.

21 Q Do the asbestos trusts do the same thing?

22 A Many of them do vary the value of a claim by life status,
23 but they do it in a different manner than the states. So most,
24 or at least many of the asbestos trusts -- I haven't gone
25 through and tried to add them up -- look at it at the time the

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1 claim is filed or at time of diagnosis and they do the life
2 status there as opposed to the life status as of the time the
3 case goes to trial and which is what happens in many of the
4 state systems.

5 So a trust may actually backdate life status and take a
6 much -- many of the pending claims that have been deceased,
7 that are deceased now but weren't at the time they were
8 diagnosed or filed their claim, may actually be treated as
9 though they were alive for compensation purposes by a trust and
10 would not be treated that way in the tort system right now.

11 Q And, and that would address any inequities that would
12 follow from a delay in the creation of a trust, correct?

13 A Assuming the trust adopted a parameter to look at life
14 status either at diagnosis or time of filing. It would
15 actually not only undo what, the delay that's already occurred,
16 but undo any future delay.

17 Q And that's something that the ACC or the FCR could
18 certainly negotiate for, correct?

19 A It's -- clearly, they could and, and many trusts have.

20 Q Thank you, Dr. Mullin.

21 THE COURT: Any more questions of this witness?
22 Anyone?

23 (No response)

24 THE COURT: Okay.

25 Dr. Mullin, you have stepped down, then.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Where does that --

3 MR. EVERT: Thank you, Dr. Mullin.

4 THE COURT: -- put us in the proceeding, ladies and
5 gentlemen?

6 MR. HIRST: Your Honor, it's Morgan Hirst again for
7 the debtors.

8 As you know, we have only one more witness who is
9 Mr. Kuehn, who is coming tomorrow. And so at this point what I
10 would suggest is we kind of temporarily suspend our part of the
11 case, turn it over to the Committee. Tomorrow, the only thing
12 we would do is Mr. Kuehn's, present Mr. Kuehn and then we would
13 provisionally move in our exhibits subject to the various
14 agreements about resolving objections post trial or post
15 hearing with the Committee.

16 THE COURT: Others? Other thoughts?

17 (No response)

18 THE COURT: Any objection to that?

19 (No response)

20 THE COURT: Do we need to enumerate the exhibits that
21 have been identified or anyone need to hear those numbers?

22 (No response)

23 THE COURT: Then I'm just going to make a generalized
24 subject to the objections to, to follow, they're provisionally
25 accepted and not try to enumerate them.

1 (Plaintiffs/Debtors' exhibits provisionally admitted in
2 evidence)

3 MR. HIRST: And, Judge, just, we can make clear for
4 the record tomorrow kind of en masse the, the exhibits in our
5 book and our list that we intend to move in, if that's okay
6 with your Honor, and just for the record and all that fun.

7 THE COURT: That will save us the time of going
8 through that, the list today.

9 MR. HIRST: Correct.

10 THE COURT: Is the Committee ready to proceed on its
11 part of the case?

12 MR. WEHNER: Yes, your Honor.

13 THE COURT: Okay.

14 Does anyone feel the need for a break? I know we're
15 only an hour past the last one.

16 (No response)

17 THE COURT: We ready to go forward? Okay. Let's
18 move --

19 MR. HIRST: Debtors are.

20 THE COURT: Let's move --

21 MR. WEHNER: Believe so. Let me make sure I've got my
22 witness. Yes, I think I do.

23 THE COURT: I couldn't see who was talking at the
24 moment. Who, who was just speaking for the ACC?

25 MR. WEHNER: Actually, it was me, your Honor. James

DIAZ - VOIR DIRE

1 Wehner for the ACC.

2 THE COURT: All right. Thank you, Mr. Wehner.

3 If you're ready to proceed, call your next one.

4 MR. WEHNER: Thank you, your Honor. Again, Jim Wehner
5 for the ACC.

6 We are going to call as an expert witness Mr. Matthew
7 Diaz.

8 THE COURT: Okay.

9 Mr. Diaz --

10 MR. WEHNER: I believe he's --

11 THE COURT: -- are you on?

12 MR. DIAZ: I am.

13 THE COURT: All right.

14 MR. DIAZ: Good afternoon, your Honor.

15 THE COURT: Good afternoon. If you'll raise your
16 right hand.

17 MATTHEW DIAZ, DEFENDANTS' WITNESS, ADMINISTERED OATH

18 THE COURT: All right.

19 Witness is with you, Mr. Wehner.

20 MR. WEHNER: Thank you, your Honor.

21 VOIR DIRE EXAMINATION

22 BY MR. WEHNER:

23 Q Mr. Diaz, I know you have been before this Court at least
24 once recently, but just for the record let's talk a little bit
25 about your background.

DIAZ - VOIR DIRE

1 First, Mr. Diaz, can you state your full name for the
2 record, please?

3 A Sure. It's Matthew Diaz.

4 Q Where do you work, Mr. Diaz?

5 A I work at FTI Consulting in their Corporate Finance and
6 Restructuring Group.

7 Q What's your title there?

8 A I'm the Senior Managing Director.

9 Q And what kind of work do you do there?

10 A So I represent companies and creditors in distressed
11 situations in, in court and out-of-court engagements.

12 Q And how long have you done that?

13 A So I've been doing this for over 20 years and I've been at
14 FTI for over 15 years.

15 Q And can you give us a quick sense of the kinds of matters
16 you worked on?

17 A Sure.

18 So I, I've been involved in over 50 different bankruptcy
19 assignments. You know, most recently, I've been involved with
20 JCPenney, Payless, Purdue, Mallinckrodt, Sears, Toys R Us,
21 iHeartMedia.

22 I've also been involved in a number of asbestos cases
23 where, really, asbestos was sort of the focal point, Bondex,
24 Bestwall, Paddock, DBMP, and, and these two bankruptcy cases,
25 Murray and Aldrich.

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1 You know, in, in connection with these cases I typically
2 represent unsecured creditor groups. As part of that role, I
3 evaluate business plans, you know, review financing agreements,
4 inter-company agreements, assess related-party transactions,
5 evaluate vendor programs, look at inter-company transactions,
6 review plans of reorganizations, you know, help draft,
7 negotiate plans of reorganizations, you know, among other
8 things.

9 And I would also note that prior to my work at FTI I worked
10 as the Director of Restructuring at Impath Laboratories and the
11 Chief Financial Officer at Graham Field Health Products where I
12 joined both of these companies. At the time they were both in
13 chapter 11 and I helped navigate them out of bankruptcy.

14 Q What degrees do you hold, Mr. Diaz?

15 A So I have a, a Bachelor of Science in Accounting and
16 Finance from New York University. I also have my MBA from
17 Columbia Business School.

18 Q And what licenses and certifications do you have?

19 A So I'm a Certified Public Accountant. I'm a Certified
20 Turnaround Professional and I'm also a, a Certified Insolvency
21 & Restructuring Advisor.

22 Q And are you a member of any professional organizations?

23 A I am. I'm a member of the American Institute of Public
24 Accountants, a member of the Turnaround Management Association,
25 and a member of the Association of Insolvency & Restructuring

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1 Advisors.

2 Q And in your restructuring work have you received any honors
3 or awards?

4 A I, I have. I've been fortunate where a few of my cases
5 have received recognitions from M&A Advisor. You know, I was
6 involved with the 2017 Restructuring of the Year, the 2017 363
7 Sale of the Year as well as the 2015 Restructuring of the Year.

8 You know, in addition, I also was honored by M&A Advisor as
9 a 40 Under 40 Winner under the Service category as well.

10 Q And, Mr. Diaz, did you prepare an expert report in
11 connection with this preliminary injunction motion?

12 A I, I did, yes.

13 Q And what materials, generally, did you review and use in
14 creating this report?

15 A So, so in my expert report I think I have an appendix that
16 lists the specific documents that I reviewed, but more
17 generally, I looked at documents that were publicly filed,
18 court-submitted documents, documents that we received in
19 discovery as well as certain deposition testimony.

20 Q And after you completed your review, did, of these
21 materials, did you arrive at some conclusions?

22 A I, I did, yes.

23 Q And did you take into account discovery that took place
24 after you submitted your expert report?

25 A I, I did, yes. You know, my team and I looked at that

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1 discovery and, and that did not change the conclusions that I
2 put forth in my report.

3 MR. WEHNER: Your Honor, pursuant to the stipulations
4 of the parties, at this time I tender the witness as an expert
5 in the field of restructuring.

6 THE COURT: Any opposition to the designation?

7 (No response)

8 THE COURT: All right. So recognized.

9 DIRECT EXAMINATION

10 BY MR. WEHNER:

11 Q Mr. Diaz, in, in connection with the expert work that
12 culminated in your testimony today, what, broadly, did you do?

13 A So, so generally, what I did with respect to my expert
14 report, was, you know, really look at three things. One was
15 was I looked at the 2020 restructuring transactions and
16 subsequent bankruptcies. Two, I looked at what the impact of
17 the restructuring and bankruptcy was on asbestos creditors as
18 well as, you know, stakeholders. And then finally, I assessed,
19 you know, what the broader impact was of these transactions --
20 I think I call it the Transaction Series -- and, you know, if
21 there may be broader implications as a result of that.

22 Q And, and did you prepare some demonstrative slides for use
23 with your testimony today?

24 A I, I did, yes.

25 MR. WEHNER: Your Honor, we'd ask to be permitted to

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1 Share the screen for his demonstratives, if that's all right.

2 THE COURT: Absolutely, yes, sir.

3 MR. WEHNER: Okay.

4 BY MR. DIAZ:

5 Q Mr. Diaz, let's start with an overview. We were here not
6 too long ago, not so long ago before the Judge in the DBMP case
7 talking about a, a similar transaction.

8 What happened here in this case?

9 A So, you know, in this case, you know, I think there's a lot
10 of similarities to what we saw, you know, back in March and
11 what we talked about in the DBMP trial and, you know, a little
12 bit different here where in this case we have two
13 restructurings where in DBMP we just had the one.

14 And on the slide here that we have up on the screen I show
15 you, first, on the left-hand side the Aldrich restructuring.
16 And, you know, quite simply, in the Aldrich restructuring you
17 had Ingersoll-Rand Company, which, you know, for the purposes
18 of my remarks and I think others did this as well, I'll call
19 that Old IRNJ. That went through a divisive merger and it
20 created Trane Technologies Company LLC, which I will also be
21 call, which I'll be calling New Trane Technologies, you know,
22 which I think is similar to the terminology that other
23 witnesses have been saying, and it also created Aldrich Pump
24 LLC, which I'll call Aldrich. You know, that's a debtor that's
25 here, you know, in this bankruptcy.

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1 On the right-hand side, I just put a high-level depiction
2 of the second restructuring. I mean, these basically all
3 happened at the same time, but on the right-hand side you see
4 the Murray restructuring. That started with Trane U.S. Inc.,
5 which I'll call Old Trane. That split into two through the
6 divisive merger. It went into Trane U.S. Inc., you know, which
7 is the healthy company, the go-forward company that I'll call
8 New Trane in my remarks, and it also split into Murray Boiler
9 LLC, you know, which is the debtor here. I'll call that
10 Murray. It's in bankruptcy and that's where the asbestos
11 liabilities got put.

12 But at a, at a high-level, you know, that's kind of what
13 happened here today.

14 Q What can you tell us about Old IRNJ and Old Trane before
15 the restructurings?

16 A Sure.

17 So, I mean, both of these companies, Old IRNJ and Old
18 Trane, provided climate solutions to homes, to businesses, to
19 transportation-type businesses. Old IRNJ, big, valuable
20 company, has \$15 billion of assets, had about \$315 million of
21 asbestos liabilities. As I generally understand it, the
22 asbestos related to components that were used in manufacturing
23 certain equipment. The components used asbestos.

24 On the Murray side, Trane U.S. Inc., or Old Trane, also a
25 very big company, valuable, \$7.3 billion of assets. That

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1 company, I understand, had also asbestos of about \$190 million
2 of asbestos liabilities. Understand that those asbestos
3 liabilities related to, you know, similar to Aldrich, you know,
4 using components that had asbestos in them as well as, you
5 know, some issues related to the boilers.

6 And I'll just preface this, you know. Whenever in my
7 remarks today I mention asbestos liabilities, these are numbers
8 that the debtors put in their public filings, their public
9 records, and I just used those for illustrative purposes. I, I
10 don't have a point of view on what the liabilities are, but I
11 think it's just easier to, you know, use the numbers for
12 illustrative purposes that the debtors have provided.

13 Q Can you take us through the steps of the restructurings and
14 bankruptcies that occurred in 2020 in a little bit more detail?
15 Maybe we start with the Old IRNJ side.

16 A Sure. Sure, I can walk you through that.

17 You know, there were over 200 documents in order to create
18 these restructurings and in my demonstratives I'm going to try
19 and, you know, vastly simplify this, but walk the, the Court
20 and the participants through a more high-level understanding of
21 how I understand the restructurings happened.

22 And on the slide that's up here on the screen, this is,
23 essentially, a simplified version of the Trane enterprise prior
24 to the restructuring and prior to the bankruptcy. On the top
25 of the Trane, of this chart that I have here is Trane

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1 Technologies PLC. You know, that's the Ireland company.
2 That's the top of the chain. You know, as I understand it,
3 this is the company that publicly trades, a very valuable
4 company. I think the market capitalizations covered right now
5 is about \$42 billion. So very, very valuable company.

6 Underneath there you have the Ingersoll-Rand Company, which
7 is the Old IRNJ. Prior to the restructuring, Old IRNJ was a
8 single company, you know. All the assets were there.
9 Understand there's about \$15 billion of assets and also, you
10 have the asbestos liabilities that were there. The asbestos
11 liabilities and the assets are all in the same place, all in
12 the same legal entity.

13 Underneath Old IRNJ is the subsidiary we've talked about in
14 these cases, is 200 Park, Inc., as well as some other
15 subsidiaries.

16 Now if you turn to the next slide, I'll walk you through
17 what happens kind of as part of the restructuring.

18 So on this slide here, once again, I show on the left-hand
19 side what the Trane enterprise looked like prior to the
20 divisive merger on the Aldrich side. But now on the right-hand
21 side I show to you where we end up after the restructuring.

22 So on the right-hand side, you know, once again, we have
23 Trane Technologies PLC. That's the same entity, you know, the
24 ultimate top company. That did not change. That's still there
25 on the far right-hand side. You now have a new holding

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1 company, which was Trane Technologies HoldCo., Inc.

2 But then you have the ramifications of the divisive merger
3 where Old IRNJ got split into two entities. You have Aldrich
4 Pump that we have highlighted on the left-hand side and New
5 Trane Technologies on the right-hand side. And as you can see
6 here from my diagram, 99 percent of the assets got moved to New
7 Trane Technologies. None of the asbestos liabilities got moved
8 there. Aldrich Pump got approximately 1 percent of the assets
9 and all the liabilities got moved to Aldrich Pump in connection
10 with the divisional merger. There's a conditional funding
11 agreement where Aldrich Pump has that and New Trane
12 Technologies is the obligor.

13 Underneath Aldrich Pump is 200 Park, Inc., which is the
14 non-debtor subsidiary, and that's essentially kind of what this
15 looks like, you know, after the restructuring.

16 Finally, on Page 4, the restructuring and bankruptcy are
17 complete. And, you know, once again, on the left-hand side is
18 the prerestructuring and bankruptcy legal entity chain. So
19 that's the same that we've seen in all three of these slides,
20 but on the right-hand side the only change from the previous
21 slide is is that now Aldrich Pump files for bankruptcy and they
22 did that on June 18th of last year. And you'll see on the
23 legal entity chart I circled Aldrich Pump, you know, indicating
24 that it was in bankruptcy and the, now the restructuring and
25 bankruptcy transactions are complete.

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1 And, I mean, just to take a step back. Prior to the
2 restructuring and bankruptcy Old IRNJ had all the assets, all
3 the asbestos liabilities. They were all housed in one legal
4 entity box. Now postrestructuring, postbankruptcy, you have,
5 pretty much, all of the assets are in Trane Technology on the
6 right-hand side and essentially, all the -- not essentially --
7 all the asbestos liabilities are in Aldrich Pump as a result of
8 this transaction.

9 Q And did something similar happen with Old Trane?

10 A It did, yes. And I'll walk through this a little bit more
11 quickly.

12 So on the Murray side, we saw something similar happened.
13 And on the left-hand side, you know, once again, you see the
14 prerestructuring and bankruptcy. This is your before-look at
15 the legal entity chart. Once again, you have Trane
16 Technologies, you know, the, the company who shares trade, the
17 top of the box.

18 Underneath there you have Old IRNJ. So that's before it
19 went through its divisive merger and a subsidiary of Old IRNJ
20 is Old Trane, which we flagged here. Old Trane had a hundred
21 percent of the assets, hundred percent of the asbestos
22 liabilities, you know, just similar to Old IRNJ prior to the
23 dismissive [sic] merger. And then in connection with the
24 dismissive merger, pretty much all the, the assets and
25 liabilities got bifurcated between New Trane and Murray Boiler.

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1 And as you can see on the right-hand side, New Trane got 98
2 percent of the assets, Murray Boiler got 2 percent of the
3 assets. Murray Boiler picked up all of the asbestos
4 liabilities and then there's a funding agreement, a conditional
5 funding agreement between Murray Boiler and Trane USA. Murray
6 Boiler converts to a North Carolina entity. New Trane
7 converted to a Delaware entity.

8 And then finally, like Aldrich Pump, Murray filed for
9 bankruptcy on June 18th.

10 So in summary, you know, once again, something very similar
11 happened on the Murray side where prerestructuring,
12 prebankruptcy Old Trane had all of the assets, all the
13 liabilities. They were in a single legal entity box. Now
14 postrestructuring, postbankruptcy, you know, all the assets are
15 pretty much in a new box that is healthy. It's a going
16 concern. It's not in bankruptcy and the asbestos liabilities
17 have now been saddled, isolated at Murray Boiler and are now
18 subject to these bankruptcy proceedings.

19 Q Apart from all of this corporate reshuffling, did the
20 actual businesses change?

21 A So the businesses, I mean, really did not change. I mean,
22 the businesses are, are very similar. You know, except for,
23 you know, two minor changes where, you know, these two small
24 businesses moved to the debtors, you know, ClimateLabs, you
25 know, is now part of the Murray Boiler chain. The debtors

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1 value that, I think, at like \$30 million, or between 20 and \$30
2 million.

3 You had 200 Park, which is an Artic Chiller business, you
4 know, that went underneath the Aldrich chain.

5 But, you know, putting aside these two very small
6 businesses relative to a very large Trane, you know, things
7 just really didn't change. I mean, the, the products are the
8 same that New Trane Technologies and New Trane are selling.
9 The customers are basically the same. The vendors are
10 basically the same. The employees are essentially the same.
11 You know, we heard from Mr. Tananbaum, you know, a few
12 employees are involved in, in helping with the debtors'
13 businesses. The plants are essentially the same, you know,
14 with the exception of these non-debtor businesses, these small
15 non-debtor businesses, that moved.

16 And finally, the capital structure is also basically the
17 same except for now New Trane and New Trane Technologies no
18 longer have asbestos liabilities on their books. They're now
19 on the books of Murray and Aldrich. In exchange for that,
20 there's a funding agreement that has replaced that.

21 The big change here is how the asbestos liabilities have
22 been treated, where before they were all part of New Trane and
23 New Trane Technologies and now they've been put into the
24 separate boxes that are the subject to these bankruptcy
25 proceedings.

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1 Q How did the restructurings leave the new companies that had
2 once been Old IRNJ from a financial point of view?

3 A Yeah. So unlike from an operating point of view, from a
4 financial point of view it's, it's very different. I mean, if
5 you look at the slides that I put up here on the screen, on the
6 left-hand side it's Old IRNJ's, you know, highly summarized
7 balance sheet and Old IRNJ, as I mentioned, you know, big,
8 valuable company, has \$15.3 billion of assets. It has \$7.8
9 billion of asbestos and operating liabilities and, and that's
10 what it looked like prior to the corporate restructuring.

11 Now just after the corporate restructuring, that's what I
12 show on the right-hand side. And on the right-hand side you'll
13 see 99 percent of the assets go to New Trane Technologies. So
14 that's 15.1 billion out of the 15.3 billion of assets go to New
15 Trane Technologies. On the Aldrich side, they pick up about 1
16 percent of the assets, which is \$210 million. You know, that
17 includes the insurance, that includes some cash, but, and
18 that's only 1 percent, you know, of the assets.

19 In terms of the liabilities, New Trane Technologies picks
20 up the operating liabilities and those continue as part of the,
21 the healthy company, the go-forward company. And on the
22 Aldrich side, they pick up all the asbestos liabilities -- and
23 I show that here on the chart -- and a few operating
24 liabilities.

25 In terms of the other big thing to mention is the funding

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1 agreement and you'll see that I showed here on a line -- and
2 I'll discuss that more in detail -- but this funding agreement
3 is a poor substitute for the actual assets and it's conditional
4 and that's why I showed it, you know, as I showed it on this
5 chart here.

6 From an equity perspective, it's also a very similar
7 picture. So if you go to the next slide, I show that the
8 equity of Old IRNJ was \$7.5 billion prior to the corporate
9 restructuring and just after the corporate restructuring the
10 equity of New Trane Technologies is basically the same, \$7.5
11 billion. So essentially, all of the equity goes to New Trane
12 Technologies and \$53 million, or a very, less than 1 percent,
13 you know, went to Aldrich.

14 Q Before, before we move on to the other side of this
15 transaction, absent the funding agreement, setting aside the
16 funding agreement, do Aldrich liabilities as disclosed exceed
17 its assets?

18 A They do. They do. The, the Aldrich liabilities as
19 disclosed -- and as discussed, this is just the debtors'
20 numbers, not my point of view -- is \$315 million of asbestos
21 liabilities, plus \$3 million of operating liabilities. So
22 that's \$318 million of liabilities and their assets are \$210
23 million.

24 So yes, the, the liabilities of Aldrich, if you exclude the
25 funding agreement, are greater than the assets of, of Aldrich,

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1 correct.

2 Q Let's look over to the other side here (distortion) No. 2.

3 How did the restructuring leave the companies that had once

4 been Old Trane from a financial point of view?

5 A So from a financial point of view it's, it's a similar

6 story on the Old Trane or Murray side. So on the left-hand

7 side I show a similar bar graph of what Old Trane's balance

8 sheet, if you will, looked like prior to the restructuring.

9 They had assets of \$7.3 billion. They had asbestos and

10 operating liabilities of, you know, close to \$5 billion.

11 That's what Old Trane looked like.

12 Postrestructuring, the assets -- essentially, all of the

13 assets went over to New Trane. \$7.2 billion out of the \$7.3

14 billion went over to New Trane. The operating liabilities also

15 went to New Trane and those won't be impacted by this

16 bankruptcy and they'll continue to move along in the ordinary

17 course.

18 On the Murray side, they picked up \$127 million of assets,

19 they picked up all of the asbestos liabilities, \$193 million

20 asbestos liabilities. Similar to Aldrich, the assets of

21 Murray, \$127 million, if you exclude the funding agreement, are

22 less than the total liabilities of 193, plus 1. So \$194

23 million. And similar to the Aldrich side, I show the funding

24 agreement as a line from New Trane to Murray. As I mentioned

25 before, you know, given its conditionality and, and given,

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1 that's a poor substitute for having the actual assets. So I
2 show it the same way here.

3 On Page 10, like I did in the Aldrich slides, I, I show the
4 equity for Old Trane and it's a similar story where,
5 essentially, all of the equity that Old Trane had was
6 transferred over to the New Trane side as part of the
7 restructuring. So Old Trane had \$2.3 billion in equity
8 prerestructuring. Postrestructuring, they also have \$2.3
9 billion at New Trane. Murray got \$22 million, which is less
10 than 1 percent.

11 Q So, so did the restructuring and bankruptcies here that
12 you've just walked us through harm asbestos claimants?

13 A Yeah, absolutely. You know, asbestos creditors were harmed
14 by the restructuring and the bankruptcy and really put these
15 asbestos creditors into a box. And I'll refer you to the slide
16 that we just put up on the screen.

17 You know, asbestos creditors representing significant
18 obligations are isolated and not paid during the bankruptcy,
19 which can take many years. So in terms of significant
20 obligations, you know, prepetition, prerestructuring, you know,
21 we understand that they spent over a hundred million dollars a
22 year on these obligations. Life to date, they spent over \$2
23 billion in connection with these obligations. So clearly, they
24 are significant. They're isolated and not paid.

25 You know, in connection with the bankruptcy all these

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1 liabilities have been stayed to the exclusive detriment of
2 asbestos creditors, which can take many years. You know, as we
3 heard earlier this morning from Ms. Ryan, she put out a study
4 in her expert report that said these asbestos cases may take,
5 you know, 4.3 to 6 years. She had some other asbestos cases
6 that went past six years. So clearly, these cases could take a
7 long time to resolve.

8 In addition, harms, you know, asbestos creditors have to
9 rely upon conditional funding agreements of uncertain value.

10 Q Wait. What do you mean by "conditional funding agreements
11 of, of uncertain value"?

12 A So what I mean by that is that, you know, these funding
13 agreements, you know, are related-party transactions. You
14 know, New Trane will only pay under these funding agreements
15 under certain conditions. These funding agreements, you know,
16 limit the costs and limit the expenses that can be funded and
17 these, and there's no dispute mechanism. So clearly, there's
18 some conditionality in these funding agreements, among other
19 things.

20 You know, in addition, the funding parties are able to
21 delay payments to asbestos creditors and allowed to engage in
22 certain transactions that could weaken their ability to satisfy
23 asbestos claims. You know, in terms of delaying payments to
24 asbestos creditors, you know, clearly, that's happening in
25 these cases here. The bankruptcy is delaying payment and

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1 freezing payments to asbestos creditors.

2 In terms of weakening their ability to satisfy asbestos
3 claims, there's no prohibition of dividends. So New Trane and
4 New Trane Technologies can make dividends. There's no
5 prohibitions of layering on debt onto New Trane or New Trane
6 Technologies. There's no prohibitions on a sale of certain
7 assets and that could clearly, you know, weaken their ability
8 to satisfy asbestos claims in the future.

9 Aldrich and Murray also have minimal economic incentives to
10 negotiate a plan and exit bankruptcy in a timely matter [sic]
11 while asbestos claims are stayed and New Trane Technologies and
12 New Trane materially benefit from this dynamic.

13 Q What do you mean by "minimal economic incentives to
14 negotiate a plan"?

15 A So what I mean by that is is that, you know, asbestos
16 creditors, you know, have literally been, you know, put into a
17 box, you know. And what I mean by that is like a legal entity
18 box where they're isolated or by themselves. You know, in a
19 typical bankruptcy you have all stakeholders in the same spot.
20 You have creditors in bankruptcy. You have customers, you
21 know, who are impacted by the bankruptcy. You have suppliers,
22 you have funded debt, you have equity.

23 So everybody's sort of in the same spot. Creditors want to
24 get out of bankruptcy as quickly as possible so they can get
25 paid. You know, equity wants to get out of bankruptcy as

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1 quickly as possible so it can move on. You know, customers
2 don't want to deal with a bankruptcy customer [sic]. So the
3 fact that you have a different direction here, you have one
4 party who is stuck in bankruptcy while another party that's
5 thriving as a going concern, healthy company, you know, that
6 alleviates the normal incentives that you have in bankruptcy.
7 Clearly, you know, it's beneficial to Trane to keep Aldrich and
8 Murray in bankruptcy. Previously, they were paying a hundred
9 million dollars a year for asbestos-related obligations in
10 connection with the bankruptcy. They're just not paying that
11 anymore.

12 In addition, there's limitations where the funding
13 agreement isn't transferable. There are limitations on what
14 can be paid. As a result, that substantially impacts the
15 negotiating dynamic here resulting in what I call minimal
16 economic incentives.

17 And then finally, I'll just sort of state the obvious here.
18 You have asbestos creditors are being harmed because they're
19 not being paid. They're being singled out. In the meantime,
20 you have non-asbestos creditors, you know, billions of dollars
21 of non-asbestos creditors who continue to get paid in the
22 ordinary course of business and they're not impacted by the
23 bankruptcy.

24 MR. WEHNER: Cecilia, you can take down the slides for
25 just a minute.

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1 BY MR. WEHNER:

2 Q Mr. Diaz, going back to the funding agreements for a
3 minute, do the funding agreements put asbestos claimants in the
4 same position they were at Old IRNJ and Old Trane?

5 A Yeah. No, no it doesn't. As I've said a few times now,
6 the funding agreement is a poor substitute for the assets that
7 asbestos creditors once had access to. You know, with the
8 bankruptcy, asbestos creditors are not being paid. Asbestos
9 creditors are not able to pursue litigation as a result of the
10 automatic stay in their existing forum. They're no longer
11 treated as direct creditors of Trane. They're dependent on
12 Aldrich and Murray to obtain payment from Trane and from New
13 Trane and New Trane enterprises. You can't put liens on New
14 Trane or New Trane Technologies' assets to secure judgments
15 'cause you're now a step away from that. The funding agreement
16 is highly conditional, you know. It says that asbestos
17 creditors can't be paid outside of a 524(g) plan, you know.
18 For example, if you have a lift stay motion, you know, asbestos
19 creditors still can't get paid via the funding agreement, even
20 if that's permitted, you know, by the Court. They're limited
21 on what they can do with the funding agreement. You know, the
22 agreement is not transferable. So on its face, it cannot be
23 sold, cannot be transferred to a trust pursuant to a creditor
24 plan.

25 And finally, you know, among other things, you know, the

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1 assets supporting the funding agreement could be dissipated.

2 So, you know, clearly, no. I mean this funding agreement
3 is not the same. It doesn't put the asbestos creditors in the
4 same position that they were prior to the restructurings.

5 Q You heard Ms. Ryan's testimony, well, this morning and
6 afternoon, I guess, right?

7 A I, I did. I did. I listened to that.

8 Q And you reviewed Ms. Ryan's two expert reports, I take it,
9 right?

10 A I, I did, yes.

11 Q She had a couple of critiques of your work. She suggested
12 that you did not take into account the disputed or contingent
13 nature of asbestos claimants' claims.

14 How do you respond to that criticism?

15 A Yeah. I, I didn't really, yeah, I, I didn't really
16 understand where she was coming from and, you know, I had
17 difficulty really understanding her point on that, nor -- I
18 think it's, you know, fairly simple.

19 You know, look, I mean, in, in any balance sheet, you know,
20 there's liabilities. There are, you know, trade liabilities
21 and those are a little bit different from funded DIP
22 liabilities, which are a little bit different from rent
23 obligations, which are a little bit different from
24 environmental obligations, which are a little bit different
25 from, you know, in this case, you know, asbestos obligations.

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1 And, you know, for some reason, she picks on that liability,
2 you know, being different versus some other liability.

3 You know, clearly, these are not pie in the sky. You know,
4 the debtors have said that they're spending a hundred million
5 dollars a year in this prior to the bankruptcy. They spent \$2
6 billion on this cumulatively. They have put on their books and
7 records. You know, we had a discussion about, you know,
8 pursuant to generally accepted accounting principles. The
9 debtors in their SEC -- not the debtors -- Trane in their SEC
10 filings, you know, pursuant to ASC 450 put over \$500 million of
11 liabilities on their balance sheet and that tells me that Trane
12 determined that these liabilities were probable. Trane
13 determined that these liabilities were reasonably estimatable.
14 So that's very normal and that's, you know, obviously a
15 liability.

16 You know, there also was a lot of discussion this morning
17 about the schedules. Under penalty of perjury the debtors
18 filed their schedules and in their schedules they made an
19 indication, I think, almost 8,000 times that there were
20 confidential settlement amounts with certain plaintiffs, which
21 also indicates to me that there are, you know, liabilities
22 there, too.

23 And then finally, you know, it also did confuse me. For
24 some reason, you know, I think she was caught up on this GAAP
25 definition about it being under the standard ASC 450 and

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1 because it was under the standard that, you know, these
2 liabilities, you know, for some reason, you can isolate them,
3 but she didn't distinguish why other liabilities, you know,
4 environmental claims, warranty liabilities, those went with the
5 go-forward company. Those went with New Trane and for some
6 reason, that was okay, even though it applied to the same GAAP
7 standard.

8 So like I said, I was, I was a little bit confused by that
9 and to, to me this is clearly a liability and, and not a pie-
10 in-the-sky type of thing. It's clearly a real, meaningful,
11 significant liability.

12 Q Ms. Ryan set out some pretty dire consequences if the whole
13 Trane enterprise had filed for bankruptcy. Could Old IRNJ and
14 Old Trane have addressed their asbestos liability in a way
15 different from what they decided to do here?

16 A Yeah. No, I mean, and I, I mentioned this in my expert
17 report, too, where it just, the whole premise of her expert
18 report, you know, was confusing to me. You know, as I
19 mentioned, you know, I looked up this morning the market
20 capitalization of Trane is \$43 billion, an extremely valuable
21 company. And I think we heard Ms. Ryan say that the
22 counterparties to these funding agreements, New Trane and New
23 Trane Technologies, account for 80 percent of the value.

24 So these are extremely, extremely valuable companies. You
25 know, like I said, market cap, \$43 billion as of this morning.

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1 So the whole premise of filing these big, valuable companies
2 into bankruptcy, I, I never really understood that and why
3 somebody would do that.

4 But that, that being said, you know, look, I, I can
5 understand that there are some benefits of bankruptcy. There
6 are some benefits to, you know, permanently resolving, you
7 know, you know, asbestos liabilities and what I didn't quite
8 follow from Ms. Ryan was that she essentially assumed it would
9 be a freefall bankruptcy and what I just suggest here is that
10 to the extent that New Trane and New Trane Technologies,
11 despite being so valuable, wanted to handle this in a big
12 bankruptcy, there's ways to have mitigated the costs that she
13 highlighted.

14 You know, I see all the time in the big bankruptcies you
15 have prenegotiations where you reach out to your key
16 stakeholders, your creditors, your lenders, etc., in order to
17 prenegotiate a bankruptcy to make that a little bit more
18 easier. I've also seen pre-packaged bankruptcies, you know.
19 Admittedly, those are a lot harder to do. You need more
20 consensus, but, you know, I think the Coltec case that we've
21 talked about, you know, almost was a pre-packaged, you know,
22 asbestos bankruptcy.

23 The other thing I also see a lot of is, you know, certain
24 bankruptcy relief measures. You know, these are things to
25 reduce, you know, costs, you know, with suppliers, you know,

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1 help maintain your employee base, you know. But look, you
2 know, clearly, you know, bankruptcy, there's costs to
3 bankruptcy and there's benefits to bankruptcy and to the extent
4 that they did want to file New Trane and New Trane Technologies
5 into bankruptcy, you know, there's ways that they could have
6 mitigated some of the costs that Ms. Ryan outlined.

7 Q Is the approach that Old IRNJ and Old Trane did take, that
8 is, isolating creditors in a company while taking the assets
9 away in a divisional merger and then filing the, the liability-
10 laden companies in bankruptcy, is that unusual in the broader
11 context of restructuring?

12 A Yes. I -- you know, that, that was one of my conclusions,
13 that I, I found this to be highly unusual in the bankruptcy
14 context, you know, outside of a few recent asbestos cases that
15 are currently pending right now.

16 Q What is the basis for your assessment that the divisional
17 merger and restructuring combination here is unusual?

18 A So, I mean, first and foremost, you know, the, the basis
19 for that conclusion, the restructuring coupled with the
20 bankruptcy being highly unusual, you know, it's just my
21 professional judgment, you know, my, my over 20 years of
22 experience. It's just not something I've seen happen before
23 where you basically take unwanted creditors, you put them into
24 a separate legal entity box, and then, you know, like in this
25 case, almost, you know, less than 50 days later you file that

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1 box for bankruptcy. It's just, you know, not something that,
2 you know, I, I've really, you know, seen before.

3 I then, you know, I bounced this off with some of my
4 colleagues here at FTI to just check my judgment and they also
5 kind of scratched their head and, and mentioned that was, was
6 pretty strange. And to, to really ground, you know, my
7 judgment, my conclusions, you know, what I tried to do was to
8 put together a study and, you know, the study is, you know,
9 pretty similar to what I did in the DBMP case as well, too,
10 where I went to TheDeal.com, something that I use fairly
11 frequently. TheDeal.com is a database that has a list of
12 cases, bankruptcy cases that filed. It gives you the
13 liabilities, the date, among other characteristics.

14 And in my study what I did was was I went back five years.
15 I said give me all the bankruptcy cases, you know, from 2016 to
16 2020. I asked for all the bankruptcy cases that had
17 liabilities that were sized between 500 million and \$2 billion.
18 And the reason for that criteria was, you know, the first time
19 I became aware of this divisional merger concept was about
20 three years ago with the Bestwall bankruptcy. So I wanted to
21 make sure that I picked up that period of time and I went back
22 another two years just to give me a little bit more coverage.
23 In terms of the liability size, 500 felt about right in the low
24 end because that covered the asbestos liabilities that are
25 disclosed here in these cases and I went up to \$2 billion just

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1 to pick up some other large cases.

2 And after I, you know, pushed the button, if you will, you
3 know, that spit out 189 bankruptcy cases that met that
4 criteria. And my team went through the first day declarations
5 for each of these 189 cases and did a keyword search of
6 "divisive" or "divisional" and ran that through and after doing
7 that search they found no comparable cases to what we're seeing
8 here, you know, outside of the asbestos context.

9 And I would only, I would only mention as well, too, that
10 subsequent to, or, you know, right around the time that we
11 wrote the expert report, and just to kind of be a little bit
12 more thorough, I had my team run through other search terms
13 through the first day declarations just to make sure, you know,
14 we weren't missing anything. You know, we ran "keep" for, you
15 know, short for keepwell, we ran "carve," short for carveout,
16 "spin," short for spin, spinoff, "separate" for separate, you
17 know, "524" for 524(g) and similar. You know, after running
18 that search, you know, we did not find, you know, any
19 comparable divisive merger transactions outside the asbestos
20 context.

21 Q So let's just step back even a little farther and my
22 question is what implications do transactions like the
23 restructurings and bankruptcies here have for restructuring
24 more broadly?

25 A Yeah, no, look. So as we discussed for, for those who were

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1 in the DBMP trial back in March at the DBMP hearing, you know,
2 I still remain worried that this trend of corporate
3 restructurings followed by bankruptcies could be used as a
4 model to isolate and harm other types of unwanted creditors.
5 And, you know, there's really no magic to this technique. I
6 mean, it's, it's pretty simple. You take a big, valuable
7 company like they did here at Trane and you divided that into
8 two. You put all the unwanted liabilities into one entity,
9 then you take all the good, healthy, valuable assets and you
10 put that into the other legal entity. You then follow that up
11 with filing the unwanted liabilities, that entity, for
12 bankruptcy and then you go seek an injunction to go protect the
13 healthy company. I mean, it's, it's, it's pretty simple. It's
14 pretty straightforward.

15 You know, we're obviously seeing this trend happening in
16 the asbestos world. You know, we saw this happen in Bestwall,
17 in DBMP. We're seeing it happen in these cases here and I'm
18 concerned, you know. If this technique is allowed, you know,
19 it seemed to me that there'd be a lot of implications to this.
20 Companies with product liability claims, mass tort exposure,
21 pharma claims, warranty claims, environmental claims may
22 consider a strategy like what New Trane and New Trane
23 Technologies did here in order to isolate and manage these
24 liabilities. And I'm concerned that this really switches the
25 focus of what I normally think of a bankruptcy where you had

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1 the rehabilitation of business and maximizing the value of
2 creditors.

3 You know, someone who frequently works for creditors, you
4 know, I foresee implications of the strategy and it doesn't
5 take a large stretch of the imagination to see how this could
6 be applied in other situations more broadly.

7 Q Thank you, Mr. Diaz.

8 MR. WEHNER: Your Honor, we're, we'll pass the
9 witness. I don't know if --

10 THE COURT: All right.

11 Anyone need a break before we go into cross?

12 (No response)

13 THE COURT: How about staff? Everyone good?

14 (No response)

15 THE COURT: All right. Let's proceed.

16 Who's first? Debtor?

17 MR. TORBERG: Good afternoon, your Honor. This is
18 David Torberg from Jones Day on behalf of the debtors.

19 THE COURT: Okay.

20 MR. TORBERG: I'll be starting.

21 Before we get started with Mr. Diaz, I just wanted to
22 be sure that your Honor received the materials that we sent of
23 documents that we might use in connection with the cross-
24 examination of Mr. Diaz?

25 THE COURT: I've got so many notebooks at this point

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1 I'm not sure which ones we're talking about. Can you, can you
2 clue me in?

3 MR. TORBERG: They would be -- if it's the binder,
4 it'll have 11 tabs.

5 THE COURT: 11 tabs.

6 MR. TORBERG: I will also be showing --

7 THE COURT: I've got it.

8 MR. TORBERG: -- them on the screen.

9 THE COURT: Only weighs --

10 MR. TORBERG: Okay, great.

11 THE COURT: -- 50 pounds, so.

12 MR. TORBERG: Oh, no. I think they've got something
13 in there I didn't expect to be, if it's that much. But I won't
14 be going --

15 THE COURT: Go ahead, Mr. Torberg.

16 MR. TORBERG: -- through 50 pounds of paper, I
17 guarantee you.

18 THE COURT: Okay, Mr. Torberg.

19 CROSS-EXAMINATION

20 BY MR. TORBERG:

21 Q Good afternoon, Mr. Diaz. I felt like we've been here
22 before, but it's --

23 A Yeah.

24 Q -- nice to see you, again.

25 A You as well.

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1 Q Do you have copies of your expert report and the transcript
2 of your deposition in this case in front of you?

3 A Yes. I, I printed out clean, hard copies of both. So I
4 have my expert report and I have the, the transcript from the
5 March 23rd deposition.

6 Q Great. Thank you.

7 Do you agree, Mr. Diaz, that the debtors have significant
8 asbestos liabilities, correct?

9 A I, I think it's all relative. I mean, I think the debtors
10 have disclosed that, you know, there's over \$500 million of
11 asbestos liabilities and I think, I think that's pretty
12 significant, yes.

13 Q In reviewing the debtors' bankruptcy schedules, you found
14 that Aldrich had over 48,000 asbestos claims filed against it
15 as of the petition date, is that right? On Page 20 of your
16 report, Paragraph 28.

17 A Correct. 48,000 claims were scheduled as part of their, of
18 their schedules, correct.

19 Q And likewise, Murray had over 47,000 asbestos claims filed
20 against it, is that right?

21 A I noticed on Murray's schedules there was 47,000 claims
22 that were scheduled on Murray's schedules, correct.

23 Q You also understand that both debtors expect tens to
24 hundreds of thousands of additional asbestos claims to be filed
25 against them in the future, correct?

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1 A Yeah. I'm, I'm not sure how many claims will be filed in
2 the future. I, I assume there'll be additional claims. I'm
3 not sure how many there would be.

4 Q You understand the debtors commenced these chapter 11 cases
5 with the goal of resolving those asbestos liabilities, correct?

6 A I think Mr. Pittard mentioned that in his first day
7 declaration that they had a goal of, of resolving asbestos
8 obligations.

9 Q And your report states that "Aldrich and Murray filed the
10 cases with a goal to resolve their asbestos liabilities through
11 a section 524(g) trust" -- Paragraph 7, Page 4 -- correct?

12 A That, that is correct, yes.

13 Q And you don't have a judgment, Mr. Diaz, on the pursuit of
14 a bankruptcy solution to those asbestos claims whether
15 bankruptcy should have been filed or not, correct?

16 A Yeah. I'm not -- I'm not -- I mean, it's a pretty general
17 question. I'm not sure I follow that question.

18 Q Do you have a judgment on whether or not a bankruptcy
19 solution to the Aldrich/Murray asbestos claims is appropriate?

20 A Yeah, no. I think I, I think I mentioned in my testimony
21 that Trane is an extremely valuable company and I'm not sure
22 why it would file for bankruptcy. But to the extent that it
23 did want to file for bankruptcy, then, you know, obviously,
24 that's something they could consider doing.

25 Q In this case, you've been retained by the ACC, but not the

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1 FCR, correct?

2 A That, that's right. Correct.

3 Q You understand that the FCR supports the debtors' motion
4 for a preliminary injunction, is that right?

5 A That -- that is -- that is my understanding, correct.

6 Q And that's not something you were aware of when you issued
7 your expert report and before you were deposed in this case,
8 correct?

9 A That, that is correct. I, I don't think I was aware of it.
10 I don't think I was aware of that at either of those times.

11 Q And you commented at your deposition when I told you that
12 that that was "good to know," correct?

13 A That, that sounds right.

14 Q The opinions that you render in your report and that you've
15 rendered here today are rendered on behalf of the current
16 asbestos claimants, is that right?

17 A Yeah, no. I would, I would say that a little bit
18 differently. The Committee asked me to perform certain, a
19 certain scope of work. Independently, I evaluated that work
20 and independently came up with my conclusions. You know, I
21 think it's, I mean, the Committee engaged me to be their expert
22 here, but, you know, I think, I think that would be a better
23 way to say it.

24 Q But you would agree that the opinions that you're offering
25 are rendered on behalf of counsel for the current claimants,

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1 correct?

2 A Yeah. I, I, I would agree that I, I was engaged by the
3 Committee to develop my own independent analysis, my own
4 independent work. I don't know if that's what you're asking,
5 but I just want to be clear here. I mean, it's my own
6 independent analysis, you know, based on my judgment, you know,
7 that, that sort of thing, just to be clear.

8 Q Do you have a sense, Mr. Diaz, of what percentage of the
9 debtors' asbestos liabilities now and in the future are
10 comprised of current claims versus claims that will be filed in
11 the future?

12 A I, I don't have a sense of -- of that -- of that mix, no.

13 Q So I take it that's not something that you considered in
14 forming your opinions in this case?

15 A Correct. Correct.

16 Q Does your report separately consider the impact of the
17 restructurings and the bankruptcy filings as between current
18 and future claimants?

19 A So in connection with our report, I, I generally looked at
20 how -- I'm sorry. Just taking a step back.

21 So in connection with my report, I essentially looked at
22 three things. One was that I looked at how, I looked at the
23 restructuring and the bankruptcies and, and assessed those. I
24 then evaluated the impact of those on asbestos creditors. I
25 didn't make a distinction of those asbestos creditors between

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1 current asbestos creditors and future asbestos creditors. I
2 looked at it more generally as a class. And then finally, I, I
3 looked at the broader implications of what these strategies may
4 mean.

5 But I think that -- I mean, hopefully, that answers your
6 question.

7 Q It does. Thank you.

8 Mr. Diaz, you understand that the debtors seek a
9 preliminary injunction to provide an opportunity to resolve
10 their asbestos liabilities in this bankruptcy proceeding and
11 not have separate litigation in numerous courts across the
12 country, correct?

13 A I mean, I -- I mean, my understanding of the injunction
14 motion is that you are looking to avoid litigation against, you
15 know, over 200 so-called protected parties in connection with
16 the injunction adversary complaint.

17 Q And without a preliminary injunction would you expect that
18 asbestos claimants would sue one or more of the debtors'
19 affiliates in the tort system?

20 A Yeah. I, I don't know. If the injunction was not in
21 place, I'm not sure if there would be lawsuits against these
22 protected parties. I'm not sure.

23 Q That, that was not something that was part of your analysis
24 in this case, is that right?

25 A That's right.

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1 Q You've opined, Mr. Diaz, that if the preliminary injunction
2 is granted, there will be minimal economic incentive for the
3 debtors to resolve the cases in a timely manner, correct?

4 A Yeah, no. I, I don't think I would, I would say it that
5 way. I think I would say it two ways.

6 I, you know, in my expert report I indicated that by doing
7 the corporate restructuring and by doing the subsequent
8 bankruptcies, that that harmed asbestos creditors and
9 essentially put asbestos creditors into a legal entity box and
10 that legal entity box caused there to be minimal, an impact in
11 the negotiating dynamic, that there are minimal economic
12 incentives for negotiation.

13 I think on top of that, if the injunction is granted,
14 there'd be, you know, less incentives as well.

15 Q You've read the declaration of Mr. Pittard, the debtors'
16 Chief Restructuring Officer, as part of your work in this case,
17 correct?

18 A I, I have, yes.

19 Q And I can show it on the screen, but do you recall him
20 stating that, "The debtors were prepared immediately to commit
21 the necessary resources to satisfy the various requirements of
22 section 524(g), including the negotiation on an agreement with
23 the claimant representatives on an acceptable and confirmable
24 plan of reorganization as soon as possible"? Do you recall
25 that language?

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1 A Sound, sounds familiar, yes.

2 Q And have you heard similar statements and sentiments made
3 from the debtors' two witnesses in this proceeding?

4 A I, I have heard similar statements, yes.

5 Q And you don't have any basis to doubt the sincerity or
6 truthfulness of those statements, correct?

7 A Yeah. I don't, I don't have a basis to say whether those
8 are true or not, correct.

9 Q In your deposition, Mr. Diaz, you stated a belief that
10 "current asbestos claimants had an incentive to get out of
11 bankruptcy as soon as possible," do you recall that?

12 A I, I do. I, I think that in connection with the bankruptcy
13 one of the harms that I mentioned that resulted from the
14 corporate restructurings and the bankruptcies is that asbestos
15 creditors are not being paid.

16 So one incentive of getting out of the bankruptcy would be
17 to, you know, be able to get paid, correct.

18 Q And you believe that the ACC representing the current
19 asbestos claimants also has an incentive to get out of
20 bankruptcy as soon as possible?

21 A I, I'm the financial advisor, you know. I'm an expert here
22 asked to answer specific things, you know. I obviously can't
23 speak for, you know, the ACC and, and what they want.

24 Q Okay.

25 Do you have an understanding, Mr. Diaz, of whether the ACC

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1 wants to get out of the bankruptcy through a negotiation of a
2 consensual agreement on trust funding or through a denial of
3 the preliminary injunction motion and an effective dismissal of
4 this case?

5 A So as I just mentioned, I mean, I'm the financial advisor
6 and I was asked to do certain things. I, I can't speak to
7 their desire or can't speak to their position on the
8 negotiations. I, I just, I can't speak to that. I just, I
9 just don't know that as the expert here.

10 MR. TORBERG: Jon, if you can put up what I believe is
11 Tab 6 in the materials that I sent you. It's the transcript of
12 the, last week's hearing before the Court, specifically Page
13 41.

14 BY MR. TORBERG:

15 Q Mr. Diaz, did you, did you or any of your team attend last
16 week's argument on the ACC's motion to compel?

17 A I don't, I don't recall. I, I, I did not personally. I
18 don't recall if my team did.

19 Q Okay.

20 MR. TORBERG: Jon, if you would highlight and maximize
21 Lines 7 through 10. This is a statement from Mr. Goldman,
22 who's counsel for the ACC.

23 THE WITNESS: I'm sorry. Who is this a statement
24 from?

25 BY MR. TORBERG:

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1 Q Mr. Goldman. He is counsel for the ACC.

2 A Okay. Thank you.

3 Q Robinson & Cole.

4 He said, "As a practical matter, I mean, we believe this
5 case will be disposed -- we believe and hope this case will be
6 disposed of effectively in the proceedings next, next, next
7 week." Do you see that?

8 A I, I do, yes.

9 Q Okay.

10 Were, were you aware of the fact that the ACC hopes to
11 dispose of this case through this hearing?

12 A You know, as mentioned, in connection with my expert work
13 here, the work of my expert report, you know, I think that was
14 clearly not something that -- that -- that -- negotiations was
15 not something that I'd been involved with, correct.

16 Q Are you aware, Mr. Diaz, that the debtors have offered to
17 engage in negotiations with the ACC on the amount of trust
18 funding necessary to fairly fund a section 524(g) trust?

19 A Yeah. I mean, same, same answer. In connection with my
20 expert work that I, that I've done here, you know, that was not
21 something that, that I'm aware of.

22 MR. TORBERG: Jon, if you could put up Tab 7. And
23 specifically, go to Page 8, Footnote 21.

24 BY MR. TORBERG:

25 Q And, Mr., Mr. Diaz, I showed this document to you in your

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1 deposition, but I'll show it to you, again.

2 The, this is a submission filed by the FCR in this matter
3 on March 19th -- so four days before your deposition -- and it
4 states, "Despite multiple invitations from the FCR and the
5 debtors, the ACC has been unwilling to engage in any plan-
6 related discussions. The same has been true in DBMP."

7 I take it, given your prior answer, that you have no basis
8 to disagree with the FCR's statement?

9 A No. I mean, I will just -- just to be clear. I, I would
10 say, say the same answer, which is in connection with my expert
11 work, that did not involve any negotiations. And I want to be
12 real clear, you know. In connection with my expert work, that
13 was just not something that I've been involved with.

14 Q Are you aware that the debtors are attempting to negotiate
15 or are negotiating with the FCR on the financial terms of the
16 trust?

17 A I think I'm aware of that in terms of the expert capacity
18 from what I've heard in these proceedings and it may have said
19 that in, in the submission that you have up on the screen here.

20 Q And you agree that there's nothing stopping asbestos claim,
21 asbestos claimants and the ACC from trying to negotiate a
22 consensual deal in this case, right?

23 A Yeah, no. Just to repeat my answer, I mean, I'm, I think
24 my expert testimony here is pretty clear of what I've done.
25 I'm not the right guy to talk about negotiations, you know,

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1 with the ACC. That's just not, not something that I, I've done
2 as part of my expert work.

3 Q Yet you do opine about the fact that there's minimal
4 economic incentive for the debtors to negotiate a consensual
5 resolution, correct?

6 A So, so I'm glad you mentioned that. I think there's a big
7 distinction there.

8 So my opinions, I think, are pretty clear that I am focused
9 on the negotiating dynamic and that by doing the corporate
10 restructuring, by doing the bankruptcy asbestos creditors, in
11 effect, got put into a legal entity box and that harmed
12 asbestos creditors. It harmed the negotiating dynamic and that
13 is something that I've written about in my expert report, very
14 much, you know, very much and talked about that. I think
15 that's very different versus talking about actual negotiations.

16 But in terms of the negotiating dynamic, I think asbestos
17 creditors were harmed in that and, and one of the issues, as
18 you talked about, is that the debtors have minimal economic
19 incentives to negotiate.

20 MR. TORBERG: Jon, if you could, in Tab 1, which
21 should be his report, bring up Page 22.

22 BY MR. TORBERG:

23 Q So I'm on Page 22 of your report, Mr. Diaz.

24 MR. TORBERG: Tab 1 of the binder, your Honor. If
25 you --

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1 THE COURT: Uh-huh (indicating an affirmative
2 response).

3 MR. TORBERG: -- rather just follow along with the
4 screen, of course, that's --

5 THE COURT: All right.

6 MR. TORBERG: -- might be easier.

7 THE COURT: Go ahead.

8 BY MR. TORBERG:

9 Q Paragraph 36 on Page 22, the first full sentence, it starts
10 with, "As noted." Let me know if you're --

11 MR. TORBERG: Let's go to the -- yeah, there we go.

12 BY MR. TORBERG:

13 Q "As noted."

14 You wrote, "As noted, the use of the Transaction Series as
15 well as the proposed preliminary injunction has isolated the
16 asbestos creditors and eliminated many of the factors that
17 would have otherwise incentivized the debtors to quickly exit
18 bankruptcy."

19 And those factors that you're referring to include some of
20 the things you mentioned in your direct testimony, the fact
21 that there would be customers, suppliers, creditors, and
22 employees impacted by a bankruptcy, is that right?

23 A Among other things, correct. Correct.

24 Q And do you believe that by not filing Old Trane and Old
25 IRNJ those incentives were eliminated or largely eliminated,

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1 correct?

2 A Yeah, no. So I mean, to clarify. You know, I, I think
3 I've said a couple times that I'm not sure why Old Trane or Old
4 IRNJ would have filed for bankruptcy. You know, market
5 capitalization is, you know, over \$40 billion, extremely
6 valuable companies. But to the extent that you did want to do
7 that, it's good to have everybody, all the stakeholders rowing
8 in the same direction and it's, that causes everybody to want
9 to get out of bankruptcy. But when you have everybody not
10 impacted except for one group of creditors, you know, I think
11 that isn't a good dynamic.

12 Q So is the answer to my question yes?

13 A I -- I -- I mean, I think I just, I think I just answered
14 the question. I mean, you can --

15 Q You're also involved in the Paddock Enterprises asbestos
16 bankruptcy, is that right?

17 A So I'm going to need to be careful there. I, I am involved
18 in that case, correct.

19 Q You're one of the senior people at FTI on that file?

20 A I, I am one of the senior people, you know, on the team and
21 I'm, I represent the FCR and I represent, or FTI represents the
22 Committee as well, too, in that case.

23 Q And that case involved a pre-petition restructuring
24 strategy very similar to the one taken in this case, correct?

25 A So, you know, again, I, I need to be very careful here, but

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1 I just want to kind of stick to the public facts. And so I
2 apologize if, if I seem, you know, if I'm just doing that, but,
3 you know, I think that's important.

4 But I don't think, you know, sticking to the public facts,
5 I, I don't think that is correct. I think there are, you know,
6 differences, you know, in the Paddock case versus, you know,
7 some of the other cases.

8 MR. TORBERG: Jon, if you could go back to Tab 1 and
9 Page 21 of his report, Paragraph 33.

10 BY MR. TORBERG:

11 Q Mr. Diaz, does your report state, "Strategies similar to
12 the Transactions Series were also executed in Bestwall LLC,
13 Paddock Enterprises, LLC, and DBMP LLC," and then it continues,
14 correct?

15 A Correct. I, I recognize that paragraph.

16 Q And that case also involved a divisional merger, is that
17 right?

18 A So in Paddock -- and, you know, I'll leave it to you and
19 the other lawyers -- you know, there was a -- I don't know if
20 divisional merger is the right word for it. You know, in the
21 Paddock case it was under a Delaware statute. In Bestwall,
22 DBMP, in these cases, it's under the, the Texas statute.

23 So I think there is a distinction there. I, I, you know, I
24 think that's more of a legal distinction, but I just want to
25 point that out.

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1 THE COURT: Understood.

2 BY MR. TORBERG:

3 Q In particular, in that case Owens Illinois' operating
4 assets were transferred to a new entity called Owens Illinois
5 Group and the asbestos liabilities were left with a new entity
6 called Paddock, correct?

7 A Conceptually, that, that sounds right, correct.

8 Q And the restructuring also included the equivalent of a
9 funding agreement between Owens Illinois Group and Paddock,
10 correct?

11 A I, I, I believe there's a funding agreement between Owens
12 Illinois and Paddock.

13 Q Okay. And you understand that the pre-petition
14 restructuring in Paddock was designed to allow a section 524(g)
15 resolution without subjecting the entirety of the Owens
16 Illinois business to a chapter 11 filing, right?

17 A So, you know, I need to be, you know, like I said, very
18 careful here. I'm here as the expert in the Aldrich and Murray
19 cases and, you know, I'm just going based off my public
20 knowledge.

21 You know, I think in Paddock there were, certainly,
22 differences. You know, there were prenegotiations prepetition
23 where there was an FCR that was involved. There was an *ad hoc*
24 group of victims involved and there also was, you know, no
25 injunction post emergence -- sorry -- you know, as part of the

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1 bankruptcy period, among other, probably, differences. But
2 like I said, I want to be real careful here about, you know,
3 what my expertise is on this.

4 Q So do you understand that the purpose of the restructuring
5 was to allow a 524(g) resolution without subjecting the
6 entirety of the Owens Illinois business to a chapter 11 filing?
7 That's something you didn't understand?

8 A Yeah. I would -- I mean, I, I would have to look at a
9 first day declaration. Wouldn't surprise me, you know, if it
10 said that, but I, you know, sitting here today I just, I don't
11 recall if, if I read that's somewhere or not.

12 Q Okay.

13 MR. TORBERG: Jon, if you could bring up Tab 8.

14 BY MR. TORBERG:

15 Q This is a publicly available document, Mr. Diaz, titled
16 Paddock Enterprises, LLC and OI Glass, Inc., Seeks a Final and
17 Equitable Resolution to Its Legacy Asbestos-Related Claims
18 dated January 6, 2020.

19 Have you -- are you familiar with this document?

20 A I mean, as the expert for Aldrich and Murray, this was not
21 a document that I considered as part of my expert report.

22 Q And I'm asking. Have you, are you familiar with it at all?

23 A Yeah. I don't, I don't recall. I don't -- I don't -- I
24 don't recall if I looked at this document or not before.

25 MR. TORBERG: Jon, if you would go to the fourth page

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1 of this -- I'm sorry -- seventh page.

2 BY MR. TORBERG:

3 Q It says, Key Implications: The Next Steps. The first
4 bullet says, "Business as usual for OI Glass."

5 Is that something you under -- that you under -- that you
6 understand as being involved in that case, the idea of the
7 restructuring approach there was such that business could
8 continue as usual for the company while attempting to resolve
9 its asbestos liabilities in the bankruptcy forum?

10 A Correct. That was, that was my understanding, was that OI
11 Glass would continue as usual.

12 Q Now notwithstanding that strategy, a consensual agreement
13 was recently reached in the Paddock case after a mediation with
14 Kenneth Feinberg, is that right?

15 A I, I understand that there was a, a public filing that
16 there was a successful mediation in that case.

17 Q Are you familiar, generally, with the terms of the
18 agreement?

19 A I think, I think I'm aware of a number. I think it was
20 \$610 million. I think that's the extent of my knowledge on
21 that from the public basis.

22 Q Do you understand that there would be an injunction
23 protecting Paddock, OI Glass, and their affiliates from current
24 and future asbestos claims?

25 MR. WEHNER: Your Honor, this is James Wehner.

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1 I'd like to just lodge an objection. I, on behalf of
2 the ACC. I -- Mr. Torberg is getting very close to trying to
3 elicit information from Mr. Diaz in his capacity as a
4 confidential, as a confidential restructuring advisor and non-
5 testifying expert in the Paddock case. While I recognize that
6 this is an area of interest for the debtors and for the FCR, I
7 would appreciate an instruction that they not try to elicit
8 privileged information from Mr. Diaz. It's -- he, he's
9 obviously having a very difficult time trying to negotiate
10 this.

11 THE COURT: Mr. Torberg?

12 MR. TORBERG: Yeah. I, I don't think there'll be an
13 issue here. The next document I'm going to show him is a, is a
14 public announcement.

15 THE COURT: Right. Well, let's try to stay away from
16 anything that's privileged.

17 Mr. Torberg, you've done a good -- excuse me --
18 Mr. Diaz, you've done a pretty good job so far of identifying
19 that and giving me as the finder of fact the hints when you
20 think you're near the line and I would suggest that you
21 continue to do so. Don't tell us anything confidential. Just
22 tell us what you know that is in a public record.

23 Let's proceed.

24 MR. TORBERG: Thank you, your Honor.

25 Jon, if you could put what is Tab 9 on the screen.

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1 BY MR. TORBERG:

2 Q Mr. Diaz, this is a press report dated April 26, 2021. "OI
3 Glass Announces Agreement of Potential Plan of Reorganization
4 for Paddock Subsidiary."

5 Are you familiar with this press release?

6 A Conceptually, as I mentioned. You know, I was aware that a
7 settlement was reached based on a public record.

8 MR. TORBERG: Jon, if you could go to the next page
9 and highlight the, the second full paragraph. Bring that up.
10 I'm sorry. Paragraph before that. Thank you.

11 BY MR. TORBERG:

12 Q And does the end of that paragraph refer, Mr. Diaz, to "a
13 trust being created under 524(g) that would establish an
14 injunction protecting Paddock, OI Glass, and their affiliates
15 from assertions of current and future liability from such
16 channeled claims"?

17 A Yeah. I mean, I can read the document for you. I think
18 the document speaks for itself. It says "establish an
19 injunction protecting Paddock, OI Glass, and their affiliates
20 from assertions of current and future liabilities from such
21 channeled claims." And I think early in the paragraph it, it
22 mentions the \$610 million settlement, you know, that I think I
23 mentioned to you a moment or so ago.

24 THE COURT: Let me inquire at this point, Gentlemen.
25 Is this particular document something that all sides are aware

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1 of? And do you have an agreement that this document would be
2 self-authenticating if he does not? It doesn't sound like
3 Mr. Diaz has seen this particular document.

4 BY THE COURT:

5 Q Do you have an understanding about it?

6 A I don't know if I've seen this document. I, you know, I, I
7 have a general understanding that there was a settlement.
8 Sitting here today, though, I don't, I don't recall reading
9 this, this section.

10 THE COURT: That's, that's my point, Mr. Diaz. I'm
11 asking the lawyers.

12 THE WITNESS: Oh, I apologize.

13 THE COURT: Is this exhibit something I can consider
14 under some theory, either by agreement or simply because it's
15 an adjudicated fact or -- or -- what I'm trying to get at is --
16 or are you just trying to use it to refresh the recollection of
17 Mr. Diaz?

18 MR. TORBERG: It's the debtors' view this document can
19 be considered by the Court. We're, we're agreeable to that.

20 MR. WEHNER: Your Honor, it's not marked as an
21 exhibit, I don't believe. I'm not sure I know what it is. We
22 would --

23 THE COURT: Okay. All right.

24 Well, why don't y'all work on that one overnight. I'm
25 trying to keep him away from the line of getting into

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1 confidential --

2 MR. WEHNER: Yeah.

3 THE COURT: -- information testimony.

4 So let's talk about that again tomorrow if it's really
5 germane. I would imagine if I got out of here and Googled it,
6 I might find the same document if it is, in fact, a public
7 release. But you let me know what you think tomorrow.

8 MR. TORBERG: I can represent to you, your Honor, that
9 I Googled it and that's how I found it.

10 THE COURT: Okay. Of course, I'm not sure Google
11 means it's not hearsay, but if it's out there, it may not be
12 something that reasonable people would dispute. I assume --

13 MR. TORBERG: Thank you, your Honor.

14 THE COURT: -- whatever is in the court docket, not
15 this document, in particular, but I assume someone has said
16 something on the record there to the judge, okay?

17 Let's move along, then.

18 MR. TORBERG: Thank you, your Honor.

19 BY MR. TORBERG:

20 Q You mentioned, Mr. Diaz, that there was not a preliminary
21 injunction in the Paddock case, is that right?

22 A That is my understanding, yes.

23 Q Do you know if a preliminary injunction was ever sought in
24 Paddock?

25 A From the public record, I'm not aware of a similar lawsuit,

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1 you know, like there is in this case or like there is in some
2 of the other asbestos cases that I've seen.

3 Q And is it your understanding that most asbestos claims
4 against OI Glass were handled through administrative claims
5 handling agreements?

6 A I, I don't have a point of view on that, no.

7 Q Are you aware of any claims that were presented to Paddock,
8 Owens Illinois, OI Glass, or any other affiliate of Paddock
9 after the corporate restructuring in that case?

10 A Yeah. That, that was just not something that I looked into
11 in connection --

12 Q Are you aware of a -- I'm sorry.

13 Did you finish your answer?

14 A Yeah, no. That's just not something I looked into.

15 Q Are you aware of a single lawsuit that was filed against an
16 affiliate of Paddock after the corporate restructuring in that
17 case?

18 A Same, same answer.

19 Q You observed in your report, Mr. Diaz, that after the
20 Transaction Series, which is the restructuring and the filings,
21 non-asbestos creditors continue to get paid in the ordinary
22 course by New Trane Technologies and New Trane, correct?

23 A That, that is right. That was one of the, the harms that I
24 mentioned to asbestos creditors, that non-asbestos creditors
25 were continuing to get paid while asbestos creditors were not

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1 being paid, correct.

2 Q Is it your view, Mr. Diaz, that in order to have a
3 bankruptcy that resolves the Murray, Aldrich/Murray asbestos
4 claims we need as a matter of bankruptcy policy to subject all
5 of the New Trane Technologies and New Trane non-asbestos
6 creditors to a disruptive bankruptcy process?

7 A I'm sorry. That was, that was a very long question with a
8 lot of, lot of phrases in there. I don't know if you could
9 break that up or -- I want to make sure I can answer your
10 question appropriately.

11 Q So you, you've commented in your testimony that if there
12 was to be a bankruptcy --

13 A If there was to be a bankruptcy --

14 Q Okay.

15 A -- okay.

16 Q So let's take that as the first premise, okay?

17 Is it your view that, assuming we have the bankruptcy to
18 resolve the asbestos claims, that we have to subject all of the
19 non-asbestos creditors to that bankruptcy process?

20 A So I think, I think my testimony is pretty clear that if
21 there was to be a bankruptcy, that it should be set up in such
22 a way that asbestos creditors are not unduly harmed like what
23 happened in these bankruptcy cases and, you know, candidly,
24 what we talked about in March, what happened in DBMP as well,
25 too, among other things.

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1 MR. TORBERG: Jon, if you could show what I sent you
2 this morning, the picture I sent you this morning. Put that on
3 the screen.

4 BY MR. TORBERG:

5 Q So as fate would have it, on my way to work this morning,
6 to the office, I got stuck behind traffic from this van -- and
7 I promise that the traffic was stopped when I took the picture
8 -- some van from a company called Boland and I don't know if
9 you can read it, but do you see the Trane in the bottom left
10 corner?

11 A I, I see the logo. I do, yes.

12 Q Okay. And it says there, if you can't read it, "Authorized
13 franchisee of Trane," you see that?

14 A I, I do, yes.

15 Q Okay. In forming your opinions in this case, have you
16 evaluated the impact of filing the entirety of the Trane
17 business on companies like Boland and other business partners
18 of Trane that rely upon the strength of the Trane brand?

19 A No. No, I think, you know, look. I, I think this is an
20 interesting picture. You know, I would go back to my same
21 testimony of this is New Trane and New Trane Technologies are a
22 substantial portion of a \$42 billion market enterprise company.
23 So conceptually, I don't understand the premise of why New
24 Trane and New Trane Technologies needs to file for bankruptcy
25 to deal with the asbestos liabilities.

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1 Now, look, I, I understand if you want to deal with the
2 asbestos liabilities, then I'm not sure why you need to subject
3 just Aldrich and Murray's creditors to the burdens of
4 bankruptcy. I, I don't know why this \$42 billion company
5 should benefit by not having its equity subject to the burdens
6 of bankruptcy, why the value of, why it should still get
7 dividends. So no.

8 Look, I understand that, you know, this company here,
9 Boland, would get hurt as part of the bankruptcy, or
10 potentially hurt. I don't, I don't know. I see a lot of
11 companies that do fine in bankruptcy, but just the whole
12 premise of this just makes me scratch my head a little bit of,
13 you know, what, what, what happened here.

14 Q Have you evaluated the impact of a broader bankruptcy on
15 companies like Boland? Was that part of your analysis or not?

16 A So as part of my analysis and, you know, not to kind of
17 repeat my answer, but to address that more directly, I
18 disagreed with Ms. Ryan's contention that if there was a
19 broader bankruptcy, that it wouldn't be a freefall bankruptcy,
20 that there could be ways to manage it, whether it be through
21 first day motions, whether it be through other bankruptcy
22 relief, strategic communications programs that could be used to
23 manage creditors or suppliers like Boland, you know, like we
24 see all the time, you know, in other large, big cases.

25 But that being said, I did not analyze specifically if

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1 there was a filing how that would impact this vendor, Boland.

2 Q So getting back to your observation that non-asbestos
3 creditors continue to get paid in the ordinary course, are you
4 saying based on your review of the financial information in
5 this case that there will be insufficient funds to pay all of
6 those non-asbestos creditors and the asbestos claims in full?

7 A So I've not done a valuation of the assets here. There are
8 \$7 billion, I think, if I recall, of non-asbestos liabilities
9 in New Trane enterprises. For example, there are \$4.8 billion
10 of non-asbestos liabilities at New Trane, but I've not done an
11 analysis of whether there is sufficient money to pay all of
12 that, correct.

13 Q Mr. Diaz, do you know how long it generally takes for an
14 asbestos claim to be litigated in the tort system?

15 A All right. There was a little feedback there. Can you
16 repeat that, please?

17 Q Sorry, sure.

18 Do you know how long, generally, it takes for an asbestos
19 claim to be litigated in the tort system?

20 A I, I don't have a point of view on that, no.

21 Q We looked at the FCR submission earlier -- and I showed
22 this, some language to you in your deposition -- where the FCR
23 stated that, "Reverting to the tort system is a decidedly
24 inferior result for the classes of both current and future
25 claimants when compared to the benefits of an asbestos trust."

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1 Do you recall me asking you about that language?

2 A Yes, something like that. Yes.

3 Q And do you have a view on that statement?

4 A So, I mean, conceptually, I think there are a lot of what-
5 ifs in that hypothetical. Conceptually, the trust system, I, I
6 think I understand from, you know, from the declarations in
7 this case that these companies have been dealing with asbestos
8 litigation, I think, going back to the seventies.

9 So there's been, I don't know if there's been 50 years of,
10 of a previous history in the tort system where the tort system
11 has dealt with these claims. I mentioned to you earlier that,
12 you know, the counterparties here are extremely valuable.
13 Market capitalization of the ultimate Trane organization of
14 over \$43 billion. So I, I don't have a basis to think that
15 that would be any different, that the tort system would
16 continue to pay creditors in the future, you know, given that
17 market strong value.

18 That being said, you know, trusts are very fact specific,
19 you know. How would these trusts be funded? How long would it
20 take to create these trusts? How long would these trusts be in
21 place? What are the trust distribution procedures? You know,
22 that, that is not my area of expertise, but that's very much a
23 hypothetical of, you know, the trust is, system is not as good
24 or -- sorry -- is, is not as good, is, is better than the tort
25 system. I just think that's, you know, there's a lot of

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1 missing in that hypothetical.

2 But, you know, conceptually, I mean, that's how I think
3 about it.

4 Q But you haven't done an assessment in your report about
5 whether resolving the claims through the bankruptcy process or
6 through the tort system would be in the public interest, is
7 that right?

8 A Yeah, no. I think I would kind of mention to you -- so the
9 short answer is no. But, but I would say to you that, you
10 know, clearly, the asbestos, you know, clearly, the asbestos
11 victims in the past were paid a hundred million dollars a year.
12 This bankruptcy's been going on, you know, pretty close to a
13 year now, come June. So I would say that those victims who
14 weren't paid over the last year would be worse off than via the
15 trust system.

16 And then I would just give you the same answer as I just
17 mentioned before about comparing the tort and the trust system,
18 you know, with respect to, to the other creditors.

19 Q You understand that asbestos claimants typically sue
20 multiple different defendants in their tort system complaints,
21 correct?

22 A I, I have an understanding of that, correct.

23 Q But that is not your area of expertise, correct?

24 A That, that is not my area of expertise, correct.

25 Q And at least at the time that you prepared your expert

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1 report you were not familiar with the percentage of claimant
2 recoveries that typically were attributable to Old Trane and
3 Old IRNJ, correct?

4 A That is correct, yeah.

5 Q If you go to Slide 3 of your presentation.

6 MR. TORBERG: Jon, if you could bring that up.

7 BY MR. TORBERG:

8 Q And this slide, you indicate on the right the
9 postrestructuring of what was Old IRNJ, correct?

10 A Correct. The postrestructuring prior to the filing of
11 Aldrich for bankruptcy. That's what's showing here on this
12 slide.

13 Q And you note that 99 percent of the assets were allocated
14 to New Trane Technology and 100 percent of the asbestos
15 liabilities were allocated to Aldrich Pump, correct?

16 A That is right, correct.

17 Q But what percentage of the overall liabilities of Old IRNJ
18 were allocated to New Technology, New Trane Technologies?

19 A Yeah. I, I know Ms. Ryan mentioned that in the, in her
20 rebuttal report -- and it just kind of confused me a little bit
21 -- where -- to answer your question, you know, approximately a
22 hundred percent of the operating liabilities were allocated to
23 New Trane Technologies, you know, which was about \$7 billion.
24 That was a pretty good deal. They got \$14 billion of assets
25 and they assumed \$7 billion of liabilities.

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1 So that was the piece that I didn't really get from
2 Ms. Ryan's rebuttal report. That was just, you know, without
3 that context of getting, you know, two assets for every one
4 liability that was assumed, you know, just seemed a little bit
5 misleading to me.

6 Q And they also got about 90 -- New Trane Technologies also
7 received about 96 percent of the total liabilities of Old IRNJ,
8 correct?

9 A They got -- yeah. I'm not sure what the percentage is, but
10 they got \$7.4 billion of operating liabilities. As I
11 mentioned, they got a good deal. They got \$15.1 billion of
12 assets in exchange for that.

13 Q You don't know the answer to my question?

14 A The percentage of liabilities, I mean, and the numerator
15 would be 315 million and the denominator would be 740, 7
16 billion 442, I don't know, 93, 94 percent of the liabilities,
17 maybe. I'm just doing that in my head.

18 Q In your expert report, Mr. Diaz, you stated that Aldrich
19 and Murray were "saddled" with asbestos liabilities, correct?

20 A That is right, yes.

21 Q But you're not saying that they were stranded with those
22 liabilities, correct?

23 A Yes. I think I used the word "saddled" where a hundred
24 percent of the asbestos liabilities were saddled at Aldrich and
25 a hundred percent of the asbestos liabilities were saddled at

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1 Murray for that restructuring.

2 Q Okay. And in your deposition you -- you said -- you
3 initially used the term "stranded" and then corrected yourself
4 and said, "I think 'saddled' would be a better word than
5 'stranded,'" right?

6 A I, I don't want to debate you. I think you used the word
7 "strand," "stranded," and I said, "I don't think I'd used that
8 word, but if I did, I think 'saddled' is a better word." But
9 I, I don't recall.

10 Q In any event, you think the word "saddled" is better than
11 "stranded," whomever used it first, right?

12 A Yeah. "Saddled" was the word I think is more appropriate,
13 yes.

14 Q Thank you.

15 You have, you've not assessed whether either Aldrich or
16 Murray are insolvent, correct?

17 A So I haven't done a formal solvency analysis, but I think I
18 mentioned earlier in my remarks when I was answering questions
19 from Mr. Wehner that the assets at both Murray and Aldrich were
20 less than the liabilities at both Murray and Aldrich, you know,
21 as part of my initial testimony.

22 Q But you have not done a solvency analysis, correct?

23 A I, I did not do a formal solvency analysis, correct.

24 Q Nor have you assessed whether either Aldrich or Murray are
25 able to pay their debts as they come due, correct?

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1 A Correct. I -- I -- correct. I did not do that.

2 Q Likewise, you have not assessed whether either Aldrich or
3 Murray have unreasonably small capital, correct?

4 A Correct.

5 Q And your expert report does not render an opinion about
6 whether or not the 2020 corporate restructuring resulted in any
7 fraudulent transfers, correct?

8 A So I was not asked in connection with my role here to
9 assess whether there was a fraudulent conveyance. That being
10 said, there's certainly indicia that there was a intent to
11 hinder and delay creditors here, as I mentioned in my
12 testimony.

13 But that being said, I've not investigated whether there
14 was a fraudulent conveyance, but there there's certainly
15 indicia of that.

16 Q You talked about a study that you undertook that supported
17 your opinion that the restructuring here was highly unusual,
18 correct?

19 A That is right. I, I did a, a study to confirm, you know,
20 my individual, my, my judgment that this was highly unusual,
21 correct.

22 Q And you went back five years, correct?

23 A Correct.

24 Q You did not focus your study on pre-petition restructurings
25 by companies that filed bankruptcy to resolve their asbestos

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1 liabilities, correct?

2 A Yeah, no. I did not cherry-pick. I, I put forward certain
3 criteria and based on that criteria a sort of population of
4 bankruptcy cases were identified.

5 Q You performed, as you said, a similar study in the DBMP
6 case, correct?

7 A I -- correct. I did.

8 Q And you didn't focus on asbestos situations there, either,
9 did you?

10 A So again, I'm going to be careful. I'm here as the
11 financial expert for Aldrich and Murray. You know, I think
12 that proceeding was public and I'm talking solely. So I think
13 I can answer that question.

14 So, correct. I did something similar in that case.

15 Q You mentioned possibility of a pre-packaged bankruptcy,
16 correct?

17 A Yes. I, I mentioned that I'm not sure why New Trane or New
18 Trane Technologies would file for bankruptcy, but to the extent
19 that they do want to file for bankruptcy there are certain
20 strategies that one could employ, whether it be a prepackaged,
21 prenegotiated, first day motions, you know, typical bankruptcy
22 strategies that one could employ, one of it being a prepack,
23 correct.

24 Q You don't have any personal experience being involved in
25 pre-packaged or pre-arranged bankruptcies that resolve asbestos

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1 claims, correct?

2 A I think we've talked about this before and I think Coltec
3 was a pretty good example of a pre-arranged bankruptcy. That
4 worked out pretty well and it was, you know, prior to Coltec
5 filing for bankruptcy it gathered creditor support. It
6 resulted in a, a plan. That plan was approved with unanimous
7 support, you know. I think that was a pretty good example of
8 where it was done, you know, in a way that, you know, did not
9 harm, you know, one specific group of creditors.

10 Q And when we talked about this topic in your deposition,
11 Coltec was the only pre-packaged or pre-arranged asbestos
12 bankruptcy you were aware of, right?

13 A You know, look, I think I mentioned this to you. It's a
14 troubling trend where you have big, healthy companies who
15 unilaterally put asbestos creditors into a box and then file
16 them. And, yes, I would love for there to have been pre-
17 negotiated asbestos bankruptcies. But one sort of closest to
18 that, in addition, you know, prior to Coltec, you know, was,
19 you know, we talked about Paddock where there was some
20 prenegotiation happened.

21 But yes, you know, I wish that there would be more of that
22 so we wouldn't see this trend happening.

23 Q And the negotiations for a pre-packaged bankruptcy in
24 Paddock were not successful, right?

25 A I -- like I said, I -- I'm -- I can't speak to that. What

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1 I can just talk to the public record and the public record, I
2 understand that there was an FCR appointed prepetition. There
3 was a group of asbestos plaintiffs prepetition. There
4 ultimately was a settlement. I, I don't know how to put all
5 that together. But, you know, I just, those are the facts, I
6 think.

7 Q You, you gave some testimony about the funding agreements.
8 This'll be my last topic.

9 You stated that it was highly conditional, correct?

10 A Yeah, that's right.

11 MR. TORBERG: Jon, if you could put on the screen Tab
12 11.

13 BY MR. TORBERG:

14 Q This would be the funding agreement in the Aldrich side of
15 the house and direct your attention -- you, you've reviewed
16 this document before, of course, correct, Mr. Diaz?

17 A Yeah, I'm sorry. Thank you for blowing that up.

18 So, so this is the Aldrich funding agreement, June 15th,
19 yes. I, I have reviewed this document, yes.

20 MR. TORBERG: If you'd go to Page 7, Jon. Thank you.
21 And bring out the Conditions to Payment section.

22 BY MR. TORBERG:

23 Q Subsection (d) provides, "The payer's obligation to make
24 payment is subject to the satisfaction of the following
25 conditions as of the date of the funding agreement" -- "funding

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1 request relating to such payment," and then it, and then it
2 goes on.

3 Are, are you aware of any additional conditions to payment
4 other than those set forth in this provision?

5 A You know, look, I mean, I mean, let's just sort of be clear
6 on this. I, I think there's a number of conditions and, you
7 know, I think, you know, pulling a certain section up here, I
8 mean, this, you have to look at the full agreement in the
9 context of my statement.

10 So one is is that -- and we can pull it up in the document,
11 if it's helpful -- I think it's pretty clear that asbestos
12 creditors in bankruptcy cannot get paid during the bankruptcy
13 outside a 524(g) trust. So I think that's a pretty clear
14 condition that if you, the debtors, wanted to pay an asbestos
15 payment today, you can't do that. There's a condition in this
16 document that says you can't do that.

17 Two, if the debtors want to sell this funding agreement,
18 this is your most valuable asset and you sell this to some
19 counterparty, hedge fund, you know, pick some other name,
20 there's a condition in this funding agreement that prevents you
21 from selling this, prevents you from transferring it, you know.
22 I think that is a condition.

23 If the Committee files a competing plan, if the FCR files a
24 competing plan, if a party in interest files a competing plan,
25 you know, once exclusivity expires and that competing plan

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1 wants to assume this agreement, you know, it's a legal
2 question, but I assume that you'd take the position that you
3 can't transfer this document to a trust or to, you know, that
4 isn't confirmed. That is a condition as well.

5 It, I think there's, there may be other conditions, too,
6 but I just think it's a little bit misleading to highlight this
7 one sentence when we're talking about this.

8 Q Okay. Does this provision in, in the funding agreement set
9 forth the conditions by which the payer will honor the payee's
10 request for funding? It's a simple question.

11 A I, I think I've just answered this question. I think it's,
12 you know, cherry-picking.

13 Q Now can you -- you didn't answer my question. You --
14 you -- you went on in direct examination again and told me
15 everything you want to say about the funding agreements. My
16 question is very specific.

17 A Okay.

18 Q And that is does this provision set forth the conditions
19 under which the payor will have to honor the payee's funding
20 requests?

21 A So I think the word on the page says "Conditions to
22 Payments." The words on the page say "The payor's obligations
23 to make any payment is subject to the satisfaction of the
24 following conditions as of the date of the funding request
25 relating to such payment." And I could read the rest of it,

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1 but -- and I think the context that I provided is important to
2 it. But, but I can read that, if that's helpful.

3 THE COURT: Let me suggest at this point that
4 documents say what they say and we're past 5:00 and we have to
5 quit before 6:00. My new landlord effectively charges for, for
6 lights and air conditioning after this time and has the ability
7 to, to monitor that.

8 So in the interest of time, let's move along and let
9 the documents, you can point them out to me in final as to what
10 they say.

11 MR. TORBERG: Your Honor, as would happen, that was my
12 last question, so.

13 THE COURT: Of course.

14 MR. TORBERG: I'm done.

15 BY MR. TORBERG:

16 Q Thank you, Mr. Diaz.

17 A Thank you. Thank you, Mr. Torberg. I appreciate it.

18 THE COURT: Other questions of this witness? Who's
19 up?

20 MR. GUY: Yes, your Honor. Can you hear me?

21 THE COURT: Yea, Mr. Guy, please.

22 MR. GUY: Thank you. I'll, I'll try to be quick,
23 understanding that the Court has a new electricity charge
24 payment.

25 THE WITNESS: Let me just adjust my screen, Mr. Guy.

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1 I apologize.

2 CROSS-EXAMINATION

3 BY MR. GUY:

4 Q Oh, take your time, sir.

5 A Okay. I'm ready. Thank you.

6 Q Good afternoon, Mr. Diaz. As you know, I represent the
7 Future Claimants' Representative, Mr. Grier. I do have some
8 questions for you and I'll try to keep them down.

9 You are not familiar with how asbestos trusts operate,
10 correct?

11 A I think I have a general familiarity with how trusts
12 operate.

13 Q But you're, you're not an expert in that field, correct?

14 A I'm not an expert in that field, correct.

15 Q And you're certainly not an expert with regard to trust
16 distribution procedures, correct?

17 A Correct. I would not consider myself an expert in that.

18 Q And you're not in a position as an expert to advise the
19 Court whether the tort system is superior to asbestos trusts in
20 terms of paying asbestos creditors as opposed to, you know, the
21 tort system as compared to the asbestos trust system?

22 A Yeah. I, I think I would just repeat my answer that I said
23 to Mr. Torberg that I think it depends on what type of
24 creditors there are. You know, for the asbestos creditors who
25 are, who otherwise would have received a hundred million

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1 dollars, you know, last year or this year or the year after,
2 depending on how long these bankruptcy cases go for, I mean, I
3 think it's fairly self-evident that they're better off 'cause
4 they're getting paid now versus waiting to whenever a trust
5 gets formed, if it ever gets formed. And I think I mentioned
6 to Mr. Torberg the issues, the negotiating dynamic, the fact
7 that we don't have a trust here.

8 So I think I would just reiterate those comments, but I, I
9 would say that I'm not an expert on comparing trusts versus
10 tort system, to answer your question.

11 Q Yeah. And that was my generic question, Mr. Diaz, that
12 you're not in a position to advise the Court as an expert --

13 THE COURT: I think you froze, Mr. Guy.

14 Ready to go? Okay. Try that one, again. We didn't
15 hear you.

16 MR. GUY: Oh, I'm sorry, your Honor.

17 BY MR. GUY:

18 Q It was as generic question, Mr. Diaz. I'm just asking that
19 you as an expert are not in a position to advise the Court as
20 to whether or not the tort system is superior to asbestos
21 trusts in terms of compensating asbestos creditors?

22 A Yeah, no. I think, I think I just answered that question,
23 that, yes, I'm not an expert in that, but I, I did provide some
24 commentary based on my expert report that I think is applicable
25 here.

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1 Q Understood.

2 You understand if the preliminary injunction is not
3 entered, current claimants could potentially sue non-debtor
4 affiliates, i.e., return to the tort system?

5 A Yeah. As mentioned to Mr. Torberg, I, I'm not sure what
6 would happen if this injunction was not put into place or was
7 not continued.

8 Q You stole a statement from the ACC's counsel that they
9 believe that the denial of the PI will mean the end of these
10 cases. That's what they want, correct? They want to return to
11 the tort system.

12 A Yeah, no. I would provide the same answer to Mr. Torberg.
13 I'm sorry. I'll give you the same answer I said to
14 Mr. Torberg, that I'm here as the expert in connection with
15 Aldrich and Murray. I can't speak to negotiations that the
16 Committee may be having or not having. I, I just can't speak
17 to that.

18 Q Have you formed any opinion as to whether returning to the
19 tort system would be a good result for the class of current
20 asbestos creditors in this case?

21 A I, I think it is the same answer that I said a moment ago,
22 that for the creditors who otherwise would have been paid
23 during these bankruptcy proceedings, I think it's fairly self-
24 evident. They would be better off. I think that the
25 negotiating dynamic here has harmed asbestos creditors and I

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1 think it's going to make it that much more difficult to get a
2 524(g) trust, if that ever does happen, and, you know, those
3 are my opinions, you know, some of my opinions that I have
4 here.

5 Q Yeah, Mr. Torberg [sic]. I, I want this to go quickly for
6 all of us, including the Court and the Court's staff.

7 I, I'm just asking whether you formed an opinion that a
8 return to the tort system will be a good result for the class
9 of current asbestos creditors, not individual creditors, but
10 the class as a whole? And either you have or you haven't.

11 A Right. So I would repeat my answer that I believe that
12 asbestos creditors were harmed as a result of the
13 restructurings and the bankruptcy filings.

14 But that being said, I don't have an opinion via the,
15 whether there's a trust some day that is formed and what that
16 looks like and hypothetically, how that treats, you know, how
17 that treats victims and how that compares to the tort -- I
18 don't have an opinion on that.

19 Q And I assume that you haven't formed an opinion as to
20 whether it would be a good result for future asbestos
21 creditors, a return to the tort system?

22 A Yeah. I, I don't mean to rehash my opinions on this. You
23 know, I think my opinions are pretty clear that asbestos
24 creditors were harmed by the restructuring, that asbestos
25 creditors, their negotiating dynamic was harmed by that. You

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1 know, may that, will that impact a future 524(g) trust that may
2 benefit the futures, I mean, that's a bunch of hypotheticals.
3 But I think asbestos creditors' negotiating position was
4 harmed. I think that's pretty clear and I think that, you
5 know, colors my answer to your question.

6 Q Yeah. We'll, we'll get to the harm to the negotiation
7 position in a minute. My question was more as to whether you
8 understood what the result would mean for a class, but I'm not
9 going to belabor it.

10 When we took your deposition I think you said, acknowledged
11 that companies that are large, robust, and healthy companies
12 today may be bankrupt, you know, ten years from now and we all
13 know instances of that, Kodak, GM, Chrysler, and the like.

14 You, you agree with that concept? We, we don't have
15 certainty with a company that's solvent today will be solvent
16 20 years from now?

17 A Yeah, no. So I, I would -- you know, Mr. Torberg asked me
18 is it realistic for, you know, this company, you know, to file
19 for bankruptcy, given how valuable it is today, and what I said
20 to him was I don't know. I haven't thought about that. I
21 don't know, you know, if it's realistic or not.

22 I, you know, what I would say is that New Trane and New
23 Trane Enterprises is a pretty good space right now. They do
24 climate solutions in the post-COVID era. Their stock price
25 went from a market capitalization of \$20 billion when the

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1 market cap, you know, when they did the restructuring back in
2 May. Today, it's 43 billion. So it doubled.

3 Look, you know, in 30, 40 years could something happen to
4 this company? I don't know. I mean, maybe this company's
5 worth \$200 billion at that point of time. But, you know, look,
6 there's clearly some uncertainty, but this is a pretty good
7 company, I think, to bet on. It's a -- I'm sorry - it's a
8 pretty good company in terms of -- I'll scratch that comment --
9 pretty good company right now in terms of value and I'm not
10 sure how realistic it is, you know, down the road of what
11 happens to it.

12 But that being said, I do not, I don't have a crystal ball
13 of, of what's going to happen in the future, you know, with
14 these companies.

15 Q So you can't tell the FCR or the Court if Trane is going to
16 be a vibrant, healthy company 20 years from now, can you? No
17 one has that crystal ball?

18 A No. I think what I can tell the Court is is that today the
19 company is worth \$43 billion. What I can say is is that it's
20 in a climate solutions business in a post-COVID era. That's
21 pretty good. So, you know, I think the Court and principals
22 can make, you know, whatever judgment they can.

23 But you're right. I don't have a crystal ball.

24 Q Mr. Diaz, I want to, I want you to assume a hypothetical
25 for me, that the ACC is successful in achieving what they want

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1 here, which is a wholesale return to the tort system and
2 effective dismissal of these bankruptcy cases. I want you to
3 assume that Trane continues to be a healthy company, but 20
4 years from now it's insolvent, for some reason, we don't know.
5 There will be no money at that point to pay future creditors.
6 I want you to assume that.

7 That's not a good result for futures, is it?

8 A So let me, let me parse that a little bit. So, I mean, I
9 think in the first part of the statement you said the ACC wants
10 to return to the tort system. You know, as I, as I said all
11 day, I'm the financial advisor. I'm the expert. I don't know
12 if that's true or not. I can't speak for the ACC. So put that
13 aside.

14 If, if one wants to -- if you take this big, valuable
15 company and 20 years from now you're saying it's now bankrupt
16 and you're saying that there's no money left over for the
17 futures, is that a bad result? Is that your hypothetical?

18 Q Correct.

19 A So, I mean, under that hypothetical and, you know, as I
20 mentioned, that feels, you know, very rare to me, you know,
21 given the numbers we just talked about. It would not be a good
22 outcome if the futures got zero in that hypothetical. I think
23 that the futures -- and just talking generally -- have more
24 risk than just that, you know. In 20 years, there's a lot of
25 other risks that the futures are taking if you're not in the

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1 tort system, if you have a trust. I think the futures are
2 taking the risk that in 20 years that the trust still has money
3 in 20 years. I think the futures are taking the risk that
4 they're estimating in 20 years and I think one would have to
5 balance the risks of a company that's currently \$42 billion,
6 you know, whether that has assets 20 years from now, whether,
7 or, you know, whether, you know, if there's a trust. I think
8 people have to balance all that.

9 Q I want to be sure I understand one of your objections to
10 the debtors' bankruptcy and what I've heard you say -- and I
11 don't want you to tell the courtroom again. I just want you to
12 say if there are others that we haven't heard yet.

13 I've heard you say that the pre-petition corporate
14 restructuring is unusual, I've heard you say the asbestos
15 creditors are harmed because they're not being paid from the
16 bankruptcy, and I've heard you say that the debtors have no
17 incentive to exit bankruptcy promptly. And the last thing I
18 think I've heard you say -- and I'm not sure this is in the
19 report so crispy -- but the bankruptcy has impacted the
20 leverage of asbestos creditors. Do I have that right, fair
21 summary?

22 A You know, I'm trying not to rehash, you know, what I've
23 said and I'm cognizant I'm not rehashing, you know. I think
24 that, I think I could summarize it a little bit differently.

25 THE COURT: Gentlemen, in the interest of time, I've

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1 heard the testimony. I know what he said. Is there anything
2 else that hasn't been discussed previously that you find is, is
3 disadvantageous then?

4 MR. GUY: That's my question, if there's any -- if
5 there's nothing else to add, I'll move on, your Honor. I was
6 trying to get him --

7 BY THE COURT:

8 Q Is there anything else, Mr. Diaz, that we haven't discussed
9 previously that would be harmful to the creditors?

10 A Yeah, no. I think my, my testimony is pretty clear on
11 that.

12 Q All right.

13 THE COURT: Next question.

14 MR. GUY: Thank you.

15 BY MR. GUY:

16 Q Mr. Diaz, corporate pre-petition restructurings, let's
17 assume they're unusual. Unusualness isn't a legal objection to
18 a bankruptcy, is it?

19 A I mean, I'm a financial guy. I can't comment on whether
20 that's a legal objection or not, but, you know, we can -- I'm
21 glad to talk about it from the financial perspective.

22 Q That's fine.

23 And pre-petition corporate restructurings aren't illegal,
24 either, correct?

25 A Pre-petition corporate restructurings are not illegal.

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1 Same, same answer. I'm happy to talk about it from the
2 financial perspective. I'm not a lawyer. I can't talk about
3 that from a legal perspective.

4 Q If all the Trane companies had filed for bankruptcy, the
5 asbestos creditors would be stayed from bringing actions
6 against anyone, correct?

7 A If all of the Trane companies filed for bankruptcy,
8 including the entities that held the asbestos liabilities, I
9 would assume that those asbestos liabilities would be blocked
10 by the automatic stay, but there also would be the same
11 injunction issue that is here of whether they could sue, you
12 know, the so-called protected parties, you know, unless those
13 were protected, too, by an injunction.

14 Q You mean, the insurers? I think everybody agrees that they
15 are already protected.

16 Are you thinking of anybody else?

17 A There are -- I think the injunction is seeking to protect
18 204 non-debtor affiliates, 15 putative indemnity parties, and
19 182 insurers, which are, collectively, the protected parties.

20 So in your hypothetical, I, I don't know if those are
21 protected, too. So that was just more my observation.

22 Q Do you understand that the automatic stay kicks in
23 immediately when a bankruptcy filing is made?

24 A In, in connection with the debtor, yes.

25 Q Correct.

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1 And there's no exception to the automatic stay for asbestos
2 bankruptcy cases, right?

3 A You know, I, I think you're -- sure, but if there is a
4 company that did not file for bankruptcy and there's a cause of
5 action that a victim has, you know, I'm not sure that would go
6 away unless there's an injunction.

7 Q And there's no exception for bankruptcy cases that follow a
8 corporate restructuring? In other words, there's no preclusion
9 from a debtor filing for bankruptcy following a corporate
10 restructuring, correct?

11 A I mean, I think you're asking me more legal questions. I
12 mean, I'm happy to answer financial questions, but I'm not a
13 lawyer unless I'm missing the point of the question.

14 Q What I'm trying to understand, Mr. Diaz, is you're
15 supporting the ACC's argument that they should be allowed back
16 into the tort system and you would agree with me that a
17 fundamental bankruptcy principle is equal treatment for all
18 creditors, correct?

19 THE COURT: I would.

20 MR. GUY: Thank you, your Honor.

21 THE COURT: I think that's an adjudicated fact based
22 on the priority --

23 MR. GUY: Right.

24 THE COURT: -- system.

25 Let's go.

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1 MR. GUY: All right. I'll move on.

2 THE COURT: Okay.

3 THE WITNESS: Thank you, your Honor.

4 BY MR. GUY:

5 Q But, Mr. Diaz, you do agree with me that 524(g) also
6 requires that asbestos creditors, current and future, should be
7 treated the same, correct?

8 A If, if you -- from a financial standpoint, if you have a
9 confirmed 524(g) plan, I understand there's certain rules of
10 how creditors should be treated.

11 Q So these cases share the same characteristics of all other
12 asbestos bankruptcy cases where the stay applies and in the
13 future asbestos creditors will be compensated through a trust,
14 correct?

15 A I mean, Mr. Guy, we, I, I don't think we know that. I
16 think what we do know is is that asbestos creditors have been
17 put into a box, asbestos creditors have, are in bankruptcy
18 right now. I, I don't know if a 524(g) will happen down the
19 road. If it does happen, I guess we'll find out what that
20 524(g) looks like. But we don't have a plan right now. We
21 don't have a 524(g) trust right now. It's, it's very hard for
22 me to comment on, on how that's going to look.

23 Q You said that the asbestos creditors are put in a box
24 because of the corporate restructuring. That's exactly what
25 happened in Paddock, right?

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1 A So, so again, you know, being careful just to talk to
2 public information, I think I did say to Mr. Torberg that I
3 think there was a divisive merger and -- or not divisive merger
4 -- there was something that happened under the Delaware statute
5 and there were liabilities that were put into Paddock and there
6 were assets that was put into Owens Illinois. I think I
7 mentioned that to Mr. Torberg.

8 MR. GUY: If Jon could pull up the declaration, which
9 I think is Exhibit No. 10 in the Court's binder.

10 BY MR. GUY:

11 Q What I'm showing you, Mr. Diaz, is the declaration of David
12 Gordon, who is the President and Chief Restructuring Officer of
13 Paddock. And this was filed January 5, 2020.

14 Now I know that you and your colleagues are very serious
15 and you're quite diligent in attending hearings and reviewing
16 filings and pleadings and from the role that you've taken in
17 our case. Can you tell the Court if you've seen this
18 declaration before? And it's the first day declaration.

19 A So in connection with my role as the expert engaged by the
20 Aldrich and Murray Committees, this is not a document that I
21 considered in putting together my, my expert report or prepare,
22 or preparing for my comments today.

23 Q I, I understand, Mr. Diaz, but what I'm asking is have you
24 seen it before in any capacity?

25 A So in any capacity in connection with my role where I'm a

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1 financial advisor to the FCR and the Committee at Paddock, I
2 have seen this document before, although it's quite, quite some
3 time ago.

4 Q Right.

5 And I want to move through this quickly, but if you need to
6 look at the declaration to refresh your recollection, please
7 do. And I'm going to point to specific paragraphs to make it
8 easy and to facilitate things.

9 You agree with me, don't you, that Owens Illinois have
10 massive asbestos liabilities relating to its insulation
11 product, Kaylo?

12 UNIDENTIFIED SPEAKER: This is all based on --

13 BY MR. GUY:

14 Q I beg your pardon?

15 THE COURT: I'm not sure who spoke.

16 THE WITNESS: That wasn't me. I heard somebody else
17 speak. So I'm being quiet.

18 THE COURT: Go ahead, Mr. Guy.

19 MR. GUY: I'll, I'll repeat it.

20 BY MR. GUY:

21 Q And I just want to move through this quickly, Mr. Diaz.
22 And I'm, and if you don't remember, just look at the
23 paragraphs.

24 Do you agree with me that Owens Illinois had massive
25 asbestos liabilities related to the insulation product, Kaylo?

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1 A Yeah. I don't, I don't recall. Does that say that here in
2 Paragraph 1? I'm just getting close to the screen so I can
3 read this.

4 Q Paragraph 7, Mr. Gordon talks about the product, Kaylo. He
5 says, "The debtor is annually subject to hundreds of claims and
6 lawsuits alleging personal injuries and death from exposure to
7 asbestos-containing products manufactured under the Kaylo
8 brand."

9 Do you remember that?

10 A Yeah. It's been a while ago, but I, I mean, I think the,
11 the document speaks for itself.

12 Q It does, but I want to get it in the record. And
13 obviously, we can refer to it later.

14 A Okay.

15 Q If you look at Paragraph 12, the debtors valued their
16 asbestos liabilities up to \$722 million, do you see that?

17 A No.

18 Q Paragraph 12. You see it is sub numeral (2), "Estimate
19 that the reasonable possible lawsuits could result in asbestos-
20 related tort expenditures up to \$722 million," do you see that?

21 A Yeah. I just, that, that number seems -- I'm just going
22 from memory, but that number seems high to me. I thought the
23 number was substantially less than that.

24 Q All right.

25 And you remember that the debtor filed for bankruptcy on

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1 January the 5th, 2020, correct? You do remember that?

2 A Yes. It sounds right.

3 Q And you do remember that the corporate restructuring that
4 it underwent under Delaware law took place in December 2019,
5 the prior month, correct?

6 A Correct.

7 Q And you do know that the parent of Paddock is a publicly
8 traded company, OI Glass, Inc., correct?

9 A I do. I do know there's a parent, which is publicly
10 traded. I forget the exact name, but that sounds right.

11 Q And do you know that that is a multi-billion dollar
12 company?

13 A You're talking about like assets or -- what, what do you
14 mean by "multi-billion"? What, what measures that?

15 Q Market capitalization.

16 A I haven't looked at it recently, but it's, it's probably
17 two or three, you know, it's probably two or three billion, or
18 something like that.

19 Q Right.

20 And you also know that in that case they had a very similar
21 structure that we have here in terms of a funding agreement,
22 correct?

23 A You know, again, I mean the documents in Paddock speak for
24 themselves. I'm just getting uncomfortable wearing two hats,
25 my Paddock hat and my expert Aldrich hat. You know, I think

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1 the record's pretty clear in Paddock that there's documents,
2 there were funding agreements that were filed. I mean, I think
3 that's pretty clear. You may be able to put that in front of
4 me and I can kind of also say that, too.

5 But I just, it's hard for me to bifurcate my knowledge from
6 being a consulting advisor to that group versus, you know, what
7 I know from the public record.

8 Q Right. And, Mr. Diaz, I'm not trying to put you in a
9 difficult position. I don't want you to reveal any privileged
10 information. I'm only asking you about a publicly filed
11 document, first day declaration.

12 And what I'm trying to understand is what is the principal
13 objection to the corporate restructuring here from the ACC as
14 opposed to its complete acceptance of it in Paddock. Because
15 at the end of this process -- and you keep on saying that,
16 "Well, they lost leverage here. They lost leverage here. They
17 were put in a box. Makes it hard for them to negotiate" -- and
18 here, the ACC has negotiated a \$610 million settlement in a
19 matter of months, correct?

20 A I think we've been through this with Mr. Torberg. He asked
21 me a similar permutation of your question, Mr. Guy. So I'll
22 just repeat that and I apologize for rehashing that.

23 You know, I think it's pretty clear that I've said a couple
24 times I'm not the guy for handling the negotiations on behalf
25 of the Aldrich or Murray Committees. You know, I have an

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1 expert here. I'm an expert here. We talked about a moment ago
2 what my opinions were. I didn't, I didn't say what my --
3 that -- I didn't have anything in my opinions about the actual
4 negotiations. I think that's been pretty clear.

5 I also mentioned just a moment ago that I am a little bit
6 uncomfortable that you're asking me about what the Committee is
7 thinking about in terms of their mediation in Paddock. You
8 know, obviously, that's not something -- I'm not sure I even
9 know that answer and I'm not sure I can talk about that. So --
10 and I apologize if I'm rehashing that.

11 But, you know, I think, I think that's the answer.

12 Q I appreciate that, Mr. Diaz, but I'll tell you what my
13 reaction was when I started researching Paddock. I had a
14 really hard time reconciling everything that we were hearing
15 from the ACC about how horrible this case is, what, it's
16 collusion, it's sham, it's a fraudulent transfer, and it's the
17 worst thing ever. It's a scourge on bankruptcy. And your
18 testimony, too, saying, "Well, this is terrible," you know.
19 "People are going to use this to isolate liabilities," and then
20 in Paddock that's exactly what happening and not only that,
21 they were involved, as you just testified, perpetration in
22 discussions with the debtors.

23 So I don't want you to reveal anything privileged and if
24 your answer is you don't know, that's fine, too, sir. But to
25 the extent you can as an expert who has told the Court that you

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1 think it's better for the asbestos creditors to go back to the
2 tort system, how can you reconcile that with the position that
3 was taken, if you can, in Paddock?

4 A I'll try to answer the question differently so we don't
5 rehash this. I think my opinions here are pretty clear. I
6 think asbestos creditors were, were put into a box. I think
7 asbestos creditors --

8 THE COURT: Okay. Let's not do that. I heard all
9 that before. I think it is unfairly calling upon him to opine
10 why the Committee did what it did in the other case and he
11 doesn't represent the Committee in Paddock. In this
12 circumstance, he's the expert.

13 You've made your point, Mr. Guy. You can tell me
14 about the similarities between Paddock and this case and we'll,
15 we'll talk about that in final argument tomorrow.

16 But I don't think he, he needs to be pressed on why
17 did the Paddock Committee take the position it did if, to the
18 extent that it's not already on the public record there.

19 MR. GUY: Understood, your Honor. I was just trying
20 to see if he had a position.

21 THE COURT: You made the point loud and clear. I
22 understand the, the issue.

23 MR. GUY: Thank you, your Honor.

24 I have no further questions.

25 THE COURT: All right.

1 Anyone else this witness? Anyone?

2 (No response)

3 THE COURT: All right, Mr. Diaz. You are excused.

4 It's about a quarter, almost a quarter till 6:00.

5 Any other matters that we need to attend to before we
6 take a recess tomorrow?

7 MR. HIRST: Morgan Hirst for the debtors, Judge.

8 Nothing. We'll see you in the morning. Thanks for
9 your patience today.

10 THE COURT: How are we doing on time in terms of -- I
11 don't know if anyone has an estimate or the witness tomorrow
12 and then what we're going to look at in argument.

13 MR. HIRST: So, your Honor, for the debtors'
14 perspective -- and we'll be putting on Mr. Kuehn -- we expect
15 the direct similar to Ms. Roeder's yesterday. So very short.

16 THE COURT: Okay.

17 MR. HIRST: I don't know what the Committee has in
18 store on cross but if it's similar, I think it'll be a very
19 short witness and then we'll be moving into argument.

20 THE COURT: Okay.

21 Does anyone feel the need to start any earlier than
22 9:30 Eastern?

23 (No response)

24 THE COURT: I think we can all reach. All right, very
25 good.

1 MR. HIRST: I think we'll be good, yep.

2 THE COURT: Okay, very good.

3 Well, we will recess at this point and pick up again
4 tomorrow morning.

5 MR. HIRST: Thank you, your Honor.

6 MR. ERENS: Thank you, your Honor.

7 (Court recessed for the day at 5:42 p.m., to reconvene at
8 9:30 a.m. on Friday, May 7, 2021)

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CERTIFICATE

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14 I, court approved transcriber, certify that the
15 foregoing is a correct transcript from the official electronic
16 sound recording of the proceedings in the above-entitled
17 matter.

17 /s/ Janice Russell

May 18, 2021

18 Janice Russell, Transcriber

Date

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