UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Friday, May 7, 2021
	:	9:30 a.m.
	:	
ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	AP 20-03041-JCW
Plaintiffs,	:	
v.	:	
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

VOLUME 3

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

Audio Operator: COURT PERSONNEL

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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P R O C E E D I N G S

(Call to Order of the Court)

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

All right. We're back in the Aldrich Pump and Murray Boiler versus Those Parties adversary, preliminary injunction hearing at the moment.

I don't think I have a new list of appearances here, but let me do, as we've done in the past two days, call on the parties by, to announce which attorneys will be appearing for you this morning, starting with the debtors.

MR. ERENS: Good morning, your Honor. Brad Erens, E-R-E-N-S, from Jones Day on behalf of the debtors. I'll be doing the closing arguments. In addition, we have Mr. Jim Jones, who will be doing the direct examination of the witness that we have left.

THE COURT: All right.

Anyone else?

MR. MILLER: Good morning, your Honor. Jack Miller and Rick Rayburn, Rayburn Cooper & Durham, local counsel for the debtors.

THE COURT: Very good.

MR. RAYBURN: Good morning, your Honor.

THE COURT: Anyone else on the debtors' side announcing? Don't feel compelled, only if you feel the need to be on the record as here.

(No response)

THE COURT: All right.

How about for the ACC?

MR. MACLAY: Good morning, your Honor. From the ACC, Ms. Carrie Hardman will be appearing today as will I. And possibly, other people will show up, but probably going to be the two of us.

THE COURT: Okay, very good.

FCR?

MR. GUY: Good morning, your Honor. Jonathan Guy. Mr. Grier, I believe, is dialed in. I'm with my colleague, Debbie Felder. And it's just the two of us, your Honor.

THE COURT: Okay.

How about affiliates?

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter & English, on behalf of the non-debtor affiliates.

THE COURT: All right.

And anyone else needing to announce? Others?

(No response)

THE COURT: Okay.

Are we ready to proceed? We had one witness left, I think, on the preliminary injunctions and then we had final arguments.

I see you've delivered some demonstratives this

morning.

Are there any preliminary matters or we're ready to call that one witness?

MR. ERENS: Your Honor, we're ready to go.

THE COURT: Okay. Now I do not recall from Day 1 whose witness this was. So can someone clue me in as to who's going to be doing the examination and who the witness is?

MR. JONES: I have the clues, your Honor. This is Jim Jones for the debtors --

THE COURT: Okay.

MR. JONES: -- from Jones Day.

I will be doing the examination on behalf of the debtors and Mr. Kuehn, who is, hopefully, appearing on your screen and will say a few words, is ready to be sworn in as the witness.

MR. KUEHN: Good morning, your Honor. This is Chris Kuehn.

THE COURT: All right, sir. There you are. Very good.

Everyone see the witness?

(No response)

THE COURT: Anyone having any other preliminary matters before we go ahead and get Mr. Kuehn sworn?

(No response)

THE COURT: All right.

Mr. Kuehn, if you'll raise your right hand.

CHRISTOPHER KUEHN, PLAINTIFFS/DEBTORS' WITNESS,

ADMINISTERED OATH

THE COURT: All right, Mr. Jones. The witness is with you.

MR. JONES: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. JONES:

Q Mr. Kuehn, could you introduce yourself to the Court?

A Yes. My name is Christopher Kuehn. I'm the Senior Vice President and Chief Financial Officer for Trane Technologies PLC.

Q And, Mr. Kuehn, where are you testifying from today?

A I'm in Davidson, North Carolina today.

Q And are you at Trane's offices there?

A Yes, I am.

Q All right. Thank you.

How long have you been with Trane Technologies PLC?

A I've been with the company approximately six years.

Q And in what capacity before the, your current capacity did you serve?

A I came into the company as the Vice President and Chief Accounting Officer and then in March of 2020 became the Chief Financial Officer of the company.

Q And we've heard some testimony over the course of the last

couple days, Mr. Kuehn, to which you were not privy, but in any event, concerning the 2020 corporate restructuring involving certain affiliates of Trane.

Were you an officer or a member of the board of managers of either of the companies that underwent the divisional mergers about which we've heard?

A Yes, I was.

Q Which companies were you a member of either the board of managers or for whom you may have, or for which you may have served as an officer?

A For Old IRNJ, I was a member of the board of managers and also the Senior Vice President and Chief Financial Officer of that entity. And then for Old Trane or Old Trane U.S. Inc., I was a Vice President at that company.

Q And are you an officer or a member of the board of the managers, board of managers of any of the newly created companies that were created and formed as a result of the restructuring?

A Yes, I am.

Q And which are those?

A For Trane Technologies Company LLC, I am a member of the board of managers and also Senior Vice President and Chief Financial Officer of that entity. And then for New Trane U.S. Inc., I am a Vice President of that entity.

Q And when you say "Trane Technologies LLC," we have referred

over the last couple days to that as New Trane Technologies.

Can we do that with, today, when you and I speak?

A Sure.

Q And, Mr. Kuehn, have you ever been a member of the board of managers of the debtors?

A No, I've not.

Q And have you ever been an officer of the debtors?

A No, I've not.

Q And it is fair to say, given what you just shared with us about your roles for some of these affiliates, that you are familiar with Project Omega, as we've heard it described over the last couple days?

A Yes, I am.

Q And in, in your own words and your own observation, what was Project Omega?

A The project was to evaluate options with respect to fully, fairly, finally resolving the asbestos claims in the company, one option being remain in the tort system, the other option being evaluating a bankruptcy trust, whether that was an option for the company or not.

Q And you had a role in Project Omega, I take it?

A Yes, I did.

Q And what was your general role with respect to the project?

A When the project started I was the Chief Accounting Officer for the company. So my role was to evaluate operating

companies that would have been considered as part of the corporate restructuring and part of the debtors' structure as well as evaluating accounting and disclosure obligations depending on the options considered or conclusions reached.

Q And you may have already captured it, but in your understanding what was the objective of Project Omega?

A Yeah. The, the objective was to evaluate options to fully, fairly, finally resolve the asbestos liabilities in the company, again putting the resources and the people in the right position to make a good decision whether to remain in the tort system or to evaluate other alternatives.

Q And when you were assessing those alternatives was there any consideration of the interests of the claimants in the tort system?

A Yes.

Q And in what way were their interests considered?

A Well, No. 1, we wanted to make sure that all valid claims could be paid. So to ensure that funding capacity was available, whether it be cash on hand in the companies, cash generated from operating companies, the insurance assets that were available to the, the two categories of, of asbestos we manage in the company, and then as well as the funding agreement that was established that should that cash not be sufficient, that a funding agreement would be the backstop to ensure the cash is available to pay valid claims.

Q And were you of the view that, as you understood the restructuring, that the paying power of the prior two entities that no longer exist as a consequence of the restructuring, Old IRNJ and Old Trane, that their paying power was preserved after the restructuring as, as that paying power could be applied by the two entities that were allocated the asbestos liabilities?
A That's correct. The paying power before and after has not changed with the entities that have the funding obligation and the funding agreement.
Q Let me ask you, sir, since you mentioned the funding agreement, to take a look at two exhibits, 72, Debtors' Exhibit 72 and Debtors' Exhibit 73, which I believe you have before you.
MR. JONES: And I believe the Court has available.
BY MR. JONES:
Q Are these the --
THE COURT: Uh-huh (indicating an affirmative response).
BY MR. JONES:
Q -- funding agreements to which you just referred?
A Yes, they are.
Q And, and are these the funding agreements that you indicated preserved the paying power of the former companies which held the liabilities before the 2020 corporate restructuring?

A Yes, they are.
Q And are the, are the funding agreements capped?
A No, they're not.
Q Are they loans?
A No, they're not loans.
Q Do they have repayment obligations?
A There's no repayment obligations with respect to the funding agreements.
Q And when you were involved in Project Omega did you have a role, ultimately, then of approving the, the divisional mergers on behalf of the enterprises that were split and no longer existed afterward?
A Yes. At, at that time when that restructuring occurred in May of 2020 I was the Chief Financial Officer for the company, but I was a member of the board of managers and Senior Vice President and Chief Financial Officer of Old IRNJ. So ultimately approved that corporate restructuring based on that responsibility.
Q And, and very briefly, why did you do that?
A You know, the continued focus was we thought that this was a good opportunity to put the resources and the people into position to evaluate options with respect to, you know, fully, fairly finalizing the, the asbestos liabilities for the company. And so approved that to then give those directors of those new companies the ability to evaluate their options --

Q And --
A -- to how best to resolve that.
Q Thank you, sir.
And back to the funding agreements just for a moment, are the funding agreements available as a backstop that may be utilized to fund a 524(g) trust as it may be established in this chapter 11 case, or cases?
A Yes. Yes.
Q And have you yourself made an inquiry into whether the two new companies, New Trane Technologies and New Trane, have been called upon to meet their obligations under these funding agreements?
A Yes. I, I made inquiries over the last few weeks just understanding any requests that have been made of those entities and, and there were requests made last year and, and cash transfers were made to those two entities in the June 2020 timeframe for approximately $20 million. I recall roughly $15 million was transferred to the Aldrich entity and $5 million was transferred to the Murray entity.
Q And will Trane Technology, New Trane Technologies and New Trane satisfy those requests and comply with the terms and conditions of the funding agreements going forward?
A Yes.
Q Including requests made to fund trusts that may be formed as a part of a plan of reorganization in these chapter 11

cases?

A Yes.

Q And have you become familiar with the financial resources that are available to New Trane Technologies and New Trane to meet these obligations?

A Yes, I have.

Q And you from time to time review the financial statements as they may be created for these two enterprises, is that right?

A That's correct.

Q And at the year end 2020, at year end 2020 could you share with us the net equity of New Trane Technologies?

A Yeah. At the end of December 2020 New Trane Technologies Company LLC had net equity of about $7.8 billion.

Q And what would be the same figure for New Trane?

A That amount was approximately $3 billion of net equity.

MR. JONES: Your Honor, I have no further questions for this witness.

THE COURT: Mr. Guy, any questions on behalf of the FCR?

MR. GUY: Yes, your Honor. If you give me a second to get my own screen up.

DIRECT EXAMINATION

BY MR. GUY:

Q Mr. Kuehn, can you hear me okay?

A I can, Mr. Guy. Yeah, loud and clear.
Q Good morning. My name is Jonathan Guy. As you know, I represent the Future Claimants' Representative. I have a couple of questions for you.
In your role as the CFO you on occasion were called in to approve settlements with various asbestos plaintiffs, correct?
A Yes, that's correct.
Q I don't want you to talk about any individual names or any individual amounts, but is it accurate to say that over the course of your review of those settlements there was disparate recoveries across the country dependent, in part, as to where the claim was brought and who the lawyer was who brought it?
A Yes. I would agree with that.
MR. GUY: No further questions, your Honor.
THE COURT: Anyone for the affiliates, any questions?
(No response)
THE COURT: All right. We'll go over to the ACC, then.
MS. HARDMAN: Good morning, your Honor.
THE COURT: Morning.

CROSS-EXAMINATION

BY MS. HARDMAN:
Q Good morning, Mr. Kuehn.
A Good morning, Ms. Hardman. How are you?
A I'm doing well. How are you?

A Doing fine, thank you.

Q Long time no see.

Well, I have a few questions for you this morning and hopefully, there is no reverb this morning. But if we end up having any issues where you can't hear me or we don't hear you, there may be an interruption here or there, just as an FYI.

So just to go over very quickly, you just testified, Mr. Kuehn, that you're currently the CFO of Trane Technologies PLC, is that right?

A Yes. Senior Vice President and Chief Financial Officer of Trane Technologies PLC.

Q And in addition to your work at Trane Technologies PLC, you said that you were the Vice President and CFO of current Trane U.S., is that right?

A For current Trane U.S. Inc., I am a Vice President of that entity.

Q But not the CFO, right?

A I am not the CFO of that entity.

Q Okay. You are also a board member of the current Trane U.S. Inc., is that right?

A I'm not a board member of that entity.

Q Okay. And in addition to your roles at Trane Technologies PLC and as the Vice President of Trane U.S. Inc., you currently hold several roles at Trane Technologies Company LLC, right?

A For Trane Technologies Company LLC, I'm a member of the

board of managers as well as the Senior Vice President and Chief Financial Officer of that entity.

Q Okay. And Trane Technologies Company LLC did not exist prior to the corporate restructuring, right?

A The entity, I think, was referred to as Old IR, or IRNJ, but it did not exist prior to the corporate restructuring.

Q And you mentioned that you were a board member of Trane Technologies Company LLC today, right?

A Correct.

Q Were you a board member when Trane Technologies Company LLC was registered and organized in Texas?

A Yes, I believe I was.

Q Okay. Is it fair to say that your work is for the Trane Technologies enterprise rather than for any individual company within the corporate structure?

A My responsibilities extend at the enterprise, but also if I'm an officer of a company within the enterprise -- 'cause you have a couple of hundred legal entities -- then I think the responsibility carries for both.

Q Okay. And is it Trane Technologies PLC that cuts your paychecks?

A It's a legal entity in the U.S. that, I believe, cuts the paychecks, but I viewed it as, since I'm the CFO at the enterprise level, I viewed it as the, the PLC is the one that ultimately makes the decisions for my pay.

Q Okay. And just a couple questions about the operations of the Trane enterprise.

You previously testified that the Trane enterprise has approximately ten independent distributors or franchises, is that right?

A The, the commercial HVAC business in the U.S. has approximately ten independent franchises remaining of which the company's been buying back a few of those franchises on an annual basis.

Q That's right. I recall you mentioned that.

And two of those franchises were acquired at the end of 2020, is that right?

A Yes, that's correct.

Q Okay. And you previously testified that the goal for Trane is to own a hundred percent of those franchises, is that right?

A That would be our intention. These franchises have, generally, a life to them with the current owner of the entity. Many of these owners are in their 80s and they're evaluating, you know, the right time to sell it back to Trane.

So that's why we're seeing, really, the nature of these transactions happening now, is really just the age of the current owners.

Q And on average, you previously mentioned that Trane is about 95 percent of the way to that hundred percent, is that right?

A In the U.S., that's correct.
Q Okay. So when the debtors say that there might be harm to the franchisees if the preliminary injunction is not granted, we're talking about a very small number of franchisees left, right?
A It's a small number, but they generally represent cities in terms of their geography or their license that they have.
So they may be small in relation to the total of the U.S., but they would be negatively impacting a given city in terms of serving customers in that, in that geography.
Q But the, the number of franchises left is somewhere in the eight-to-ten range, is that right?
A That's correct.
Q Okay.
So shifting gears back to Project Omega that you mentioned earlier, you had previously told us and I think you said today that the purpose is to evaluate the enterprise's asbestos liabilities, is that right?
A It was to evaluate options with respect to fully, fairly resolving the asbestos liabilities within the company.
Q And there -- you mentioned today that there were two options considered in Project Omega to resolve those asbestos liabilities?
A I'm aware of two options, that being, you know, remaining in the tort system or evaluating, you know, a bankruptcy trust.

I think when the debtors were formed they may have evaluated other options at that time, but I'm not aware of, of that. That was made by the managers and employees of those entities.

Q And you were involved in Project Omega right up until and including the day that the corporate restructuring occurred, correct?

A Yes, that's correct.

Q And throughout that time you have previously testified you were unable to identify any other options considered under Project Omega besides the tort system and this permanent and efficient resolution of asbestos matters, as you mentioned, right?

A Those are the two that I'm familiar with, yes.

Q You had told us during your deposition as well that the permanent and efficient resolution of asbestos matters refers to bankruptcy, right?

A I believe that was one option. We thought that that was a more efficient way to ultimately resolve the, the bank, the asbestos matters and may actually accelerate some of the claims being resolved.

So it was -- that was why -- one of the reasons why we evaluated that option.

Q So the rationale behind each of the steps in that corporate restructuring and Project Omega was to enable Trane to permanently and efficiently resolve those asbestos claims, is

that right?
A First, it was really to allocate asbestos assets and liabilities to the new entities and then give those entities the resources, the people necessary to make a decision, stay in the tort system where they were or to make a different decision available to them.
Q I'm just asking about the rationale behind the steps.
So the overall rationale was to permanently and efficiently resolve the asbestos claims, is that right?
A Can you repeat the rationale over which steps, Ms. Hardman?
Q Just the rationale behind all of the steps that you've mentioned. The purpose was to permanently and efficiently resolve the asbestos claims, is that right?
A These are the steps given to us by counsel to then allow those new entities the ability to make or have options in front of them with which to permanently, fairly resolve those claims. It could have been through maybe the, the tort system, but we saw a more efficient way to get that done through, possibly, this bankruptcy trust or through that option that they were then given a chance to, to effect.
Q Right. I'm just asking about the rationale, not, not about the steps. But I appreciate that.
In other words, the corporate restructuring was necessary here in order to make sure that bankruptcy trust that you mentioned is an option, right?

A That's how I understood it. It was, it was part of the steps that would then allow that option to be considered.
Q And you've previously told us that the rationale for engaging in this corporate restructuring was because the tort system was a very inefficient process, right?
A That's correct.
Q So if I could actually show you a document and I will try to keep these brief as our system is a bit difficult in showing documents while also seeing your face.
MS. HARDMAN: If we could pull up document marked Committee's Exhibit 186, I believe.
BY MS. HARDMAN:
Q And you will be familiar with this, I suspect, from our prior engagements. Let me know once you've had a chance to look at it.
A Yes. Yes.
Q These are your notes, right, Mr. Kuehn?
A Yes, they are.
Q Okay. And you previously testified that these notes were dated sometime during the week of August 19th of 2019 based on their contents, right?
A I believe it would have been on or prior to the week of the 19th, but somewhere in that general timeframe was my best estimate and in early August of 2019.
MS. HARDMAN: And just for the sake of everyone's

eyes, Mr. Ryder, could you blow up Bullet 2? Thank you.

BY MS. HARDMAN:

Q And we've gone over this once before, but just for the sake of the record you testified previously that Gemini and Mercury were likely early code names for the Ingersoll-Rand portfolio and the Trane portfolio, is that right?

A Yes, that's my understanding.

Q And this Note 2 describes your understanding from outside counsel as to the minimum timeframes to get to a bankruptcy filing, is that right?

A Yeah. As I recall, this was trying to explain that it's a process to evaluate those options and to set expectations that it would not be an immediate process to ultimately make those decisions. So I believe that's what this relates to.

Q And it's your understanding that the debtors' bankruptcy filings occurred approximately 47 to 48 days after their creation, is that right?

A Yes.

MS. HARDMAN: And, Mr. Ryder, if you could kindly blow up Bullet 3, if that's possible.

BY MS. HARDMAN:

Q And you had previously testified as well that there was an indirect discussion with Jones Day and in-house counsel about making the debtor entity a North Carolina legal entity, is that right?

A Yes. I recall that being something that our counsel considered and wanted to advise us of.
Q And these are your notes, again, right?
A These are my notes.
Q Okay.
MS. HARDMAN: I think we can take this off the screen so that we can all see one another a little bit clearer. Thank you, Mr. Ryder.
Mr. Ryder, if you wouldn't mind just closing the -- thank you.
BY MS. HARDMAN:
Q All right. Now going to the debtors that we've mentioned thus far, Murray Boiler and Aldrich Pump, they have no operations other than the management of asbestos liabilities and related insurance recoveries, is that right?
A Well, those two entities own assets or own operating companies, but the entities themselves, I'm not aware that they have operating companies, but they have interests in operating companies.
Q Okay. But in terms of operations on a day-to-day basis, it's just the management of asbestos liabilities and the related insurance recoveries, right?
A I think at that entity level that would likely be the predominant activities.
Q Okay.

So the board of Murray Boiler is comprised of Marc Dufour, Amy Roeder, and Manlio Valdes, is that right?

A I can't confirm that. I, I don't exactly know. Those names are, are familiar to me that they're on the boards, but allocate them between Murray and Aldrich, I would, I would need to check on that.

Q Okay. If I, if we brought up your testimony, we could probably show you that you've previously testified to that fact. And maybe if we talk about Aldrich Pump, it'll help refresh your recollection.

The board of Aldrich Pump, do you recall testifying that it is comprised of Robert Zafari, Amy Roeder, and Manlio Valdes?

A Yeah. That was my recollection at the time, that those three individuals were likely allocated to that board. I was unclear -- at the time I was unclear if Mr. Zafari was allocated to Aldrich or to Murray, but I was aware that he was on one of the boards.

Q Okay. So on the -- the -- the boards here, we've discussed that there's Amy Roeder and Manlio Valdes on both boards, is that right?

A That's my understanding.

Q And Amy Roeder and Manlio Valdes are Trane employees, is that right?

A They are employees of Trane Technologies, that's right.

Q And Mr. Dufour and Mr. Zafari are retirees of Trane

Technologies, is that right?

A Yes, that's correct.

Q Okay.

And the employees of the debtors, are they all seconded employees from the Trane enterprise?

A I don't know the exact details there on their, on their employment, but I believe that there's a secondment agreement that exists for those employees.

Q So with respect to those employees, they all work at Trane, though, right, so in order to be under that secondment agreement?

A Correct. They work at Trane, but they have a secondment agreement to perform activities with respect to the debtors.

Q Okay. And so the boards of both debtors are controlled by Trane employees that are, and Trane retirees, is that right?

A How do you define "controlled," Ms. Hardman?

Q The board is comprised, boards for each debtor are comprised of both Trane employees and Trane retirees, is that right?

A That would be their occupation today, correct.

Q Okay. And the debtors' employees, again, are all seconded Trane employees?

A That's my understanding.

Q Okay.

And I know we focused on the fact that the corporate

restructuring was to address asbestos liabilities, as you've said, right?

A Correct. It was one of the steps as the company was evaluating, ultimately, the, the option for a bankruptcy trust.

Q And there were no other liabilities that the Trane enterprise allocated to the debtors aside from asbestos claims, right?

A Yes, that's correct.

Q No secured debt?

A I'm not aware of any secured debt. If, if there was, it would be a material like copy releases or otherwise, but I'm not aware of any secured debt.

Q No trade payables, either, right?

A Only with respect to the operating companies that those two debtors have interests in, trade payables and receivables would have been transferred. But I don't believe the debtors themselves.

Q Those stayed at the subsidiaries, not the actual debtors, right?

A The subsidiaries that they have an interest in would have had, likely, trade payables and, and trade receivables allocated to them, correct.

Q So the debtors themselves, there's no trade payables.

Is there any other litigation liabilities allocated to the debtors?

A I'm not aware of other litigation liabilities.

To be fair, on, on trade payables, you know, there may be payables back to insurance companies or otherwise that may need to be executed or legal fees that could be in play today, but I'm not aware of anything else.

Q But all of those that you're describing, those liabilities, whether they be attorney's fees or the like or insurance proceeds or, or claims, those all relate to asbestos liability, right?

A That would be my understanding, but I, I wouldn't know if they have other activities they've engaged in since their formation, but would likely be asbestos related.

Q Okay. In fact, you testified at your deposition that there were no other liabilities to allocate because Project Omega's purpose was to address only asbestos liabilities, right?

A Yes. I'm, I'm not aware of anything else that was allocated to those businesses.

Q Okay.

A Or to those entities.

Q And as we've discussed, part of the corporate restructuring included the option of putting the debtors into bankruptcy, right?

A It was one of the preceding steps, I believe, to ultimately allow that, that option and a decision to be made.

Q And your role in the corporate restructuring was, among

other things, to select assets to place the subsid, to place as subsidiaries under each of the respective debtors, right?

A Evaluating operating companies that could be subsidiaries to the debtors, that's correct.

Q And Jones Day provided you with the parameters on how to do that, right?

A Yes, they did.

Q And we previously discussed, for example, that Jones Day advised you that a minimum amount of value needed to be included as a subsidiary operating entity below each of Murray and Aldrich, right?

A Yeah. I recall that Jones Day wanted to give us a range of value. Because we were also evaluating the cash flows from those entities to ensure that they had a level of cash flow that could be meaningful to those entities.

Q And following the advice of Jones Day, you worked with Mr. Regnery to select those assets that would ultimately sit under each of the respective debtors, right?

A Yes.

Q And as we have discussed regarding this bankruptcy process or bankruptcy option, the Trane enterprise itself never took steps to put the enterprise through bankruptcy, right?

A That's correct.

Q Okay. And this is because putting Trane through bankruptcy would be, as you've previously said, it would bankrupt a very

large portion of the company that was not deemed to be necessary to resolve the remaining asbestos claims, is that right?

A That's correct. You know, the, the Trane company earned or generated $1.7 billion of cash last year. So, and the year before that was a number of approximately that amount. So the, the view was there didn't seem to be a need to bankrupt the whole entity to resolve the asbestos matters.

Q And by selecting the subsidiaries that would sit underneath this debtor structure, as you called it earlier, would you, you decided which assets would be allocated to resolve the asbestos claims and which wouldn't, right?

A We evaluated the operating companies with which to allocate to those debtor entities, subsidiaries to the debtor entities, and then we ensured that insurance assets were being fully transferred and then there was an evaluation of any cash needs for those entities when they were formed.

So we looked at it as a combination of cash, operating cash flow from the subsidiaries as well as the insurance assets were Day 1, and then, of course, the funding agreement would be in place should any shortfall exist.

Q Right. I guess my question is more of a yes or no question.

You were able to decide what assets would stay in the debtors and their subsidiaries and what wouldn't, right?

A Yes. We made that decision.

Q Okay. So ultimately, it was Trane that selected the assets that would be available to resolve the asbestos liabilities in this bankruptcy, is that right?

A Yes.

Q Okay.

You had previously testified that there was, in your deposition, that there was consideration given to the naming of the subsidiaries that sat underneath those debtors back in the summer of 2019, right?

A Yes.

Q In fact, you took notes that indicated that those subsidiaries should have, and I quote, "no Trane name," right?

A I recall that was a note that I wrote on the page. I don't recall exactly the, the nature of it, but I do recall that they wanted to select a name that had been representative of assets or businesses that the company had in the past.

So it was ensuring that they, whatever name, that they were, they were connected to some legacy business or legacy operation of the company.

Q So said differently, there was a preference not to name the debtor entities anything resembling the current Trane name, right?

A I would say that, you know, Trane with its name for the last, gosh, decades, you know, has not been selling any

products that, ultimately, may or may not have had asbestos.

So I think the preference would have been not to use a name there, but I recall the first conversation being to use a name that actually related to one of the operating companies or businesses of the past in the company.

Q Okay. And you, you had previously testified in your deposition that this was done to not impair the Trane name, right? So there's, there's a focus on whether or not this will impair the current Trane name, right?

A I think there was a risk of impairment, yes, if the Trane name was used.

Q Okay. And you also said it was to ensure that the Trane name was not confused with any asbestos matters, right?

A I, I don't recall that exactly. I'd have to just check my testimony on that, but I would say with our public disclosures around asbestos shareholders understand that there are asbestos claims associated with Trane Technologies now.

So I, I think it's known that that's there or that exists, that obligation exists.

Q All right.

As a board member of Trane Technologies Company LLC, you were involved in the authorization of certain agreements that effectuated the corporate restructuring, is that right?

A Yes.

Q And one of those agreements was a Divisional Merger Support

Agreement, right?

A Yes, that's my understanding.

THE COURT: Let me interrupt for a moment.

We're getting some extraneous noise in the building. I want to make sure that everyone is comfortable with that and we're not, you're not hearing it so loudly that you're impaired on understanding what the testimony is.

MS. HARDMAN: Your Honor, I cannot hear it. I don't know about Mr. Kuehn. But more importantly, if your Honor cannot hear us, that would be more of my concern than anything.

THE COURT: No, I can hear you. This is a background vibration and it's, it's intermittent. At the moment we're not getting it, but it's not going to impair the transcript, I don't think, okay?

MS. HARDMAN: Okay.

THE COURT: For example, it, right now, we're getting that noise, okay? Well --

MS. HARDMAN: I hear nothing, your Honor.

THE COURT: All right. Let's proceed, then.

MS. HARDMAN: Okay.

BY MS. HARDMAN:

Q As a board member -- let's, let's go back to the one question I was asking you so that we can just stay on track.

As a board member of Trane Technologies Company LLC you were involved in the authorization of certain agreements that

effectuated the corporate restructuring like this Divisional Merger Support Agreement, right?

A Yes.

Q Okay. And during your deposition you testified that once the boards of Aldrich and Murray were established, the Trane enterprise would treat those entities as if they were at arm's length, right?

A Yes.

Q Okay. So prior to the formation of those boards the Aldrich and Murray interests were all part of the Trane enterprise, is that right?

A Yes, they were.

Q And Jones Day served as outside counsel to guide Trane in approving the steps to the corporate restructuring, right?

A I guess laying out the steps that the company should consider to ultimately approve the restructuring, yes.

Q And Mr. Evan Turtz and Ms. Sara Brown were your in-house counsel guiding Trane in approving the steps to the corporate restructuring, right?

A Yes. They were part of that team.

Q Okay. At the time of the divisional merger the only counsel you knew of that was involved in the divisional merger and the corporate restructuring was Jones Day and Trane's in-house counsel, is that right?

A Yes. Those are the, the parties that I recall, you know,

being the most involved.

Q And Mr. Turtz and Ms. Brown are counsel at the Trane enterprises, right?

A Yes. With Trane Technologies PLC, that's correct.

Q Okay. Sounds good.

So let's talk about a different agreement besides the Divisional Merger Support Agreement. Let's talk about the, the funding agreement which I think you went over a little bit with Mr. Jones earlier today.

Now there are two funding agreements that were executed as part of the corporate restructuring, right?

A That's correct.

Q One for Aldrich?

A One for Aldrich and one for Murray.

Q Okay. Since the funding agreements were entered into, no -- you mentioned that there was a funding request made in June of 2020, is that right?

A There were transfers made in June of 2020. I don't know if the request was made, you know, in May or, or was it made in June. But I know that there were transfers made to Aldrich and to Murray in June of 2020.

Q Pursuant to the funding request -- excuse me -- the funding agreements?

A Yes.

Q Okay. And have there been any requests made since those

June 2020 requests or, I guess, fundings?

A I'm not aware of any requests for funding since that date.

Q And there's been no funding made since that date, right?

A Yes. Given there's been no requests, no funding has been necessary, that's correct.

Q Logic dictates, but I figured I'd ask just to, to button that up.

Are you generally aware of the terms of the funding agreements themselves?

A Yes, I am.

Q Okay. Are the terms of the funding agreement for Aldrich materially the same as the terms of the funding agreement for Murray Boiler?

A Yes, that would be my understanding.

Q Okay. Did you consider alternative arrangements at the Trane entity to fund the debtors beside these funding agreements?

A Alternatives, though, we considered was initial cash on hand, how much cash would those entities need upon formation, the allocation -- second would be the, the allocation of the asbestos insurance. That was important to ensure that, that transfer to the entities. Third was we evaluated the cash flows from the subsidiaries, those operating companies you mentioned before, Ms. Hardman --

Q Uh-huh (indicating an affirmative response).

A -- to understand how much cash they generated annually that then could be shared with its parent, the, the debtor. And then the fourth piece was really this funding agreement to ensure any potential gap in funding was going to be covered by the funding agreement. 'Cause the company always viewed this as the obligations before this transaction remain, you know, important for the company to resolve. So we wanted to have these funding agreements in place in case there's any shortfall in cash.

Q Well, specifically with respect to the funding agreements, you mentioned before that they're a backstop, right, to these other avenues of funding?

A Yes.

Q Was there any alternative arrangement considered be, besides the funding agreement to serve as that backstop?

A No. I think this was the primary, the primary vehicle to ensure there was cash going to be available.

Q So Trane did not consider whether a guaranty might be provided in lieu of a funding agreement, right?

A I don't recall having that conversation to, to evaluate that.

Q So these funding agreements themselves don't serve as a guarantee, right?

A From my view, the fact that we've agreed to it and, you know, our company Treasurer has signed the agreements, we feel

that that is an important commitment that the company's making that these entities will back stop any cash shortfall.

Q Well, "these entities,": are you referring to the two Trane entities, Trane Technologies Company LLC and Trane U.S., is that right?

A Yes. Those are the two entities I'm referring to.

Q And they've agreed, meaning it's, it's just a contractual obligation to pay, right?

A That's my understanding, yes.

Q So a commitment doesn't necessarily mean it's a guarantee of payment, right?

A Maybe legally, that is fair. I would tell you that in terms of the company we've signed this agreement. We stand behind the agreement.

Q And based on your understanding of these funding agreements serving as a backstop you have said that these funds will essentially fill in a gap with respect to the funds that might flow from the other avenues of recovery, is that right?

A If a gap was presented, then, yes, the, these funding agreements would step in and, and satisfy that gap.

Q And I know that you mentioned that you're not a lawyer, which I appreciate, but you mentioned that you -- you -- with respect to this funding arrangement that it is a, it's a promise to pay, right, under the funding agreements, is that right?

A Yes. I, I would view it as we've signed this agreement. These entities have made a commitment on paper that they will fund any shortfalls and I think back in June of 2020 when a request was made, that money was transferred to those entities in response to their request.

So we've just had one example or one month of examples where the request was asked and, and I would say these entities answered and delivered that cash as, as needed.

Q And so in this instance of a backstop or a shortfall, the payments by insurance and cash flows from the subsidiary and cash on hand needs to be exhausted first before you would seek any funds from the funding arrangement, is that right?

A I think the, the debtors make the decisions when they want to seek funds, but from what I understood back in June they did not allow the balances to get fully exhausted. They projected a set of cash flows and made sure that they didn't get the balance to zero. They, they funded well in advance of that happening to ensure that there was always liquidity in those entities.

Q Well, they may have made that request, but is Trane's position that it will fund even if there's sufficient cash flow from the subsidiary and sufficient cash on hand to otherwise satisfy liabilities at these entities?

A I'd say the request would certainly be made by the debtor and then we'd have to evaluate what their projection of cash

flows would be and if there was a shortfall of cash, we'd want to make sure that we infused enough cash to ultimately satisfy any debts that they had for any valid claims.

Q Okay. I guess my point is is you're referring to a shortfall here. That would demonstrate that the debtors need to show that there isn't sufficient funds and they need the funding but if there are sufficient funds and they still make a funding request, is Trane's position that it will entertain that funding request?

A I would -- we'd have to evaluate it at that time. I -- my comments were more around that if there was, you know, $10 million in the bank account, for example, and it got down to a million dollars, I think you had mentioned, Ms. Hardman, you know, about exhausting all the balances. I, I would think the board of managers for those debtor entities would say, "Hey, we want to put a request in for funding before this gets to zero," and our answer would be, "Yes, let's have that conversation." We're not looking for, we would hate for those entities to get to that position and I would hope the directors of those entities would evaluate when they need the cash in enough turnaround time.

So we probably haven't had enough examples of where they've asked for money, but I would say the funding agreement stands on its own. We'd want to make sure that they are sufficiently funded.

Q Okay. And you -- we discussed this once before in your deposition, but you're aware that the debtors are currently obliged to indemnify their respective counterparts to the funding agreements, to the extent that they're subject to asbestos claims, right?

A Yes.

Q So, for example, if Trane Technologies Company, TTC, is sued for an asbestos claim, Aldrich is obligated to indemnify TTC for that claim and defense costs, right?

A Yes.

Q And if Aldrich lacks the funds to pay those indemnification obligations, it's your understanding that Aldrich could rely on the funding agreement to obtain those funds sufficient to pay those obligations?

A Yes, that's my understanding.

Q Meaning the funds would be coming from the same entity which was technically indemnified by Aldrich, right?

A Yes, that's my understanding.

Q And you're unaware of a business purpose for that arrangement, right?

A I would say that was part of the legal teams laying out the steps to the corporate restructuring and ultimately executing through the plans of Omega. But I, I can't speak to a business reason for that.

Q Okay. So your understanding is that there might be a legal

reason, but not a business reason for that, right?
A Yes.
Q Okay.
Do you know whether any non-debtor Trane entities have been named in an asbestos suit since the corporate restructuring?
A No, I'm not aware.
Q You're not aware of any or you don't, or you are aware that there are, have been none?
A I am not aware of any that have occurred.
Q Okay.
A If any have occurred, I am not aware of that.
Q Okay. So assume for the sake of argument that there aren't any. At this point any harm to Trane and the Trane enterprise in that circumstance for indemnification is theoretical, right?
A Can you say that again, Ms. Hardman? I'm just trying to track it here on the, on the thinking.
Q So if, if you're not aware of any obligations for asbestos claims at the Trane enterprise level, right now there's no obligation to indemnify those entities, right, from Aldrich and Murray?
A I guess that makes sense logically, yes.
Q So that concern right now is theoretical, right?
A Yes. That -- that sounds --that sounds right.
Q Okay. Are there any limitations to funding by, I'm going to call them the payors, but that's TTC and Trane U.S. Do you

understand that reference when I describe them as "payors" under the funding agreement?

A Yes, I do.

Q Okay. Are there any limitations to funding by the payors to the debtors under the funding agreements?

A I'm not aware of any limitations. I'm not aware of any caps or loans or, as previously disclosed, no.

Q Okay.

MS. HARDMAN: I think if we could bring up either, let's try ACC Exhibit 86, if we could. And if we could scroll to Paragraph 2(a) when you get a chance.

BY MS. HARDMAN:

Q As you see, this is the Second Amended and Restated Funding Agreement.

Are you familiar with this document, Mr. Kuehn?

A Yes.

Q Great.

MS. HARDMAN: If we could go to Paragraph 2(a), Mr. Ryder. Thank you.

BY MS. HARDMAN:

Q And if you need a quick moment, go ahead and take a look at this paragraph. It's --

A Yes, please.

Q Sure.

A Okay.

Q All right. So Paragraph 2(a) here requires the payor "to make payments to the payee for any permitted funding use," right?

A Yes.

Q And is it your understanding that "permitted funding use" has a specific definition under this agreement?

A Yes, that would be my understanding.

Q Not a trick question. We will go to the definition.

A Okay.

MS. HARDMAN: If we could pull up the definition of "permitted funding use." And depending on how the pages work, there are a few sections to it. No, it's not 2(b). It is the def, it's a definition page. Let me see if I can find it for you. It should be on Page, it begins on Page 5 of 19 of the PDF.

Thank you, Mr. Ryder.

BY MS. HARDMAN:

Q So this is the first page that includes the description of the term "permitted funding use," and you see this? I will give you a moment to just skim it and let me know when you're ready.

A Okay. Thank you.

Q Sure.

And for what it's worth, I'm going to focus on Paragraph (b), if that's helpful.

A Okay.

Okay. Yes, I've had a chance to read it.

Q Okay. Are payments of asbestos-related liabilities considered costs of administering the bankruptcy case as it's listed here?

A Can you repeat the question, Ms. Hardman?

Q Sure. Why don't I take it in parts.

This paragraph here, does it state that "permitted funding use includes the payment of costs and expenses incurred during the pendency of the bankruptcy case"?

A Yes, it does.

Q Does that include the costs of administering the bankruptcy case?

A Yes. That's how I, that's how I read the paragraph.

Q So in layman's terms, is the payor obligated to pay the, the payee here or the debtors costs of administering the bankruptcy case?

A Yeah, that's how I understand it.

Q Okay. Would you consider payment of asbestos-related liabilities to fall under that category of costs of administering the bankruptcy case?

A Initially, I would not. I thought during a bankruptcy the -- well, let me take this in parts.

Under the bankruptcy, my understanding is that those cases are stayed at this point. So there may not be any obligations

to pay asbestos litigation, but as the, if a bankruptcy were approved and moved forward, then, yes, there would be obligations to pay valid claims through bankruptcy.

Q I think we can get to that point, but I guess my question is with respect to administration of the bankruptcy case. You don't believe that asbestos claims fall under that category, right?

A Ms. Hardman, I'm not an attorney and I'm, I've never been through a bankruptcy before. So I would tell you that I, I don't know if I can answer that question. I, I certainly see that it's the cost of administering the bankruptcy case, but I would maybe not be the best person to say it excludes valid asbestos claims.

Q Okay. Let's take a step back, then, from the language.

It's your understanding that this funding agreement permits payment of asbestos claims pursuant to a section 524(g) plan, right?

A Yes, it does.

Q Is it your understanding that this funding agreement would permit payment of asbestos claims outside of a section 524(g) plan?

A I would presume that it does, but I, I don't know the answer fully to that.

Q Okay.

A Yeah.

Q With respect to this "permitted funding use" definition, there's another paragraph, which I will show you now 'cause I think it will explain a little bit of this for you.

MS. HARDMAN: If we could show Paragraph sub (d), which is on the next page, Mr. Ryder.

BY MS. HARDMAN:

Q And once you've had a chance to look, just let me know.

A Okay. Thank you.

Q Sure.

A Okay.

Q So with respect to this provision, I think it addresses the point you were making earlier, but just to confirm. This provision is intended to provide that the payor would pay the debtor or the payee's funding of that section 524(g) plan, right?

A Yes.

Q And is it your understanding that section, the term "section 524(g) plan" is a defined term in this agreement?

A I believe it is, yes.

MS. HARDMAN: If we could pull that definition up, Mr. Ryder. It's right below this. Yeah. No, I'm sorry. It was right below the larger portion, defined term. You can go ahead and max that out. Thanks. See the definition down below. It's the "Section 524(g) plan means." yeah. Perfect. Thank you.

BY MS. HARDMAN:

Q Once you've had a chance to review, let me know.

A Yep, I've reviewed.

Q Okay.

And so the definition of "section 524(g) plan" in this agreement requires, in layman's term, that the plan include all the protections of a section 524(g) plan for the payor, right?

A Payor and payee with all the protections of a, of a plan, that's correct.

Q So in, in layman's terms, does that mean that the plan needs to protect both the debtor and the Trane payors, is that right?

A That's how it reads to me, yes.

Q So in order for funding of asbestos claims pursuant to a 524(g) plan, under this funding agreement the payor is only obligated to pay as long as they are protected by section 524(g), is that right?

A I would need to read the entire document just to make sure there isn't anything contradictory to that, but to, to this point here in the definition, as I'm reading it as well, it would be providing protections to both the payor and the payee.

Q Well, it's your understanding at a high level that if the Trane enterprise is going to fund the 524(g) plan, they're going to get something out of it, right? They're going to get protections from 524(g)?

A Yeah. I think the way I viewed it and other executives in the company would be that, yes, it would be an allowance for us to fully and fairly settle the asbestos liabilities, establish a trust, fund the trust appropriately with the cash that's necessary, and then whatever requirements are within section 524(g), protections or otherwise, yes, that would be made available to the companies.

Q Including the ones that are not in bankruptcy, right?

A I would presume so. As a, as a layperson here, yes.

Q That's just your understanding from a business perspective as to what this transaction benefit, how this transaction benefits the Trane enterprise, right?

A Yes, that's my understanding.

Q Okay. And so you mentioned before when we were talking about the other provisions, which we don't need to bring up, of the definition of "permitted funding use," it was your understanding at a high level that the funding agreement permitted the payment under a 524(g) plan of asbestos claims, but also provides for payment of asbestos claims outside of a 524(g) plan, right?

A Yes, that's my understanding.

Q And what's your basis for that understanding or that assumption?

A My basis is, is that the company has an obligation to resolve the asbestos matters and pay valid claims. So whether

it was through a 524(g) trust or it was through a different mechanism -- and I'll use the tort system -- the company's obligation remains.

So I, I think -- I don't know how best to answer the question from, from that end.

Q Okay. I just -- I -- I'm asking more of where you might have gotten that understanding, if it's -- and not asking a privilege question -- but if it was a discussion with counsel or a discussion amongst the business folks.

But the idea is trying to understand your business understanding of this funding agreement and where, where the Trane obligations exist here to make those payments.

A Yeah. That, that's my understanding. I think the -- if a 524(g) bankruptcy trust was not available anymore to the company, would it be still the company's obligation? Yes, it would still be the company's obligation to pay. It's my understanding that it would be allowed to pay under either of those scenarios, but that's just my understanding.

Q Okay. Let's turn to the bankruptcy process.

MS. HARDMAN: And, Mr. Ryder, you can take this down, if you wouldn't mind. Thank you.

BY MS. HARDMAN:

Q So while the debtors remain in bankruptcy, the asbestos victims' claims are stayed. You mentioned that, right?

A My understanding is that's a consequence of the process

we're going through today, is those valid claimants are, are not getting paid. Their, their claims are stayed.

Q And so, said otherwise, the asbestos claimants have been prevented from resolving their claims or recovering on account of their claims while the bankruptcy is pending, right?

A My understanding, again, the, the claims have been stayed and if the parties can come to a mutual agreement, then we would love to move forward with that and ultimately make sure that that money is being transferred and paid into valid claimants.

Q I appreciate that. It, it was more of a yes or no question as to whether or not the asbestos claimants are prevented as a result of the bankruptcy filing from collecting on their claims, is that right?

A Yes, it's my understanding.

Q Okay.

As a result of placing the debtors in bankruptcy, the debtors would benefit, as you've said to us before, from understanding what the total liability they would have or be responsible for, right?

A Yes.

Q Okay. In other words, the creation of the debtors by solvent entities, like Trane, it's not just to obtain final resolution of the asbestos liabilities, but it's to use the bankruptcy to reduce those liabilities, right?

A I don't know if that would be the case or not. I think the, the decision would be what is the value of those cases and ultimately, I think really would give certainty to all parties as to what value is available to pay valid claims.

Q But you could obtain that same result in the tort system, right?

A I don't believe in any way, in any reasonable timeframe would that be resolved in the tort system. As I've testified before, the, the inefficiency that, that I saw, that others saw in the tort system was such that we thought this bankruptcy trust was something that could make it a quicker resolution to valid claimants.

Q So it's a better deal to proceed in the bankruptcy process than it is to go through the tort system, right?

A I don't know if I'd characterize it as a "better deal." I think it provides certainty to all parties as to a valuation of the liabilities and ensuring that the funding is there and committed to. That, I think, would provide certainty to many parties versus just, just, you know, Trane Technologies, for example.

Q So let me break that down just a moment.

You said it provides certainty and ensures that funding is available, right?

A It would provide -- my understanding would be it would, it could provide certainty as to an amount, an agreed-upon amount

that the parties would ultimately negotiate to and then subsequent to that would be a discussion around, well, how would that be funded and how quickly would that be funded.

Q So just to break it down, on the certainty front, you can't get certainty through the tort system as to these claims and their amounts?

A I think the -- what I saw in the tort system with respect to the amount of money the company was paying versus how much made its way to the ultimate claimant we felt was very inefficient and the fact that these claims could run out for another 35, 40 years, felt like that was a, a very long time to try to resolve claims with, with valid claimants.

Q Well, I guess my question is more one specific to the tort system.

There is certainty in the tort system, irrespective of timing and whatnot, right? There is a process, the claimants are given an opportunity to pursue their claim, and the claim is decided, correct, whether or not --

A There is a process --

Q -- settlement or otherwise? Sorry.

A Yes. There is a process in the tort system. I would also describe it as an inefficient process, but yes, there would be a process, as you described, Ms. Hardman.

Q And you mentioned that the other part of this is, in addition to having certainty, is whether or not there will be

funding available to pay those claims.

Is there a concern that Trane would not have funding available to pay claims in the next 20 years in the tort system?

A Well, I, I can't speak to the company, where it's going to be 5, 10, 20 years from now, but I would think that under the bankruptcy trust, my understanding is that that funding would actually come quicker. There would be a quicker funding of the trust by the company than, say, over the next 40 years to resolve claims.

So I've always viewed it as an acceleration of that cash funding, giving certainty to valid claimants that there is money available. Certainly, I think the company has a great future and continues to grow, but, you know, where it's going to be in 20 years, you know, I hope it's better than where it is today, but that's the uncertainty you take with, with that risk of the future.

Q And the -- so you've mentioned that it's a quicker process, is that right?

A I, I understood it as there could be a faster contribution of cash and funding into the trust than what it otherwise would have been under a, following through the tort system.

Q Quicker, quicker for Trane, right? That's a quicker process for Trane?

A Well, it would be a, a faster process for Trane to

allocate, transfer monies into a trust, into a bankruptcy trust than it would be to follow just the tort system. So it would actually be a faster payment of monies by Trane into satisfying the, the actual requirements of the trust.

Q So, you know, we're talking about making it a quicker process, but in, in doing so it removes the input or the ability for a claimant to pursue their claim. So no one case is going to last, you know, ten years, right?

A That part of it I, I don't know. I just know that the way that we understood it, or I understood it, a bankruptcy trust, once agreed to, would probably result in a quicker amount of cash being contributed by the company to resolve the claims and then the process continues, I guess, through bankruptcy or through whatever that trust is to resolve claims. I'm, I'm not as familiar with that process, but it would certainly be a faster contribution of cash from Trane Technologies if a bankruptcy trust were, were entered into.

Q So you're not familiar with the process as it relates to the claimants pursuing their claims in the trust, right?

A I couldn't describe it for you step by step, but I understand that there's a process for claims to be evaluated, valued, and ultimately cash contributed to, to those claimants --

Q So you --

A -- to valid claimants.

Q So you have -- I'm sorry to interrupt you.

So you have no idea whether or not that process is better or worse for claimants than the tort system?

A I, I wouldn't describe I have no idea. I think what we've seen with other examples and/or what we wanted to evaluate here was, hopefully, also rooting out some of the challenges we saw in the tort system, whether that be fraudulent cases or otherwise. But we saw it as a way to get cash faster to valid claimants and to allow a process to continue with certainty to both the claimants and to the company.

Q And in order for this process to be quicker, that, this resolution would require parties to, including the Future Claims Representative and the existing claimants themselves, to negotiate a settlement, right?

A Yes, that's my understanding.

Q And if they aren't able to reach agreement, this might not be a quicker process, right?

A It could take longer, yes.

Q And you mentioned before in your deposition you were not aware of any settlement conversations between Trane and the current or future asbestos claimants prior to the corporate restructuring, right?

A Yes, that's correct.

Q You also testified that you were not aware of any settlement conversations between the debtors and the current or

future asbestos claimants prior to the bankruptcy filing, right?

A Yes.

Q When the asbestos liabilities sat at Old Ingersoll-Rand and Old Trane, you were involved in evaluation of potential group deals, right?

A Yes.

Q And group deals are settlements of a number of asbestos claims at the same time with one or more law firms representing a host of claimants, right?

A Yes, that's correct.

Q And the benefits of entering these group settlements included efficiencies in resolving more than one claim at a time to also settle for a lower figure and save the costs of proceeding through a jury trial, right?

A Let me break that down. I think there was a benefit to resolve multiple claims at the same time. There was certainty around the dollar value per claim, you know, in negotiation for a mesothelioma claim versus a lung cancer claim. So there was a, an allocation or a certainty around that. I think the challenge for the company was that it removed the ability for the company to really evaluate and prove out valid claims versus maybe fraudulent claims, but it allowed a number of claims to get resolved at one point in time across multiple law firms, or potentially multiple law firms.

Q Well, you also testified in your deposition that as part of a settlement generally you consider the cost saving from proceeding to trial as one does in trying to settle litigation, right?

A That's correct, yes.

Q Okay. So in theory, you might be settling at a lower figure all in if you are able to avoid a jury trial, right?

A Yes. It's the tradeoff of fighting a case and paying for the legal fees or just saying we're going to make a payment on a case whether we can prove it's a valid claim or not.

So it just became, unfortunately, a conversation around economics.

Q And similar circumstance to settlements, generally, of, of litigations, right? You usually consider the legal spend or the potential here for pursuing a full jury trial or any delays as being additionally costly, right?

A That would be one of the parameters we'd evaluate, yes.

Q And these group settlements were not considered as an alternative to the corporate restructuring, right?

A No. They were, actually, fairly frequent on an annual basis to occur. So I, I just view them as a process related to the tort system.

Q So in short, they were not considered as a viable alternative to the corporate restructuring, right?

A Yes. I we not part of any conversations to look at that as

a viable alternative.

Q Okay.

As a general matter, Trane has the ability to pay its obligations as and when they come due, right?

A Yes.

Q In fact, the Trane enterprise was current on its obligations prior to the restructuring, right?

A Yes, it was.

Q These obligations include credit facilities, right?

A The company has access to credit facilities. Those facilities have not been drawn upon. So there was no obligation to repay anything, but has access to those facilities.

Q So for all intents and purposes, you're current even if there's nothing due and owing, right?

A Yes.

Q Okay. Any third-party debt?

A Yes, there is.

Q And is, was Trane current on that third-party debt prior to the corporate restructuring?

A Yes.

Q Is it current now?

A Yes.

Q Same with respect to tax obligations?

A Yes. The company's current with its obligations.

Q And was prior to the corporate restructuring?
A Yes, it was.
Q And at all times was the Trane enterprise current with respect to its employee wages?
A Yes. To my knowledge, that's true.
Q And with respect to trade payables, is, was Trane current prior to the corporate restructuring and is it now?
A Yes. I think I testified yes to that answer, but if there are any disputes with a vendor, right, in the normal course, that may be something that was not paid timely, but generally resolved fairly quickly.
Q Understood.
And so after the corporate restructuring, generally, Trane continued to pay its non-asbestos liabilities as they came due, right?
A Yes.
Q And does -- and Trane currently pays all of its non-asbestos obligations as they come due, correct?
A Yes.
Q You previously testified that Trane U.S. Inc. generates a majority of the revenue for the Trane enterprise, is that right?
A The operating companies in Trane U.S. Inc., I think, were approximately, you know, 8 billion -- 8 -- well, let me take that back. That's a confidential number.

Generates the majority of the, of the revenues for the company, yes.

Q Okay. Yeah. That's fine. I'm trying to not use figures.

A Thank you.

Q Sure.

Prior to the corporate restructuring that same majority of the revenue sat at the company with that exact same name, Trane U.S. Inc., right?

A Yes, that's correct.

Q Okay. And on an inter-company basis Trane U.S. Inc. loans those funds up, operating income, to its parent entities subject to loan arrangements throughout the year, is that right?

A I would describe it as an inter-company cash management arrangement. It's a control mechanism in the company to ensure cash is held centrally rather than disparately at bank accounts.

So as Trane U.S. Inc. earns income and generates cash, that money is currently swept up into a centralized account, which would be up through its parent, yes.

Q And that cash sweep is pursuant to a loan arrangement, technically, right?

A Yes. It would be an inter-company receivable/inter-company payable arrangement.

Q And then those inter-company loan balances are eliminated

through a distribution up to the parent each year, right?

A Yeah. The, the timing may change year to year, but the fact is as those balance grow a distribution then occurs and it eliminates the, or reduces the balance that's been accumulating through the year.

Q Okay.

MS. HARDMAN: If we could pull up document Committee Exhibit 224. Just want to check, Mr. Ryder. Are you able to pull up Document 224?

Your Honor, while Mr. Ryder may be pulling up that document, I'm going to proceed and we'll come back to it.

THE COURT: Okay. Thank you.

MS. HARDMAN: Sure.

BY MS. HARDMAN:

Q As a result of the bankruptcy filing for Aldrich and Murray, the debtors' financials were deconsolidated from the Trane enterprise from an accounting perspective, right?

A Yes. Yes.

Q And this deconsolidation was not necessarily a permanent decision, right?

A When the company lost control over those operations, when the decision was made to go into bankruptcy, that was a permanent decision at that point that the loss of control required the derecognition in the financial statements.

Q This "loss of control" is an accounting term, is that

right?
A Yes, it is.
Q And so that essentially means that the entity once it entered bankruptcy from an accounting perspective lost control?
A The -- as we think about the consolidated financial statements of Trane Technologies, that entity lost control of the operations of those operating subsidiaries under the debtor, were deconsolidated, and will remain so through this process since no control exists over those operating entities.
Q From a accounting perspective, correct?
A Correct.
Q The board of managers for each of these two entities remains the same, correct?
A Ms. Hardman, which entities? Are you referring to the operating companies or the debtors?
Q The board of managers -- yeah, I apologize. Let me be clear.

The board of managers for the debtors has remained the same, both prior to and since the bankruptcy, correct?
A Yes, that's my understanding.
Q So the debtors are continually managed at a board level by members of the Trane family, both current employees and retirees, correct?
A Yes, that's correct.
Q And the employees that are seconded to the debtors are

Trane employees still, correct?
A Yes.
Q So when we talk about losing control, we only mean from an accounting perspective, correct?
A From an accounting perspective and from a financial statement preparation perspective, yes.
Q And so when we talked about this deconsolidation process in your deposition you mentioned you had discussions with the Chief Operating Officer, Mr. Regnery, regarding the desire to reconsolidate these entities after bankruptcy, right?
A I recall the question of would these entities be permanent or would there be a way in which these entities would return to the company and, and the answer was as they go into bankruptcy, you know, the ability to control or consolidate their results would, would not occur.
Q I guess my question is something specific here.
With respect to your discussion with Mr. Regnery, I understand the possibilities, but is there a desire to reconsolidate the debtor entities with the Trane enterprise after the bankruptcy is over?
A If the 524(g) trust was established and had sufficient funding, then, yes, then the thought would be it could, those entities could be returned or transferred back into Trane Technologies.
Q So only if and when a 524(g) trust is created would you

want to reconsolidate the debtors to the Trane enterprise, correct?

A I think that would be the first option. The second option would be if, if a 524(g) trust was not set up or was not successful, then I think we'd have to evaluate the structure that was set up today.

But our view would be if success with the bankruptcy trust, then we would evaluate should those entities remain where they are or should they return back to Trane Technologies.

Q Okay. And when you had these discussions with Mr. Regnery you had previously testified in your deposition that you had those discussions about reconsolidating these debtors back in the fall of 2019, is that right?

A I recall him asking the question. Deconsolidate first, what would be the, what would be the terms necessary to reconsolidate.

Q And that was before the corporate restructuring occurred, right?

A Yes, it was.

Q Okay. So until the asbestos liabilities are resolved one way or the other for Aldrich and Murray, Aldrich and Murray would be forced to remain outside of the consolidated enterprise from an accounting perspective, right?

A Yes, that's true.

Q Okay.

So now the overall estimated cost of Project Omega, which includes the corporate restructuring and this bankruptcy process, is approximately $20 million a year, is that right?

A That was an estimate given to us by our counsel to, yeah, to think about as a forecast of the cost.

Q And how many years has the Trane enterprise estimated that the debtors would remain in bankruptcy, high and low end?

A Our long-range plan process really just goes out three years. So we've assumed that if that needed to be in place for three years, then that cost would be incurred over the next three years.

Q So there's no estimate beyond the three-year period for Trane to consider whether or not the Aldrich and Murray entities will remain in bankruptcy?

A I don't recall coming up with a forecast four, five, six years out into the future. I, I just recall the immediate forecast over these next few years, given that's the period of time that we forecast over.

Q So you don't know if -- were you told whether or not there was a high-end estimate as to how many years you would remain in bankruptcy?

A I recall counsel saying that it could be a number of years, something north of five years, depending on are we able to get resolution with all parties to ultimately negotiate a bankruptcy trust.

Q And you had mentioned in your deposition that the cost of remaining in the tort system outside of bankruptcy is approximately a hundred million dollars a year with a step down year over year, is that right?

A Yes.

Q So absent the use of bankruptcy Trane estimated that it -- or I guess the debtors now -- would remain in the tort system until about 2053, right?

A The estimate of the last claim to be paid was, was forecasted out to 2053, that's correct.

Q So by a back-of-the-envelope math, even if the hundred million dollars a year estimate decreases each year for the next 30-plus years -- I think we're looking about 32 years -- is it fair to say that the estimated overall liability in the tort system would be in the billions?

A I wouldn't say that. I think it was just the next five to seven years there were a very heavy, concentrated estimate of cash payments to be made and then after that time the dollar amounts of the payments started to really just get smaller and smaller.

So it did step down year to year, but I recall for the, maybe the last 10 years or 15 years of that projection, the amounts are very small.

Q So it's less than billions or a billion? I don't need a specific number because I do not want to evoke objection. But

I am just asking what your rough estimate was. Is it, are we talking hundreds of millions, billion, billion plus?

A Can you just repeat your question again, Ms. Hardman?

Q Sure.

Overall, what is the general estimate for the amount of liability if Trane enterprise was to remain in the tort system, whether that be through the debtors now or through the Trane enterprise prior to the corporate restructuring?

A Yeah. The, the best estimate we had of that liability was the amount that we disclosed just prior to the bankruptcy decision and that was approximately $500 million of liability for both the Aldrich and the Murray claims. So that's, that's the best number we had at that time of exposure.

Q So -- okay. You used a number of about a hundred million, which we're talking nine figures, and you say that it decreases -- it's significant for the next five to seven years, right?

A Yeah. The hundred million dollar figure, I think, as I, as I described, was maybe in 2019 or 2018. It was one of the preceding years before the decision around the corporate restructuring, but then it did step down each year thereafter, was the estimate that I recall.

Q Okay. And so despite estimating this to be somewhere in the north of 500 million you said, you estimated it would cost the Trane enterprise more to proceed in the corporate restructuring and subsequent bankruptcy process than to remain

in the tort system, is that right?
A I, I recall that a negotiation with all parties may result in a, in an amount of money that would be greater than what was ultimately estimated for financial accounting reporting purposes.
Q And what was the basis for that opinion?
A I can't speak to the basis. I'm, I'm not an attorney on other cases, but my sense would be just to prepare the company that it could be for an amount larger.
Q I'm asking where did you get that idea from that it could be more to proceed through this corporate restructuring and bankruptcy process than it would have been to proceed in the tort system?
A I recall that coming from our outside counsel, Jones Day, and also our inside counsel, through the legal teams of those two organizations.
Q So you were presented with an option that was going to cost the company more to proceed than it would have to go through the tort system which you said was more inefficient, is that right?
A It was a potential that it could cost the company more. But again, it came with the certainty of knowing what the dollar amount was going to be, what was the ultimate amount that could be negotiated amongst the parties. There have been years where the asbestos liability has been increased, namely,

in the, I think in the last five years. If I recall the Aldrich category of asbestos, there were revisions, upward revisions to that liability.

So the, the number of 500 million I'm giving you, Ms. Hardman, is it's the last estimate that was made, but I recall three or four years earlier there was a revision, an increase to that estimate, based on the number of claims that had come in that was not in the prior forecast to that.

Q Okay. So you mentioned it was a possibility that it could cost more. It was also a possibility that the, proceeding through this corporate restructuring and bankruptcy process could actually cost the company less money than proceeding in the tort system? Was that a possibility?

A I don't recall having conversations that it could cost less, but, you know, recall this $500 million estimate, it is a valuation estimate for financial reporting accounting purposes and a range of values being provided of which we recorded the liability at the low end of that range as required under the accounting rules.

So I think there was a, there was a view that it could be higher. I don't know there was necessarily a view that it could be lower.

Q So you were presented by, you said, Jones Day and in-house counsel that this corporate restructuring was only going to cost more than your current estimated asbestos liabilities on

the low end, is that right?

A I recall the conversation being it would not be any less than we have today and it could be more. That's what I recall.

Q Okay.

MS. HARDMAN: Your Honor, I ask that if my colleague is able. It turns out that our colleague was completely removed from the system and has lost all internet.

THE COURT: Uh-oh.

MS. HARDMAN: So no fault of any of ours, but he is unable to join us and share his screen. But I understand that my colleague, Ms. Manzi, may be able to share one last document for three whole questions and then I should be able to complete my, my line of questioning.

THE COURT: All right.

MS. HARDMAN: It is Committee Exhibit 224, Ms. Manzi, if you are able to share just that document. I understand you will not be able to blow it up or do the fancy things that our tech folks can, but we will make do.

BY MS. HARDMAN:

Q And thank you for bearing with me, Mr. Kuehn.

MS. HARDMAN: And your Honor.

THE COURT: Uh-huh (indicating an affirmative response).

THE WITNESS: I've learned some valuable technical skills here today to blow up items in a document. So I'm going

to take that away.

BY MS. HARDMAN:

Q Thank you.

MS. HARDMAN: Ms. Manzi, can you please just scroll up a little bit? That would be great.

BY MS. HARDMAN:

Q Mr. Kuehn, are you familiar with this document?

A Yes, I am.

Q And --

MR. JONES: Excuse me, Ms. Hardman. I, I hate to interrupt. This is Jim Jones, your Honor, on behalf of the debtors.

There may be confidential financial information in here. I'd like Mr. Kuehn to look at it -- and maybe take it down for a moment -- to make sure that we don't share that which we don't need to in a public forum.

THE COURT: Let's take it down for the moment.

Let's also take our lunch, our mid-morning recess. We'll get ten minutes in and then let the --

MS. HARDMAN: Marisa, please --

THE COURT: -- Ms. Hardman finish up, okay?

MS. HARDMAN: Understood, your Honor. Thank you.

MR. JONES: We'll come back in ten minutes, Mr. Kuehn.

(Recess from 11:06 a.m., until 11:18 a.m.)

AFTER RECESS

THE COURT: Have a seat, everyone.

Okay. Were we able to get a look at the exhibit during the break, Ms. Hardman?

Looks like we may be missing people still.

Ms. Hardman, if you're speaking, I'm not hearing.

MS. HARDMAN: Ah. If I speak a little bit more, are you able to hear me and see me?

THE COURT: I hear you, but now I don't see you.

MS. HARDMAN: Oh. Maybe if I just keep talking to ensure that my little box shows up, that maybe it will show up. No?

MR. JONES: This is Jim, Carrie. Your box is showing up, but just your initials, no picture. There we are.

THE COURT: Very good.

MS. HARDMAN: Oh, strange. Is it, it has shown?

THE COURT: Yes. We're fine. Thank you.

MS. HARDMAN: Okay, great.

MR. JONES: And, your Honor, for -- this is Jim Jones for the debtors.

I'm informed by counsel for the non-debtor affiliates that they do not have confidentiality concerns over the document. I, therefore, apologize for my interruption. I hope people took the convenience break, nonetheless, and we are ready to proceed.

THE COURT: Okay.

Ready to go?

MS. HARDMAN: Yes, your Honor.

THE COURT: All right.

BY MS. HARDMAN:

Q Mr. Kuehn, are you all set?

A Yes, I am.

Q Great.

A Thanks, Ms. Hardman.

Q All right.

MS. HARDMAN: Ms. Manzi, if you are able just to show that document one last time, it will honestly be for about a moment and then we can take it down to ask a few questions.

BY MS. HARDMAN:

Q Mr. Kuehn, are you familiar with this document?

A Yes, I am.

Q And what did you understand this document to be?

A The document was prepared in the week leading up to my second deposition regarding, just explaining the nature of any distributions that had been impacting Trane U.S. Inc. or New Trane Technologies Company LLC.

Q And your second deposition, you're referring to your Rule 30(b)(6) deposition, is that right?

A Yes, I am.

Q Okay.

And you notice on the screen that Ms. Manzi is sharing

there are two line items, one for Trane U.S. Inc. and one for Trane Technologies Company LLC, each related to a date in April of 2020, you see those?

A Yes, I do.

Q Okay. And you also see the other bullets with respect to distributions made by Trane U.S. Inc. in 2019, 2018, and 2017, you see those?

A Yes, I do.

Q Okay. And then there's a final bullet under Trane Technologies Company LLC relating to the Reverse Morris trust transaction, is that right?

A Yes.

Q As a -- based on this document the last distributions listed on this document were in April 2020, is that right?

A Yes, that's correct.

Q Okay.

MS. HARDMAN: Ms. Manzi, if you can shut down the screen now, that would be great.

BY MS. HARDMAN:

Q And distributions are typically made by Trane Technologies Company LLC and Trane U.S. Inc. once a year, is that right?

A On average, it would be about once a year. The timing was also dependent just on what was happening within the company like that RMT transaction that occurred in early 2020. But generally, it could happen about once a year.

Q And has Trane U.S. Inc. made any distributions since April 2020?
A No, I'm not aware of any.
Q Okay. Has Trane Technologies Company LLC made any distributions since April 2020?
A No, I'm not aware of any.
Q All rightie.
MS. HARDMAN: With that, your Honor, I have completed my questioning and --
THE COURT: All right.
MS. HARDMAN: --cede the witness.
THE COURT: All right.
Other questions for this witness?
MR. JONES: Your Honor, Jim Jones for the debtor. I have very few redirect questions, if others are done.
THE COURT: Anyone else that hasn't had a chance?
(No response)
THE COURT: Go ahead, Mr. Jones.

REDIRECT EXAMINATION

BY MR. JONES:
Q Picking up with the last topic, Mr. Kuehn, the distribution process that you said was periodic and annual, has that changed, periodic and/or annual, has that changed since the restructuring in 2020?
A No. The process that existed before is the same process

that exists today.
Q And there's been no impediment to New Trane Technologies or New Trane in meeting their obligations as a consequence of that system, has there been?
A No, there's not.
Q All right.
And those companies have access to credit facilities, is that right?
A Yes, they do.
Q Let me take you to another topic. And that is accounting principles and deconsolidation and the word "control." I understood you discussed that with Ms. Hardman. Do you remember that conversation or that part of the testimony?
A Yes, I do.
Q Let me ask you this question. Have you yourself attempted in any way to control or assert control over the boards of the, Aldrich or Murray since their inception?
A No, I have not.
Q Have you been aware of anyone at Trane that has attempted to assert any control of that kind upon the boards of those two enterprises, now the debtors?
A No, I am not.
Q Anyone at Trane or anywhere else, for that matter?
A No. I'm not aware of any.
Q And let me ask you a couple quick questions about the

funding agreement.

You shared with us that you're not a lawyer. Good for you.

My question is is have you read from front page to back the funding, two funding agreements lately?

A No, I have not.

Q And would you for the meaning of the terms and the obligations contained within those agreements defer to the words of the text?

A Yes, I would.

Q And as they are written, as that text appears in those two documents, will New Trane Technologies and New Trane meet the obligations that are there?

A Yes, absolutely.

MR. JONES: I have no further questions, your Honor.

THE COURT: Any other questions of this witness? Anyone?

(No response)

THE COURT: Ms. Hardman?

(No response)

THE COURT: Okay.

You may step down, sir. Thank you, Mr. Kuehn.

THE WITNESS: Thank you your Honor.

THE COURT: All right.

Are there any more witnesses to be called, either direct case or rebuttal case?

MR. JONES: None for the debtors, your Honor.

MR. MACLAY: The ACC sees no need for rebuttal witnesses. So there are no additional witnesses from us, either.

THE COURT: Anyone?

(No response)

THE COURT: Okay. Then we're done with that part.

I -- we had talked about conditionally or preliminarily taking the exhibits into evidence that the parties had announced we were going to talk about which specific ones that need to be introduced. I'm not sure where you are on that or how you'd like to proceed, but it would be good for my court reporter to know which exhibits that are going to be entered into evidence so the district court will know as well.

MR. HIRST: Good morning, your Honor. Morgan Hirst for the debtors. Good to see you again this morning.

THE COURT: Yes, sir.

MR. HIRST: I think I can cover that for us and I see Mr. Phillips' picture pop up. I suspect he'll deal with that on the Committee's side.

For the debtors and, and as we told your Honor at the beginning of the hearing, these are all being conditionally admitted. The parties will work out their objections --

THE COURT: Uh-huh (indicating an affirmative

response).

MR. HIRST: -- hopefully work out their objections over the coming days and, and let your Honor know exactly where we're at. But for the debtors, the following exhibits we're going to move for conditional admission, which are Debtors' Exhibits 1 through 34, 36 through 44, 46 through 55, 57 through 64, 67 through 78. And then there were three exhibits, your Honor, that were used on the cross of Mr. Diaz yesterday that were Tabs 8 through 10 in his binder, which we will, again, work out with our, our adversaries over the next week, but we'll probably mark those as Debtors' Exhibits 79-81 and we'll conditionally move those documents in as well. Again, that was Tabs 8 through 10 of what was shown to Mr. Diaz yesterday during his exam, cross-examination.

THE COURT: Mr. Hirst, why don't you run those numbers through one more time to make sure we all got them.

MR. HIRST: Absolutely.

THE COURT: 1 through 34 --

MR. HIRST: Yep.

THE COURT: -- 36 through --

MR. HIRST: So 1 through 34, your Honor, 36 through 44, 46 through 55, 57 through 64, 67 through 78. And those are debtors' exhibits numbers.

THE COURT: Right.

MR. HIRST: And then, also, Tabs 8 through 10 of what

was shown to Mr. Diaz yesterday. And I'm checking my various screens, you know, to make sure that I'm not getting an inbound e-mail from people telling me I just screwed up the numbers, or something else. So hold on.

I think I've actually gotten it right. So I've done one thing good for the day, so.

THE COURT: All right.

Any objection the conditional acceptance of those particular exhibits, recognizing you're still going to work through some of your remaining objections, but for present purposes and subject to that?

MR. PHILLIPS: Your Honor, Todd Phillips on behalf of the Committee.

No objection. And we'll work with the debtors to, to create the exhibit record for you.

THE COURT: Right.

In past instances, you, the three sides or four sides have done very well in working that out on, on getting us a clean record.

So I will look forward to hearing whatever you have as to other objections later.

(Plaintiffs/Debtors' Exhibits 1-34, 36-44, 46-55, 57-64, 67-78, 79-81 conditionally admitted in evidence)

THE COURT: How about from the ACC's perspective?

MR. PHILIPS: Sure, your Honor. We're going to --

we'll conditionally move in -- we have 1 through 348 and we're going to probably narrow that list some as we work with the debtors. Some of those exhibits won't be coming in for the truth of the matter, truth of the matter asserted. And some documents we have, we would just ask the Court to take judicial notice of. We will work with the debtors on that and, and come up with a clean record for you on the exhibits and we should be able to do that in the near term.

THE COURT: Any, any objections or problems with that arrangement?

MR. HIRST: For the debtors, your Honor, none, none here.

THE COURT: Anyone?

(No response)

(ACC Exhibits 1-348 conditionally admitted in evidence)

THE COURT: And FCR, any exhibits to be introduced?

MR. GUY: No, we have no exhibits, your Honor. Thank you.

THE COURT: Thank you.

And the same for the affiliates?

MR. MASCITTI: No, your Honor.

THE COURT: I don't think there was anyone else, any other parties that, that anticipated putting in exhibits, but I'll ask anyway.

(No response)

THE COURT: Okay, good. All right.

And I assume you're going to file whatever you come to agreement on.

And there were a number of motions to seal and the like I think set for later in the month.

When did y'all anticipate dealing with any problems that you might have as to objections to the exhibits that have been tendered?

MR. HIRST: So I certainly, in my mind, your Honor, and subject to Mr. Phillips -- I suspect he and I don't want to talk to each other for a day or two -- but after that, I would expect we would try and move fairly quickly on that. I think our next -- I think all the motions to seal that are pending, your Honor, I think, are up for the next omnibus.

THE COURT: Right.

MR. HIRST: I would certainly hope -- and Mr. Phillips can tell me if he disagrees -- that we can attend to all these issues before then and, and hopefully, as a result, resolve. I suspect many of the documents contained in the motions to seal are the documents we're dealing with here. So hopefully, we can take those off your plate as well, your Honor.

THE COURT: Oh, good. But the, the next omnibus date is the 13th. So you've got --

MR. HIRST: Oh, is it?

THE COURT: -- less than a week, so.

MR. HIRST: Oh, boy. So Mr. Phillips and I may have to talk to each other again before that. So we'll move as, as quickly as we can and, perhaps, Mr. Phillips and I can even do some e-mailing while, while the wonderful closings are going on today and figure out some of that.

THE COURT: If the clerk would back stop me on this. Do we have anything on May 26? Anything set for court? I know we have Aldrich, Aldrich on the 27th.

Would it make sense to move everything from the 13th to the 26th at this point, or would that create more headaches than it would resolve?

MR. MILLER: Your Honor, this is Jack Miller.

I apologize and, if I have this wrong, but I think that the hearing on the 13th is in DBMP.

THE COURT: Oh, I'm sorry.

MR. MILLER: But --

THE COURT: I'm looking at the wrong. You're right. This is the 27th. I was looking at the DBMP. You're, you're absolutely correct, Mr. Miller. The DBMP part of my brain was speaking when I was, it shouldn't have been, so. So we --

MR. PHILLIPS: Your Honor, this is Todd Phillips.

I think we can, we can get it all done by May 27th, for sure, and, and Mr. Hirst and I will, I'm sure, talk over the weekend and the coming weeks and work all this out for you.

THE COURT: Okay, very good.

MR. HIRST: Yep. And, your Honor, hearing the 27th does bring music to my ears. We can definitely -- I agree with Mr. Phillips -- get this all taken care of for you by, by the 27th.

THE COURT: Excellent. Excellent. That will be fine.

All right. So with that, we have final arguments. Are the parties ready to, to go into those or you want a lunch recess before you begin, or how would you like to -- do we have any other housekeeping matters that we need to attend to?

MR. ERENS: Your Honor, Brad Erens.

From my perspective, if there are no other housekeeping matters, to give you some sense of timing here, I would suspect that the debtors' closing argument would take us right up to a 1:00 lunch break.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: It won't be shorter than that.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: I will definitely try to keep it within that timeframe, but it would require lunch to be at 1:00 rather than some earlier time unless we broke in the middle of closing argument.

THE COURT: Right.

MR. ERENS: If, if your Honor would prefer not to take

lunch that late, we can, of course, take an early lunch and then I would start right after lunch.

THE COURT: It's more a matter of the parties' preparation. I would normally run until 1:00 before taking a recess, but it's a matter of, of what your needs are.

MR. ERENS: Yeah. I mean, we're happy to proceed, your Honor. It'll give the ACC a nice hour lunch break to consider what we said. So it's a little bit of an advantage for them.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: I believe Mr. Guy -- and he can speak for himself -- would be planning on speaking thereafter. I don't know how long his closing argument will be. And then we would turn to the ACC.

THE COURT: Okay.

So, Mr. Guy --

MR. GUY: Your Honor?

THE COURT: -- what do you envision?

MR. GUY: Your Honor, I think I should need no more than 30 minutes, your Honor.

THE COURT: Okay.

And from the ACC's perspective?

MR. MACLAY: Well, your Honor, I have the disadvantage of not having heard the closings of the debtor and the FCR, but

given what I've heard from them about an hour and a half and then a half hour, I think a reasonable projection of my own would be an hour and a half to two. But we'll have to play it by ear, obviously.

THE COURT: All right.

That being the case --

Did the, the affiliates anticipate making arguments as well?

MR. MASCITTI: No, your Honor. We don't have any argument.

THE COURT: Okay, very good.

I would suggest we go ahead and start and see if -- I won't hold you exactly to 1:00. It may be a few minutes after that, but if staff is ready to go, we will go ahead and get the debtors' final arguments, then.

MR. ERENS: All right. Thank you very much, your Honor.

THE COURT: All right.

MR. ERENS: I would ask, Jon, to bring up the debtors' closing slide deck. Great, okay.

All right. Your Honor, we're ready to proceed.

THE COURT: All right.

Your Honor, the first point I would like to make in closing is an obvious point and it's a point we all are aware of, but it's an important point that I don't think anybody

should forget in the course of the conversation here. And that is that this is not a dismissal hearing, your Honor. This is a hearing on a preliminary injunction. The ACC has not sought to dismiss the case. They tried that in Bestwall unsuccessfully and they have not tried that again here. Your Honor, we believe the reason that they haven't sought dismissal is clear.

Jon, if you could go to the next slide, Slide 2.

Your Honor, this slide represents the situation the debtors were facing around the time they filed for bankruptcy. As of around that time, the debtors were facing approximately 8,000 meso claims, asbestos-related cancer claims, and nearly 80,000 non-mesothelioma claims, including lung cancer and other diseases. And I think your Honor has heard -- we put it in our information brief. I think you heard testimony to that, to this effect from Dr. Mullin -- for a debtor in the, or a defendant in the tort system to fully defend a meso case through trial can easily cost $1 million per case.

So for the debtors in that situation to actively and actually fully defend its docket of meso cases would have cost it $8 billion and that's just the current docket. As we indicated in our information brief, the debtors were facing, on average, a new meso filing every hour of every day of the week, 52 weeks a year. It was an onslaught of litigation that would require billions in defense costs to fully defend. And, of course, that's just the meso cases. As I indicated, there's

80,000 other cases out there, not all of them active, but many other cases and there would be significant additional attorney's fees to fully defend those cases.

So the onslaught was significant. The actual cost to fully defend these cases would have been gigantic. As I said, eight billion to fully defend these cases just for the current docket, not counting cases that will be coming in in the future.

The situation was serious not only with respect to the debtors, your Honor, but the, the situation was, I'll call it, problematic with respect to the claimants. As you've heard a couple times during the course of discussion, including Dr. Mullin's testimony, the RAM study, which we cite here, has indicated that the tort system is such that most of the money does not actually go to the claimants and the debtors' experience in the tort system was no different. On average, claimants receive only 42 cents of every dollar that a, that a defendant in the tort system spends. The debtors' experience -- and I think this was part of the testimony -- was that approximately 25 percent of its own expenditures went to defense fees. The remainder went to the claimants, but a big portion of that then went to pay contingency fees. And so when you do the math, the tort system is such that less than half of the money is actually going to the claimants.

Next slide, please.

This represents, this slide represents the overall costs to the debtors and their predecessors in the tort system. Old IR-New Jersey, Old Trane, and the debtors defended more than 75,000 personal injury lawsuits from 2005 to 2020. At the time of the bankruptcy the debtors were spending approximately 100 million annually for defense and indemnity and approximately have spent $2 billion, the debtors and their predecessors, since the inception of the litigation, again on, on defense and indemnity, a very significant amount spent to date and a very significant amount to be spent into the future.

Next slide, your Honor or -- excuse me -- next slide, Jon.

As a result, your Honor, we would submit there's no question that there's a valid reorganization purpose for these chapter 11 cases, which is to resolve a very serious situation in the tort system, a very inefficient and unending situation in the tort system. And to back that up, your Honor, we quote from Judge Beyer, who faced a similar issue, obviously, in the Bestwall case in connection with the attempt of the ACC to dismiss that case. And in Bestwall, Judge Beyer said the following:

> "Attempting to resolve asbestos claims through 11 U.S.C. 524(g) is a valid reorganization purpose and filing for chapter 11, especially in the context of an asbestos or mass tort case, need not be due to

insolvency. The Committee agrees."

In Bestwall, the Committee affirmatively agreed with that statement and, your Honor, notwithstanding the statements of the ACC in this case, we would submit the ACC has implicitly agreed with this statement because, again, they have not sought to dismiss the case.

Your Honor, viewed in that context, an existing case not subject to dismissal, the debtors would submit that the need for a preliminary injunction is abundantly clear. In fact, your Honor, notwithstanding all of the discovery that has been taken place in this case over the last nine months, all the dollars that have been spent, all of the time that has been spent, the fundamental facts that justify an injunction are the same facts that the debtors set forth in their original motion and the declarations in support. The injunction is necessary to avoid piecemeal litigation that would occur in thousands of cases across this country in hundreds of courts while this reorganization is pending, the purpose of which is under the auspices of your Honor to fully, fairly, and globally resolve both current and future asbestos claims.

Jon, next slide, please.

And, your Honor, that's why we would submit that every court that has previously been asked to enter an injunction of this type has done so. Yes, many of these cases were done consensually, but it just shows that parties have long

understood that injunctions of this type are necessary to support reorganizations whether insolvent or in solvent cases.

So, your Honor, we have a long list here. Some of these cases were insolvent. Some of them were solvent. W. R. Grace was solvent. The Mid-Valley case was solvent. Your Honor, the Garlock case at the end of the day was solvent. The value of the company exceeded the amount put in the trust. And, of course, the Bestwall case at the very top left is solvent and, of course, is not a consensual case. The preliminary injunction was hotly contested before Judge Beyer on essentially identical facts to this case and yet Judge Beyer had no problem issuing the injunction in that case for all the same reasons that the debtors have argued here.

Jon, if we could turn to the next slide.

Your Honor, let's start and go into the legal standards that would support a preliminary injunction.

Next slide, please.

I think we're all aware that there are four factors relevant to a preliminary injunction: Likelihood of success, irreparable harm to the debtors' estates, the balance of harms, and public interest.

Next slide, please.

Your Honor, I will go into detail in each of, into each of the four factors, but I think what's most important is what's on this slide. This comes from the Brier Creek case and

the court said there:

"The Fourth Circuit has made very clear that the critical, if not decisive, issue over whether injunctive relief should be granted is whether and to what extent the non-debtor litigation interferes with the debtor's reorganization efforts. Where the facts are sufficient to demonstrate that the non-debtor litigation adversely impacts the debtor's reorganization efforts, injunctive relief is warranted."

Your Honor, here, the ACC's request in not continuing the injunction would be in a mass tort case to allow the entire creditor body of tort claims to effectively opt out of this chapter 11 and instead, liquidate their claims against the debtors instead, against third parties outside of this Court, third parties who the debtors have fully indemnified contractually. Your Honor, that situation is such that I cannot think of a more clear example of a situation that would interfere with the debtors' reorganization.

The purpose, again, of this case is to globally, fairly, and finally resolve both current and asbestos claims. And your Honor would preside -- excuse me -- preside over proceedings as to how to determine the amount of those claims, yet the request by the ACC is to allow all creditors to proceed outside of this case and to try to liquidate their claims

against the debtors in proceedings throughout the tort system. Your Honor, that is an example of clear interference with the reorganization and, in fact, your Honor, it's interesting. It goes even further than that. The ACC has admitted in this case that their goal in trying to defeat this injunction is not only to interfere with the reorganization. It's to actually defeat the reorganization. Your Honor, as such, we would submit there could not be a clearer case for a need and an appropriateness for a section 50, section 105 injunction under Robins and its progeny in this Circuit.

Jon, if you'd go to the next slide.

Before I actually go into each of the four factors for a preliminary injunction, I think it's important, your Honor, to remind you of the specific facts of the injunction. This did come up in testimony, but I want to set the table here.

Again, the debtors' request for an injunction would be an injunction against third-party litigation with respect to three sets of parties. The first set of parties is the non-debtor affiliates. Again, these are entities that the debtors have fully indemnified with respect to asbestos claims against the debtors contractually through the 2020 restructuring documents. That is the basis for the injunction.

The second set of parties are what we call the indemnified parties. The basis for the injunction is similar or, in some sense, the same. The debtors have fully

contractually indemnified these parties for asbestos claims with respect to and against the debtors. These parties are not affiliates of the debtors. They are parties with, with which the debtors or their predecessors entered into transactions over the course of decades through transactions like divestitures where the debtors and their predecessors agreed to fully indemnify these parties for asbestos liability relating to the debtors.

The third set of parties are the debtors' insurers. As we set forth in our moving papers, the debtors have indemnified the insurers in various respects, but the rationale here is, in addition, that, of course, the insurance is property of the debtors' estates and if plaintiffs were able to directly pursue the debtors' insurers and collect from the insurers, that, of course, would deplete assets of the debtors' estates.

Your Honor, in the objection that the ACC filed they actually did not contest the applicability and appropriateness of the injunction with respect to the two second set of parties, the indemnified parties and the insurers. So not surprisingly, your Honor, what this all is about is the ACC's objection to the application of the injunction as it applies to the non-debtor affiliates and as such, in argument I will focus on the injunction as applied to those non-debtor affiliates.

So let's start with the first of the four factors for

a preliminary injunction, likelihood of success. Your Honor, the ACC in its objection did not dispute that in bankruptcy likelihood of success has been interpreted to mean that there is a likelihood of success -- excuse me -- a likelihood of a successful reorganization. The ACC also did not dispute that this standard based on the case law is not designed to be particularly high at the beginning of the case. There's no requirement that there be an absolute guarantee of a successful reorganization, nor is there an obligation that the debtor have a plan on file the first day of the case. As such, your Honor, the debtors have made, clearly, the *prima facie* case that they satisfy the likelihood of a successful reorganization stand -- excuse me -- factor in this case.

Why is that the case, your Honor? No. 1, as the testimony shows and the documents show, the debtors clearly have the wherewithal to prosecute this chapter 11 case. As your Honor knows, that's not always the case in chapter 11s. Sometimes companies come in saying they want to reorganize in chapter 11, but simply do not have the sufficient funds to do so and they wind up in chapter 7. That is obviously not this case. Your Honor, through their own assets as well as the uncapped funding commitments from New Trane and New Trane Technologies, the debtors, no question, have the wherewithal to fund the costs of this reorganization and to fully fund a section 524(g) trust.

Yesterday, Mr. Diaz testified to the contrary. He said the funding agreements were highly conditional. Your Honor, the testimony is simply not credible. What were some of the things that Mr. Diaz said? He said, well, before the restructuring the creditors could get paid directly. Well, your Honor, that is a function of the fact the debtors have filed for bankruptcy and there's an automatic stay. That's not a function of the funding agreement. As the testimony shows, after the restructuring the debtors had the same ability to pay asbestos claims that they had prior to the restructuring through the funding agreements and their commitments and, in fact, during the period between the restructuring and the bankruptcy the debtors continued to pay claims in the tort system as they had previously.

Mr. Diaz also said before the restructuring asbestos creditors could put liens on assets. Well, again, that's true, but the reason they can't do that today is not a function of the funding agreement. It's a function of the chapter 11 and the automatic stay. Mr. Diaz said there's no dispute resolution procedure -- that what's I interpret him to say -- in the document. Your Honor, that's untrue. Section 7 of the funding agreements provide for remedies in the event of breach, in the event a payor breaches a funding agreement. Mr. Diaz said the funding agreements can't be sold. Your Honor, the funding agreements provide for cash. There's no need to sell

the funding agreements. Their commitment is to provide cash at the time of reorganization as well as during the reorganization to pay the costs thereof. And lastly, Mr. Diaz said something to the effect of, well, the, the nondebtors, New Trane and New Trane Technologies, could delay payments. I'm not sure what he was saying, your Honor. Obviously, the debtors are under the jurisdiction of this Court. They're in bankruptcy. Your, your Honor obviously has the ability to enforce agreements of the debtors according to their terms.

So, your Honor, Mr., Mr. Diaz's testimony was simply not credible in this respect.

I will also point out that the Paddock case has been talked about a lot and I think that came up in the testimony of Mr. Diaz. If you look at the funding agreement in the Paddock case, what that funding agreement actually says is the funding for a 524(g) trust would only be available under a plan that the debtors proposed or the debtors' board approved. So the debtors had a veto in that case. If they didn't like the plan, they wouldn't fund it.

Your Honor, the funding agreements in this case say nothing of the type. They're very clear. To the extent the parties agree on an amount to be funded into a trust or that amount is determined pursuant to judicial process pursuant to a final and non-appealable order, the New Trane Technologies Company and the New Trane U.S. companies are required to fund

the amounts necessary, to the extent the debtors' assets are insufficient, and they're required to fund that amount upfront at the effective date of the reorganization, not over time, not to draw it out, they're required to fund that amount upfront.

So No. 1, the debtors clearly have the wherewithal to prosecute this case and to fund a 524(g) trust.

Secondly, with respect to likelihood of a successful reorganization, the history of asbestos cases is that they always resolve. Yes, they are contentious. Yes, they sometimes do take time, but every case to date has resolved. And the best example is Garlock, a case your Honor, of course, presided over. Your Honor came into Garlock somewhere in the middle and at that time the parties had been spending several years fighting extensively over what probably appeared to be every single issue in the case. Millions of dollars were being spent on litigation and as a reminder, at that time the debtors were actually suing the plaintiffs' bar in the district court for RICO violations. Your Honor, if an observer looked at that situation, that observer might say, "Boy, I'm not sure how this case is going to successfully reorganize. The parties seem to hate each other and there's nasty litigation going on." But, your Honor, of course, that case did resolve. That case resolved under your Honor's jurisdiction. The case reached a successful 524(g) result. The asbestos cases do resolve, even though they're hotly contested.

And finally, with respect to this case, your Honor, as has come through in the testimony, the debtors have already entered into negotiations with the FCR who represents something like 80 percent of the asbestos liability. The negotiations are productive, they continue, and it is certainly the debtors' hope -- and the FCR can speak for itself -- that soon we will reach agreement on a terms, on the terms -- excuse me -- of a plan of reorganization. Yes, those discussions and negotiations haven't included the ACC, but that's simply because the ACC has turned down both the debtors' and the FCR's invitation to be part of those negotiations, but yet we believe we will get to a deal with the FCR in the near term. And, your Honor, if we can get to a deal with the FCR representing 80 percent of the liability in this case, I have to believe we can get that other 20 percent across the line.

So, your Honor, the debtors have made the showing necessary, which again is not a high showing, that there is a likelihood of success of a, likelihood of a successful reorganization in this case.

What does the ACC argue in opposition? Well, the first argument the ACC makes is that they will never agree to a deal here. Well, your Honor, a couple of things in response. As came out in the testimony over the last couple days, they just agreed to a deal in the Paddock case, a situation that involved a pre-petition restructuring very similar to these

cases. As a result, I think your Honor was concerned -- I think you used this term in the DBMP hearing -- that there, that the plaintiffs' bar views the divisional mergers as an "existential threat," I think was the term that was used. Well, the settlement in Paddock belies that. When the ACC sees the benefit of a resolution, they will do it. They've done it in Paddock in a transaction that bears all the same hallmarks of the divisional mergers in this case.

If we go to the next slide, please, Slide 10.

Nonetheless, your Honor, the argument by a party that will never agree is never sufficient to defeat a request of the type here. On Slide 10, we point out two examples of cases where courts have faced similar arguments. The first case is the Purdue Pharmaceutical case, an opioid case in the Southern District of New York. And there, the court said, "Appellants cannot say that a reorganization is unlikely simply because they intend to object to the plan as presently constituted."

And the second quote is from Judge Beyer in connection with a motion for estimation in the Bestwall case. And there, Judge Beyer said the following:

"As Mr. Harron," who represents the FCR in that case, "aptly pointed out, and I quote, 'A party does not get to declare a plan patently unconfirmable by saying it will not vote to support the plan.' The Court simply cannot make decisions about a case, how a case may

ultimately conclude, by giving effect to a party's litigation posture at the outset.'"

Your Honor, we would submit the exact point. The ACC cannot defeat the injunction by simply posturing that they'll never agree and their statements, again, are belied by their own actions in the Paddock case.

What is the next argument by the ACC?

If we could turn to Slide 11.

The next argument by the ACC is that New Trane and New Trane Technologies are not eligible for section 524(g) relief. Your Honor, first of all, that's not even the standard here. As Judge Beyer aptly pointed out in the same context in the Bestwall case, "Whether any particular party is eligible for 524(g) relief and under what conditions is something to be determined at confirmation." But in any case, the assertions by the ACC are simply incorrect. Here, we quote the statute, or the relevant portions of the statute:

"A nondebtor is eligible for protection if it is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor and if such liability arises from its involvement in a transaction changing the corporate structure of the debtor or a related party."

And "related party" is defined in 524(g) to include a predecessor of the debtor.

Your Honor, since New Trane Technologies and New Trane never manufactured or sold an asbestos-containing product, any alleged liability against those entities could only arise from the 2020 corporate restructuring, the time at which they were born, so to speak. So if you go back to the top box, any allegation against New Trane or New Trane Technologies, notwithstanding the ACC's statements to the contrary, can only be an allegation that they're liable as a result of their "involvement in a transaction changing the corporate structure of a predecessor of the debtor," i.e., Old Trane and Old Trane Technologies.

So it's simply not the case that New Trane and New Trane Technologies are ineligible for 524(g) relief. And as an example, we cite the Quigley case in our papers to underscore that conclusion.

What's the next argument by the ACC?

If we could turn to Slide 12.

The next allegation or statement by the ACC is a little bit odd, your Honor. The assertion is because they allege that there are fraudulent transfer allegations in these chapter 11 cases, the cases cannot successfully reorganize. Your Honor, on Slide 12 we give eight examples -- and I'm sure we could come up with others -- of cases that involved, that, that were asbestos cases wind up in chapter 11 through fraudulent transfer allegations and yet the cases all

successfully reorganized under section 524(g), the Keene case, the Babcock & Wilcox case, the G-I case, the W. R. Grace case, Combustion Engineering, Specialty Products, Garlock, and Kaiser Gypsum, your own case. And I suppose that case hasn't fully confirmed under 524(g). I believe your Honor has approved confirmation, but it's now up at the district court.

THE COURT: Recommended.

MR. ERENS: So, your Honor, the allegation that because there are fraudulent transfer allegations a case cannot successfully reorganize under 524(g) is simply incorrect.

And, your Honor, this slide, I think, will put out a couple of important points in the course of this argument. So I'm going to come back to this slide a couple of times. But I think for now the one other thing I want to point out -- and again, we'll come back to this -- is not only did these cases successfully reorganize under 524(g), in each of these cases a 105 injunction was issued of the type that the debtors seek here.

Separate and apart from the points I just went through, your Honor, the, the debtors, of course, completely dispute that there are any fraudulent transfers in these cases. The testimony was clear. The debtors have the full wherewithal to pay the costs of these reorganization, these reorganizations and the asbestos liability in these reorganizations. The ability of the entities that ultimately became the debtors had

the same paying power after the reorganization that they did prior to the reorganization. There was no value drain, there was no hiding of assets, there were no unloading of liabilities. The assets are sufficient through the debtors' own assets or the back-up funding agreements to pay all liabilities in full. This is the exact opposite of a fraudulent transfer.

I know the ACC likes arguing about badges of fraud. Your Honor, in our brief in reply to the ACC's objection in Footnote 17 we explained why those badges of fraud allegations are simply baseless. The non-debtor affiliates briefed the same issues and I suspect in closing we'll hear about it, again. I don't think it's worth going through now, your Honor, but in rebuttal, assuming the arguments are made, we would like to rebut the allegations of badges of fraud.

So, your Honor, with that, that is the like -- excuse me -- with that, that is the likelihood-of-success prong. The debtors clearly make a sufficient showing that they have a likelihood of success for a successful reorganization. They have the funds to do it. Asbestos cases, even though they're contested, do resolve and perhaps most importantly, we have the support of the FCR not only on this injunction, but to negotiate quickly and promptly a section 524(g) result in these cases.

Jon, if we could go to the next slide, Slide 13.

Now we'll turn, your Honor, to irreparable harm to the debtors' estates. Again, as we put up on a slide at the beginning, under Robins and its progeny this is the main factor, the most important factor of the four factors. As Brier Creek indicated, in the Fourth Circuit the critical, if not decisive, factor on a preliminary injunction is whether the third-party litigation will interfere with the debtors' reorganization.

Your Honor, here, the harm is clear. Again, the claims that the ACC would like plaintiffs to be able to bring against non-debtor affiliates in the tort system are the exact same claims that exist against the debtors. They involve the same products, the same time period, and the same injuries. They are the claims against the debtors. In addition, New Trane and New Trane Technologies have been fully indemnified on a contractual basis by the debtors with respect to those asbestos liabilities.

So the debtors are the real party in interest with respect to that litigation. What the ACC is proposing here is the unprecedented result that your Honor effectively lift the stay to allow tens of thousands of claims, tort claims, to opt out of this bankruptcy and liquidate their claims outside of this bankruptcy case while your Honor is presiding over this case, the main issue of which is what is the amount of those asbestos liabilities. It would be an unprecedented result in a

mass tort case to allow all the tort claims to simply go forward in thousands of cases across the country and in hundreds of courts. It would be an uncontrollable situation, your Honor.

If we turn to Slide 14.

We tried to depict it and what we have here, of course, is the bankruptcy court trying to resolve the whole case globally while hundreds of courts are facing the exact same claims across the country. Your Honor, of course it would result in piecemeal litigation of the exact same claims that exist in this case in thousands of courts across the country. As we said in our brief, it would defeat the very purpose of this bankruptcy, a bankruptcy, again, that no party has sought to dismiss, the purpose of which is to globally, fairly, and uniformly resolve current and asbestos claims in one forum. Your Honor, for the same reason, it would defeat the very purpose of 524(g), which is, similarly, to resolve fully, globally, and fairly in one forum and in a uniform fashion current and future asbestos claims. Your Honor, the result would be tantamount to dismissal of this chapter 11 case, a result that the ACC has not hidden is what it exactly seeks, an effective dismissal of this case. Because as I think Mr. Gordon said in the DBMP hearing, what's really going on here, your Honor, is the ACC is trying to.do through the backdoor what it cannot do through the front door. It's not

seeking to dismiss this case through a dismissal motion. It's seeking to dismiss this case through objecting to the preliminary injunction.

And actually, how do we know that, your Honor?

If we could turn to Slide 15.

We have admissions by the ACC in this case to this effect. January 28, 2021 omnibus hearing, "The Committee challenges the propriety of this bankruptcy case in its entirety." "I think that this Court's order on the preliminary injunction motion will dramatically inform what happens next." ACC counsel, March 25th omnibus hearing, "Our constituents do not want to be in this case and in this Court. We think the filings are inappropriate," yet they're not seeking to dismiss the case. And then just last week, April 29th omnibus hearing, counsel for the ACC, "We believe and hope this case will be disposed of effectively in proceedings next week." Of course, that's these proceedings before your Honor.

Your Honor, again, the test in the Fourth Circuit is whether third-party litigation will interfere with the reorganization. Your Honor, allowing the entire creditor body of tort claims to seek to liquidate their claims against the debtor outside of this forum, instead in hundreds of courts and in thousands of cases across the country obviously would create extensive interference with this reorganization, but maybe even more to the point, the entire purpose of the ACC's efforts here

is actually to defeat the reorganization in its entirety. Your Honor, I'm not sure I can come up with a clearer example, as I said before, of a situation where under Robins and its progeny a preliminary injunction is appropriate.

So what does the ACC argue in opposition? The first argument the ACC makes is that there's no harm to the debtors because, to the extent the debtors' assets are insufficient, they have uncapped funding agreements. Well, your Honor, the ACC, of course, ignores the first part of that. As Judge Beyer made clear -- and the facts are clear -- the funding agreements are simply backstops. It's the debtors' assets that are first on the line to meet claims, including indemnity claims that would be the result of litigation outside of this bankruptcy during the bankruptcy against third parties because the debtors have fully indemnified those third parties that would be sued.

So the current contingent asbestos claims would turn into liquidated indemnity claims against the debtors and it's the debtors' assets that are first up, so to speak, to meet those claims. And, of course, those being liquidated claims, those would be the first claims paid in the case.

So the debtors' assets are clearly at issue with respect to what the ACC is suggesting, which is litigation outside of this Court. As I think, your Honor -- Mr. Diaz even put this up in his own testimony -- the debtors have substantial assets. They have operating businesses, they have

cash, they have insurance, and they insurance receivables. I think Mr. Diaz indicated that the debtors' assets are in excess of $300 million. And the testimony was also that there has not been a funding request made during the bankruptcy. The debtors have had enough of their own assets to pay all of the claims, I should say all of the costs of the bankruptcy for almost the first year and I'm not aware that a funding request is coming anytime soon. The debtors' assets are sufficient, they're not minor, and they would be first on the line in terms of meeting indemnity obligations that would be fixed against the debtors outside of this bankruptcy if the injunction were not continued.

Your Honor, equally importantly, the, the ACC simply misinterprets the concept of harm to the debtors' estates. The argument of the ACC is the debtor's not harmed because the claims in this case will get paid one way or the other through the funding agreements, but, your Honor, the standard is harm to the debtors' estates. The ACC is treating the debtor as if it's not in bankruptcy. It's a private party. The debtor is in bankruptcy. When the, when a debtor files for bankruptcy or when an entity files for bankruptcy, it creates a bankruptcy estate and the harm under Fourth Circuit law that's relevant is harm to the estate.

Obviously, liquidating claims outside of this bankruptcy case will harm the debtors' estates in numerous

ways. It can lead to inconsistent results between currents in this bankruptcy -- excuse me -- claimants in this bankruptcy and outside of this bankruptcy. Obviously, the future claimants cannot opt out of the bankruptcy like the ACC would like the currents to do and liquidate their claims in the tort system. And, your Honor, of course, it affects the process. The process in this case to resolve asbestos claims includes, potentially, bar dates, PIQ motions, estimation, formulation of plans. What the ACC would propose is, notwithstanding all of those efforts in a bankruptcy to resolve claims globally, fairly, and fully, the claims would be liquidated outside of the bankruptcy and would continually be a moving target.

And a couple of points, your Honor. Robins was a solvent case and yet, of course, there was an injunction entered in Robins. So the fact that the debtors are solvent is not a basis to deny the injunction. The ACC's argument that the debtors' assets would not be depleted if the injunction were not continued, first of all, is incorrect because the debtors would, of course, expend dramatically more money trying to prosecute this bankruptcy as well as defend in the tort system, but the standard the ACC sets forth is incorrect. What they have argued is the standard in the Fourth Circuit is depletion of the debtors' assets and that's not the standard.

If you look at the Kreisler v. Goldberg case, a more recent Fourth Circuit case, what the court said there in this

context is, "An injunction may issue if non-debtor litigation will deprive the debtors of funds needed for their reorganization or put detrimental pressure on the reorganization efforts." Obviously, depletion of funds is a factor, but it's not the only factor. From the very first day in Robins, the test is interference with the reorganization, not necessarily depletion of assets of the debtors' estates.

And finally, your Honor, if you take the ACC's approach to its extreme, if you follow their logic, we would submit that the debtors could never suffer injury as a result of piecemeal litigation throughout the country. What the ACC has said is the debtors shouldn't care because all the claims will get paid. Well, what if the debtors were insolvent? You could hear the ACC saying, "Well, your Honor, in that case all the debtors' assets are spoken for. All the debtors' assets will be used to pay claims. The debtors will not be able to reserve any of their assets. They're all spoken for. They're all going to go to creditors. So why does the debtor care whether the claims are decided here or elsewhere? All the assets will be gone. So the debtor is just a stakeholder." Again, your Honor, the standard is harm to the debtors' estates. It's harm to the process. It's harm to the reorganization. The full, final, and global resolution of the entire creditor body in one forum, something section 524(g) itself contemplates.

What's the next argument that the ACC makes? The ACC makes various arguments that they allege that the harms that the debtors will clearly suffer are contrived or self, or self-inflicted. Let's start with contrived.

Your Honor, the implication of the ACC's argument is that the debtors or their predecessors put the mutual indemnity provisions into the 2020 corporate restructuring documents to create the very harms that now befall them. Your Honor, that is simply incorrect and to prove the point -- we put this in our brief -- the debtors went out and looked at the SEC database and looked for spin-off transactions that were publicly reported over the last several years and they found 150 such spin-off transactions. And why did the debtors look at spin-off transactions? The reason is those types of transactions bear some similarity to the divisional merger. A spin-off transaction is a transaction where a corporate family decides it's going to spin off a new entity and the corporate enterprise will retain some of the liabilities and assets and the spun-off company will receive some of the assets and become responsible for some of the liabilities. And, your Honor, what we found was in every single one of the 150 spin-off transactions there were mutual indemnities of the exact same type that were put in the 2020 restructuring documents.

So I want to be clear what I'm saying here. Let's take a simplified example. Let's say there's a corporate

family and there's going to be a spin-off transaction and Company A will remain in the corporate family and Company B will be spun out. And in the spin-off transaction it's determined that Company A will retain some of the assets and be responsible for some of the liabilities and Company B will receive other assets and be responsible for other liabilities. And what we found, again, your Honor, is in every single one of those 150 transactions where Company B was responsible for certain liabilities, it indemnified Company A for those liabilities because it was responsible. And, and likewise, Company A indemnified Company B for liabilities that were going to be retained by the corporate enterprise and that Company A was responsible for.

So the insinuation that the entities put mutual indemnity provisions into these documents simply to create harm is really baseless, your Honor. These are typical corporate provisions that apply when companies separate assets and liabilities. They were not contrived.

Secondly, with respect to the argument of self-infliction, the implication of the argument by the ACC is that preliminary injunctions are unique to divisional merger cases.

Your -- Jon, if you could turn back to Slide 12.

And as I said, your Honor, I'm going to be turning back to this slide a --

THE COURT: Uh-huh (indicating an affirmative

response).

MR. ERENS: -- a couple of times during the presentation.

The argument from the ACC is if a divisional merger simply had not been done here, there'd be no need for a preliminary injunction. Well, again, your Honor, we cite eight cases -- I'm sure we could find further or additional ones -- where corporate families had asbestos liabilities. The liabilities existed somewhere within the corporate family. There was a reorganization done. Assets were moved out of the entity that had the asbestos liabilities. Assets may have been moved up through dividends. Assets may have been moved down into subsidiaries. Assets may have been moved sideways into sister companies. But in, in each case, assets were moved out and the company that had the asbestos liabilities wound up being unable to pay those liabilities and filed for chapter 11. And in each of these cases, your Honor, a 105 injunction was issued, again similar to the injunction that is sought here.

Your Honor, to my knowledge, nobody argued in those cases that no injunction was appropriate because the harm was self-inflicted. I don't know exactly what was argued but if it was argued, obviously it wasn't successful because a 105 injunction was issued. No one argued that to protect the remainder of the corporate family that now had the assets and, therefore, might be subject to something like a successor

liability claim, that the injunction was inappropriate because the harm was self-inflicted. No such argument, probably, was made, but again, to the extent it was made, it was unsuccessful.

Your Honor, preliminary injunctions are not unique to divisional merger cases. As indicated on the slide I put up at the beginning, they have been issued in numerous cases uniformly by courts that have been asked to enter them in asbestos cases, including asbestos cases that have involved pre-petition restructurings.

Secondly, we would point out, as we did in our briefing, that the case law that the ACC cites on the self-infliction point do not come from reorganizations, do not come from asbestos cases, and do not come from chapter 11s. The case law itself is completely inapplicable to this type of situation.

Next, your Honor, there's two other arguments the ACC makes on this prong that I'd like to address. The ACC argues that the *res judicata* and diversion of personnel harms that will, that the debtors will suffer are not probable, but only possible and their argument is the debtors must show that the harms are probable. Your Honor, a couple of things on this. First of all, with respect to *res judicata*, collateral estoppel, evidentiary prejudice, and the like, what the ACC is suggesting, again, is that tens of thousands of cases be able

to proceed notwithstanding the automatic stay here in the tort system against parties that the debtors have fully indemnified. They, those cases obviously will involve the debtors and the debtors' facts, the debtors' history, and the debtors' asbestos liability. Given the volume of that number of cases, potentially tens of thousands of cases going forward, of course, there's a substantial risk that there'll be evidentiary prejudice, collateral estoppel effects, and *res judicata*. And can we tell you exactly today when and under what context that will occur? No, but with tens of thousands of cases potentially moving forward I think it's common sense to assume that the risk exists and the risk is substantial.

In Mr. Tananbaum's testimony, he was crossed and was asked about this topic and he was asked:

"Q Have you been aware that the debtors have been subject to *res judicata*?

"A No.

"Q Have you been -- are you aware that the debtors have been subject to collateral estoppel?

"A No."

And I think Mr. Tananbaum tried to interrupt and your Honor asked him not to do so because he was on cross --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- but the point I think he was trying to

make, your Honor, is the argument being made by the ACC is, is really irrelevant because they're talking about a 49-day period between the time that the restructuring occurred and the bankruptcy was filed. During the 49 days, during that period, did the debtors suffer *res judicata*, collateral estoppel, or similar effects? No, but it was only seven weeks, your Honor. The litigation was just commencing and, of course, they haven't suffered such prejudice to date because the automatic stay's been in place and the injunction's been in place.

But again, if all these cases were to proceed in the tort system, of course, the risk of all this would be substantial.

Your Honor, with respect to diversion of key personnel, the, the point is really exactly the same. The ACC has made various arguments and try to focus the parties on exactly what individuals do. Who is in the Legal Department? What exactly are their responsibilities? Who's in the Finance Department? Who's seconded? How much time do they spend working for the debtors versus Trane Technologies? Are they a bankruptcy lawyer? Are they not a bankruptcy lawyer? Your Honor, in large respect, I think that misses completely the point.

Your Honor, when companies file for bankruptcy, an automatic stay is put in place and as you know, the purpose of the automatic stay, among other things, is to provide a

breathing spell for the debtor. It is to allow the debtor and its personnel to stop taking the time to defend litigation that they were defending leading up to the bankruptcy, to stop defending collection actions that were occurring leading up to the bankruptcy, and to focus on the bankruptcy and prosecution of the case. What the ACC is suggesting, of course, is that none of that occurred and that the debtors have to prosecute the bankruptcy at the same time that they run the tort system.

Your Honor, no matter whether the debtors have two people in the Legal Department, two people in the Finance Department, rehire seven people in the Legal Department, of course, running the bankruptcy and running the tort system at the same time will involve massive diversion of personnel, given the number of claims we're talking about. We're not talking about five claims or ten claims. We're talking about, potentially, tens of thousands of claims and, and as a result, we would submit there could be no question that there'll be significant diversion of personnel. That has been a justification since Manville for an injunction of the type that's being requested here.

Finally, your Honor, the last argument being made by the ACC --

MR. NEIER: Can you hear me?

THE COURT: Yes, sir.

MR. NEIER: How are you? Oh, I'm okay. My, my

portion of the trial is, is over.

MR. LAMB: Mr. Neier, your mike's not muted.

MR. NEIER: And --

MS. HARDMAN: David?

MR. NEIER: -- they're doing --

MS. HARDMAN: David?

MR. NEIER: -- closing arguments right now, but --

MS. HARDMAN:: David?

MR. NEIER: -- they're so boring I can't even listen to them.

MS. HARDMAN: David?

THE COURT: Let's take a five-minute recess --

MR. NEIER: Yeah. Now Carrie's calling me.

THE COURT: -- and see if someone can communicate with Mr. Neier.

THE COURTROOM DEPUTY: All right. He's muted now.

THE COURT: Is he muted now? Good.

Okay. Let's proceed, then.

MR. ERENS: All right. Thank you, your Honor. It actually gave me a chance to take a drink. I think my, my throat's getting a little bit dry.

And I, I apologize I'm boring Mr. Neier. I hope I'm not boring the Court.

MR. NEIER: I'm sorry.

MR. ERENS: I'll try to be more lively, if I can.

Your Honor, the final argument being made by the ACC is that it's inappropriate to have all of the non-debtor affiliates be --

MR. NEIER: Can you hear me?

THE COURT: Yes, sir.

MR. ERENS: -- on the list.

MS. HARDMAN: David, you're on the record again.

THE COURTROOM DEPUTY: I muted him.

THE COURT: Okay.

Go ahead, Mr. Erens. We've muted Mr. Neier.

MR. ERENS: Okay. Thank you, your Honor.

The final argument being made by the ACC is that it's inappropriate to have the full list of non-debtor affiliates beyond the list of protected parties.

THE COURT: He's unmuted, again.

MR. NEIER: Sorry about that. It's -- this -- I can't --

THE COURT: One moment, Mr. Erens.

MR. ERENS: Sure.

THE COURT: It's a brave, new world, isn't it, with all the tech issues.

MR. ERENS: While we're waiting, I'd ask, Jon, if you could go back to Slide 16. Because we're about to move into the balance of harms argument. Thank you.

THE COURT: Are we ready to proceed?

MR. LAMB: Go ahead.

THE COURT: Okay.

Mr. Erens, back on the record.

MR. ERENS: Sure. Thank you, your Honor.

The final argument made by the ACC is that it's inappropriate to put the full list of non-debtor affiliates on the protected party list. Your Honor, we dealt with this argument in Footnote 32 of our briefs. I know your Honor has indicated you've read our --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: - brief once, if not more than once.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: The point here is it's standard to do so. We cited several cases. I think in the Kaiser Gypsum case there were 200 parties listed on the, on the non-debtor affiliate protected party list. Garlock had a large number of such cases. It's -- it's -- it's common to have something like no less than 50 and again, upwards of 200 in the Kaiser Gypsum case of non-debtor affiliates. And, of course, the point is there's no harm in doing so. If there are entities that have never been sued for asbestos and there's no intent to sue them for asbestos, well, then, there's no harm in putting them on the list. And, of course, if you leave someone off the list,

it potentially only invites plaintiffs to think about suing that party and then, if that occurs, we have to come back to court and then get your Honor to put that entity back on the list. To the extent there's been a party that has been sued or there's allegations it should be sued, of course, that entity should be on the list.

So there's no harm in putting the list of protected parties in the injunction as proposed by the debtors.

So, your Honor, in summary, the debtors would submit they've clearly satisfied the standard of irreparable harm to the debtors' estates. The avowed goal of the ACC in seeking to end the injunction is to actually defeat the reorganization. Nothing could be more strong in terms of supporting an injunction under the Robins standards. But regardless, allowing the tort system to proceed in liquidating claims against the debtors while your Honor is trying to, to oversee this case and resolve the same claims globally in this case obviously constitute, constitutes -- excuse me -- interference with the reorganization.

In Brier Creek, the court made the point that:

"There should be an injunction against litigation if the issue in the non-debtor litigation would involve issues that the court had to consider and were important to consider in the reorganization."

Your Honor, perhaps the most important issue in this

case is what is the amount of the asbestos liability. The ACC would have that be determined outside of the auspices of this case. It is a usurpation of the Court's ability and power to decide the most important issue in the case. For that reason, there is irreparable harm to the debtors' estates.

Okay. So let's now turn to balance of harms. Your Honor, the testimony that you heard over the last couple of days obviously addressed this issue. The harm, first of all, got somewhat confused, I think, in Mr. Diaz's testimony. He started talking about harm from the bankruptcy, from the automatic stay that is in place that prevents claimants from prosecuting their claims against the debtors. The automatic stay, of course, is not the issue here, your Honor. The question is what harm, if any, is there to the claimants from the injunction that will prevent them from suing third parties in the tort system, parties, again, the debtors have fully indemnified.

Well, your Honor, the first point is what are those claims the claimants would bring against third parties? Again, your Honor, the Texas divisional merger statute allocated the asbestos liabilities solely to the debtors. The Texas divisional merger statute and the transaction documents did not allocate the asbestos liability to New Trane and New Trane Technologies. So under the Texas divisional merger statute that allocation is to be respected subject to things like

fraudulent conveyance which, again, the debtors have taken care of in connection with the funding agreements.

So New Trane and New Trane Technologies were created in the divisional merger in 2020. They obviously, as a result, did not manufacture asbestos-containing products. As a result, the claims the plaintiffs seek to bring against New Trane and New Trane Technologies in the tort system by definition are what we call derivative claims. They're not direct claims. The direct claims are against the debtors. Now they may assert that they can bring those claims, but those claims are derivative. They're in the nature of successor liability, alter ego, and the like.

And, your Honor, first, we would submit, if you look at it, those claims would appear to be exceedingly weak. The direct claims are against the debtors. The debtors exist. The debtors are solvent. If you look at the case law -- and I think we cited some of this in the motion for summary judgment -- the case is, typically, that a party cannot sue for successor liability when the party directly liable still exists and that's the case. The debtors still exist and are solvent.

So it's very unclear whether successor liability claims would be valid at all.

Secondly, as we argued in the summary judgment portion of this proceeding, these are estate causes of action and as a result, the automatic stay prevents the individual claimants

from bringing those claims against the third parties during the bankruptcy.

So, your Honor, we would submit that the plaintiffs can't bring these claims individually. They could, perhaps, be brought derivatively by estate fiduciaries through the bankruptcy process, but the individuals cannot bring these cases or these claims individually in the tort system during the bankruptcy. So the injunction doesn't prevent them from bringing cases because the automatic stay already does so. So in that respect, the harm, obviously, is limited.

But, your Honor, if you ignore all of that --

And if we could turn to Slide 17.

-- and this came out in the testimony of Dr. Mullin -- as we all know, the claimants have numerous sources of recovery for their claims in the tort system. Committee members here sue, on average, 73 defendants. In the summary judgment proceedings I think we attached a couple of different complaints to show a variety of things and one of the things it shows is, I believe in at least one case, the plaintiff sued upward of 175 defendants and, of course, claimants can also bring claims against trusts that have now left the tort system.

So, on average, asbestos claimants receive -- and I think this was in Dr. Mullin's testimony -- a million dollars in recoveries from tort defendants and bankruptcy trusts when, on average, Old IR-New Jersey and Old Trane collectively

provided roughly 3 percent of the claimants' total recoveries. That's, I think, the 35,000, on average, that Dr. Mullin testified.

So the rough math is 35,000 on over 3, on over $1 million per asbestos claim. So Old Trane and Old Trane Technologies, or old IR-New Jersey and Old Trane, on average, provided 3 percent of the recoveries that asbestos claimants were going to receive.

So does that mean there's no harm, even if they had valid claims they could bring against the non-debtor affiliates? No, but the harm is limited. And, in fact, your Honor, I would submit it's not at all clear that the plaintiffs cannot recover that 3 percent from existing codefendants in the tort system currently. If you remember from the information brief, the debtors described that this is exactly what happened to them. Prior to the bankruptcy wave the debtors paid collectively in the roughly 15 years before 2000 less than $4 million for mesothelioma claims. That was over 15 years. Then in the bankruptcy wave of the early 2000s the primarily responsible party, the insulators and the like, filed for bankruptcy and they left the tort system and to the extent that the plaintiffs' bar felt as a result they could no longer get full compensation from those primary defendants, they turned to other parties in the tort system and where the debtors went from paying almost nothing on mesothelioma claims, they almost

immediately started paying substantial amounts, whereas in a couple of years they were paying close to what they were paying on the petition date, which is roughly $60 million for mesothelioma claims.

So, your Honor, the history of the tort system is that plaintiffs, because they have multiple sources of recovery, including multiple defendants, can potentially get recoveries that would otherwise be paid by now bankrupt defendants from other, other defendants in the tort system who have not filed for bankruptcy.

Now, your Honor, can I prove the plaintiffs are getting the 3 percent share of Old Trane and Old Trane Technology now from other codefendants? Of course not, your Honor, but we did try to elicit some information on this point, among others, in the discovery that was served on the ACC members. If your Honor remembers, the debtors served discovery on the ACC members and asked them a variety of questions. The ACC did whatever it could to avoid having the, have the ACC members answer those interrogatories. They filed a protective motion and your Honor denied the protective motion and indicated that the ACC was going, was responsible for responding. And as I think you heard from Dr. Mullin in testimony -- you saw a summary exhibit -- in connection with the question of what were the aggregate recoveries by these members from other defendants, not individually, but in the,

the aggregate, what did they recover from the torts and the trusts they simply refused to answer that question.

So, your Honor, they have refused to provide information that would show that they're actually recovering 3 percent from Old Trane and Old IR-New Jersey from other codefendants in the tort system.

Your Honor, finally, with respect to balance of harms, as we've indicated, I think it's important to also consider the potential benefits that claimants will reap if a section 524(g) trust is established in this case and, of course, this preliminary injunction is a step to reach that ultimate result. As Dr. Mullin testified -- and it was unrebutted -- there are significant benefits to establishing a 524(g) trust. Claimants can be paid faster, there are less costs, more of the money will go to claimants rather than going to attorney's fees, and there'll be more uniform recoveries. And, of course, the FCR has made this point as well and probably will make this point in its own closing.

So, your Honor, there's certainly benefits to the claimants, not just potential downside.

So, your Honor, in summary, the balance of harms clearly weighs in, in favor of the debtors. They've shown clear irreparable harm by the fact that if the injunction is not continued, they will have to prosecute not only a bankruptcy, but a tort system all at the same time effectively

having no automatic stay. There'll be piecemeal litigation throughout the country. The ACC's avowed goal to defeat the reorganization will be effectuated and as a result, they will suffer harm. The harm from the claimants is much more limited. They have other sources of recovery. They may receive benefits through a 524(g) trust. And again, it's not at all clear that the claims they would seek to assert against the nondebtors have any value, whatsoever.

Your Honor, that leads, then, to public interest.

If we could go to Slide 19.

Your Honor, as a result, the debtors have satisfied the first three prongs for a preliminary injunction, likelihood of success, irreparable injury to the debtors' estates, and balance of harms. That leaves only the public interest. Interestingly, the ACC has cited no case law to your Honor where the three main prongs for a preliminary injunction have been satisfied, yet a court denied the injunction only on public interest grounds. In fact, your Honor, the ACC has cited no case law where the public interest defeated a preliminary injunction at all. In part, your Honor, I think that's because those cases are extremely rare and typically, if not almost universally, involve situations where the government, state or federal government, is a party. That is not this case, your Honor. This is not a case where the U. S. Government or a state government is a party.

So, your Honor, for the reasons we set forth in our brief the debtors would submit the public interest certainly supports the injunction here. As the case law we cite in our brief states:

"There's always a public interest in a successful reorganization and that's certainly the case with respect to a reorganization involving a mass tort case, given its complexity and given the many difficult issues associated with those types of cases."

So what does the ACC argue in opposition? Mostly, their attack in the public interest area is a general attack on the restructuring, but, your Honor, as we have pointed out, the restructuring was carefully designed to preserve the paying power of the entities that were created in the restructuring so they had the same paying power after the restructuring to pay asbestos claims as they had before the restructuring. There was no hiding of assets or offloading of liabilities. There is the full wherewithal to pay asbestos claims in these cases.

The ACC in connection with public interest, of course, focuses heavily on the divisional merger.

Let's go back to Slide 12, again.

Your Honor, it may be the case that divisional mergers are new, but it's certainly not the case that restructurings in the asbestos context are new. Again, this slide depicts eight

examples -- and I'm sure we could come up with others -- of a situation where a corporate family had asbestos liabilities somewhere within the enterprise and entered into pre-petition restructurings moving assets out of the entities that had the asbestos liabilities. Assets may have been moved up through dividends down through contributions to subsidiaries, moved sideways to sister companies, and the like, but a restructuring, a pre-petition restructuring was done and as I mentioned before, in each of these cases a preliminary injunction was entered. Nobody, to my knowledge, argued that a preliminary injunction was not supported by the public interest because the public interest, obviously, had to be considered for a 105 injunction to be issued. As I said before, to my knowledge, nobody argued that there were self-infliction. Nobody argued, to my knowledge, and again, not successfully, that the whole corporate enterprise should have filed, notwithstanding the fact that the assets that were moved out of the debtors, or what became the debtors, likely still existed somewhere within the corporate enterprise.

So all of the factors that are being alleged here existed in these cases and yet a section 5, section 105 injunction was issued, including a finding that the injunction was in the public interest.

Your Honor, in these cases fraudulent transfers were alleged and fraudulent transfer litigation ensued. Your Honor,

in this case we've avoided all of that. All of the value of New Trane and New Trane Technologies are available for asbestos claimants, to the extent the debtors' assets are insufficient. In the cases I have on Slide 12 sometimes fraudulent transfer allegations were -- excuse me -- sometimes the fraudulent transfer litigation was successful, sometimes it was not, and as a result, claimants were left without sufficient assets to pay their claims in full. That is not this case, your Honor. Whatever the liability is and will be determined, that liability will be paid in full. Your Honor, if the public interest supported a 105 injunction in these cases, it clearly supports a 105 injunction in this case.

Jon, if we could go back into the public interest section.

And I think, your Honor, that's the last time I'm going to go back to Slide 12.

THE COURT: All right.

MR. ERENS: If we could go to Slide 20.

Your Honor, this slide points out a similar point. Your Honor, there is a long history of solvent companies addressing their asbestos liability in chapter 11 through section 524(g) where nondebtors receive the benefit of a 524(g) injunction for making substantial contributions to an asbestos trust. What is being proposed here is not new.

First, we take the Coltec case. Your Honor,

obviously, is familiar with that case.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: Coltec was a solvent company. It did a transaction very, very similar to a divisional merger, contributed assets into an entity that became a debtor. It, itself, stayed out of bankruptcy. It made a funding commitment called a keepwell agreement to the debtor in bankruptcy and ultimately through the plan received a 524(g) injunction, very similar to what's being proposed in this case.

In the NARCO bankruptcy, Honeywell, a solvent, non-debtor entity, received a 524(g) injunction in connection with contributions to the NARCO bankruptcy trust.

In the Quigley case, nondebtor Pfizer, obviously a large corporation, contributed to the Quigley bankruptcy trust and received a section 524(g) injunction.

In the Babcock & Wilcox case, nondebtor MMI, which is McDermott International, contributed extensive value into the Babcock & Wilcox section 524(g) trust and received a 524(g) injunction.

In the THAN case, nondebtor, I'm going to call it PNAC -- I don't know if there's another pronunciation -- contributed substantial assets, I think maybe all of the assets, into the debtor's 524(g) trust and THAN, as a nondebtor, received a 524(g) injunction.

And then maybe most interestingly -- and this came up in Mr. Guy's cross-examination yesterday -- the Paddock case. The Paddock case is almost identical to this case. In that case non-debtor, OI Glass, effectuated a transaction very similar to the divisional merger here, kept out of bankruptcy, created a debtor entity, Paddock, which received all of the asbestos liability. Paddock filed for bankruptcy and they've now resolved that case and nondebtor, OI Glass, a publicly traded company with billion-dollar valuation, will receive a section 524(g) channeling injunction.

So, your Honor, again, while divisional mergers may be new, restructurings are not and there are plenty of examples of situations where solvent corporate families did a restructuring, filed an entity for bankruptcy, and the nondebtors received a 524(g) release.

Couple other points, your Honor, on public interest. Of course, you've heard repeatedly from the ACC that the whole corporate family should have filed for bankruptcy, that New Trane and New Trane Technologies should be in bankruptcy. No. 1, your Honor, as the testimony has indicated, New Trane and New Trane Technologies have made their entire value available to this bankruptcy through the funding agreements and that certainly was not the case in the cases I showed you where fraudulent transfers were made and reorganizations were done.

So, your Honor, in those cases the entire corporate

enterprise didn't file and the entire corporate enterprise's value was not made available in the restructuring. This case is different. The entire value of New Trane and New Trane Technologies has been made available to the funding agreement in this chapter 11 case.

With respect to those companies actually filing for bankruptcy, we went through extensive testimony on this point and, of course, your Honor has extensive briefing. Putting those global enterprises into a chapter 11 would have created a much more expensive bankruptcy. In fact, Ms. Ryan showed figures that shows the additional professional fees for such a bankruptcy were in the neighborhood of what the asbestos liabilities in this case likely will be. So the money spent on attorney's fees would be the amount potentially necessary to fully fund the asbestos trust. I don't think anybody wants to see that result.

The bankruptcies, of course, would be much more complicated and would negatively affect numerous entities, customers, suppliers, employees, franchisees, other counterparties who have no involvement and no relationship to the chapter 11 asbestos issue. And, your Honor, even if all those bankruptcy events had occurred, the issue in the case would be exactly the same. The issue would be what, what would be necessary to resolve the asbestos liability. The, the complexity associated with bringing the entire enterprise in

would not change the sole issue in the case, which is how to resolve the asbestos liability.

Jon, if we could go to Slide 21.

Your Honor, it's interesting. The ACC has argued that they want to chase New Trane and New Trane Technologies in the tort system and yet at the same time they're saying they want them to be in bankruptcy, if there's going to be a bankruptcy. Well, your Honor, that argument is obviously inconsistent. In the scenario where New Trane and New Trane Technologies were in bankruptcy, the asbestos claims would still be stayed because the entities would be in bankruptcy. No additional assets would be available to fund a section 524(g) trust because, again, the entire value of New Trane and New Trane Technologies are already available in this bankruptcy. And, of course, the underlying merit and value of asbestos claims would be exactly the same.

So, your Honor, nothing would change other than a much more costly and complex bankruptcy and the asbestos creditors will be no better off.

Your Honor, I want to move to the argument now that the ACC has made, the so-called scare tactic, which is if your Honor approves the preliminary injunction, the next thing we're going to see is a raft of non-asbestos related bankruptcies, meaning bankruptcies that have undertaken divisional mergers where non-asbestos liabilities were put in a company and that

company is put in a chapter 11. Your Honor, a speculation is just that, speculation and, in fact, Mr. Diaz in his own report said, "I have not seen any cases of a divisional merger type or similar cases outside of the asbestos realm." So he admits he has seen nothing of that type and cannot say that anything of that type will actually occur.

Your Honor, the reason, I think, is clear. Asbestos is a fairly unique tort. The combination of factors in asbestos make it a very difficult and complex situation. As I think, as I think Mr. Mullin testified, it's the biggest tort historically that's been out there, biggest mass tort. What are those combination of factors?

First of all, your Honor, the number of defendants. As we've seen from complaints, a particular claimant may sue up to 100 or 150 defendants. There are numerous defendants for every single individual asbestos case.

Next, number of plaintiffs. There are tens and tens of thousands of plaintiffs in the tort system and as I showed on the first slide, or one of the first slides, the debtors have faced 75,000 cases over their history and currently have pending 80,000 additional cases. Each case has to be defended individually. Every case is an individual lawsuit, notwithstanding the tens of thousands of plaintiffs.

Your Honor, the latency period is a key issue here. There's a, what I think people believe is something like a 40-

year latency period for asbestos disease to manifest. As a result, first of all, the relevant facts are buried in the history of time and secondly, the litigation goes on forever. As we've indicated, your Honor, the debtors have been involved in this litigation already for 40 years and the prospect is it'll be 30 years at least remaining. We're talking about a 70-year piece of litigation, your Honor. That is extraordinary.

In addition, your Honor, there's a question with respect to all of the defendants. Nobody is really necessarily sure who caused, if anybody caused, the plaintiffs' harm. You have a whole variety of defendants who may have manufactured asbestos-containing products, but it's probably impossible to determine which one of them is truly responsible and to exacerbate the situation today, your Honor, we now have a fractured system. Not all of the defendants are in the same courtroom. Half of the defendants that filed for bankruptcy are in the trust system. The other half are still in the tort system. So all the evidence is not in one place and it's very difficult to determine whether the defendants that are remaining are even responsible or whether it's the bankrupt defendants who are no longer in the courtroom are responsible.

So, your Honor, in addition to the fact that the Bankruptcy Code itself has a provision for dealing with asbestos in bankruptcy, it's not surprising that the divisional

merger cases you're seeing are in the asbestos context.

Your Honor, with respect to the, as I called it, scare tactic, because I think it is that, your Honor, that the ACC is set forth, is there'll be cases where non-asbestos liability will be put in divisional mergers. I think Mr. Diaz put up an example of an airline crash. And I want to address that example specifically 'cause I think it's important to talk in detail.

Your Honor, God forbid there's an airline crash. The implication that the ACC is, is, is asserting is that the airline would say, "Why don't we put this airline crash liability into a divisional merger and file the liability for chapter 11." Your Honor, that would never happen. First of all, you heard the testimony. Project Omega started approximately one year before the ultimate bankruptcy filing, or, actually, ultimately before the divisional merger. A divisional merger is not something that happens overnight. It is a complicated transaction and involves eliminating completely the legal entity at issue. Eliminating an airline company, the main operating company of an airline, I have to believe, involves extensive work, especially given the regulatory overlay. So it's not something you can kind of just do overnight.

Secondly, do airline crashes involve 70 years of litigation? No. Do they involve tens and tens of thousands of

plaintiffs who will be filing cases for decades to come? No. Are there 300, 400, 500 defendants in the case? No. There may be more than one defendant. There might be the airline manufacturer, aircraft manufacturer. There may be the airline and maybe a couple other parties, but there's not going to be a plethora of defendants and nobody knows who's truly responsible. And is every suit, every single lawsuit an individual claim? No, your Honor. Usually, what happens in these situations is there's a liability phase. That is a collective proceeding and then there's a damages phase where each injured party gets to assert its damages. An airline accident bears zero relationship to what goes on in the tort system, what goes on in asbestos liability. There's absolutely no reason to believe an airline accident liability would be put in a divisional merger.

And finally, your Honor, I think this all points out the final reason why the public interest supports a preliminary injunction in this case. It will, hopefully, lead to a section 524(g) result which will produce a rational resolution of the asbestos liability that these debtors face compared to what's going on in the tort system. Again, I won't go over each of the factors, but every case has to be litigated individually. It costs $1 million to actually fully defend the claim. There are large system tort delays, as you heard. There'd be billions of dollars of defense costs if companies truly had to

defend claims. As Dr. Mullin testified, it's a lottery system. Certainly, there are situations where similarly situated claimants receive dramatically different recoveries and as you saw from the RAM study, a small portion, or I would say at least less than half of the dollars in the system actually go to the claimants.

And, your Honor --

If we could turn to Slide 22.

-- this is what the Supreme Court long ago said with respect to the asbestos tort system:

"Dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threaten and distorts the process; and future claimants may lose altogether."

The FCR has echoed this sentiment stating:

"Reverting to the tort system is a decidedly inferior result for the classes of both current and future asbestos claims when compared to the benefits provided by an asbestos trust."

For that reason, your Honor, we would submit that the injunction which will lead to a 524(g) result is clearly in the public interest.

THE COURT: Okay.

MR. ERENS: Your Honor, I have one more topic to address, which is preemption.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: It really kind of is separate and apart from the four factors for the preliminary injunction.

So if you want to take the break now, I'm not sure how long the preemption argument will make or -- excuse me -- will take, but I'm certainly happy to address it for a few minutes after the lunch break and then we can go to the other closing arguments.

THE COURT: Well, just looking at the time that everyone has forecast, I'm starting to worry about whether we're going to reach this afternoon.

The, the preemption argument, do you have a, a time estimate on that, Mr. Erens?

MR. ERENS: I'm hoping it's only a few minutes, like five minutes.

THE COURT: Let's go ahead and do it.

MR. ERENS: Okay. Thank you, your Honor.

If we could turn to Slide 24.

The first point, your Honor -- well, actually, before I even start here, the preemption argument is an argument that the ACC made in the Bestwall case. Judge Beyer denied it.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: And the ACC didn't even preserve it on appeal when they appealed the preliminary injunction decision by Judge Beyer. So it's not clear the ACC takes this argument particularly seriously if they're not preserving it on appeal.

But nonetheless, Slide 24 shows that, of course, we all know there's a strong presumption against interfering with congressional preemption of state law and we cite the Third Circuit in that regard.

Your Honor, I think the argument by the ACC is that the, the debtors' use of the Texas divisional merger statute is preempted by section 524(g) because 524(g) is the bankruptcy statute that deals with discharge and channeling of asbestos claims. Your Honor, the argument is baseless. Section 524(g) is a bankruptcy statute. It deals with addressing asbestos claims in a bankruptcy. The Texas divisional merger statute doesn't address bankruptcy, doesn't contemplate bankruptcy. It's a corporate statute that allows state law entities to arrange their affairs pursuant to the terms of the statute. They don't involve the same topic and in this case they, they work in tandem. A restructuring was done, but 524(g) is what the debtors now seek to utilize. The ACC seems to believe that the debtors are seeking to avoid 524(g). Quite the opposite, your Honor. The debtors are now in a bankruptcy seeking a

524(g) result.

So the Texas divisional merger statute isn't preempted because the debtors are now seeking to use 524(g) and the debtors will be subject to all of the requirements of that statute. So as a result, on a general level, there's clearly not preemption.

In terms of the specifics, there's two types of preemption argued.

If we could turn to Slide 25.

The first is conflict preemption. Conflict preemption occurs when "compliance with both federal and state regulations is a physical impossibility or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." This is from the Fourth Circuit. Again, compliance with both statutes is not impossible. The Texas divisional merger provisions and 524(g), again, concern completely different subjects and work readily in tandem.

Next slide, please.

Field preemption. Field preemption is exceedingly rare, your Honor, and occurs only when federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the states to supplement it." But, your Honor, as the Supreme Court itself has noted, "524(g) reflects the Supreme Court's longstanding

recognition that corporate governance is traditionally left to the states."

Your Honor, there is no implication whatsoever that Congress intended through 524(g) to occupy the field of state law restructurings. In fact, the exact opposite would be the implication from 524(g). 524(g)'s text itself contemplates pre-petition restructurings. It in no way seeks to occupy the field and limit or direct what those restructurings can be. As a result, your Honor, preemption is completely inapplicable in this case.

Your Honor, that concludes the presentation unless your Honor has questions.

THE COURT: Not at the moment.

Okay. It's now 1:00. I would suggest a lunch recess. Can we get by with simply 45 minutes today? That give everyone enough time?

MR. ERENS: That's fine, your Honor, from the debtors' perspective.

THE COURT: Anyone --

MR. GUY: Yes, sir.

THE COURT: Anyone opposed?

(No response)

THE COURT: Okay. 1:45, we'll pick up.

MR. MACLAY: Well, actually, your Honor.

THE COURT: Oh.

MR. MACLAY: I would suggest we could even do less than that, if your Honor would want to. Up to you.

MR. ERENS: Your Honor, from the debtors' perspective, we're ready to do whatever. It's, it's nice to have a lunchbreak, but it certainly doesn't take an hour to eat.

THE COURT: Right. Well, it's more a question if staff has to go outside this building, so.

MR. MACLAY: Understood, your Honor.

THE COURT: Okay. Let's take 45 minutes and then we'll, we'll do what we can, okay? 1:45.

Court's in recess.

(Lunch recess from 12:59 p.m., until 1:45 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat, all. Okay, very good.

Okay. Are we ready to proceed? We got everyone?

(No response)

THE COURT: Okay. I believe we were ready to hear from Mr. Guy.

MR. GUY: Good afternoon, your Honor. Can you hear me okay?

THE COURT: Very well. Thank you.

MR. GUY: Thank you, your Honor. I just had to put my cat out. Just wanted to make sure he wasn't going to jump up on the table.

MR. NEIER: Your Honor, this is David Neier.

I just want, before Mr. Guy begins, I just want to apologize to the Court and to Mr. Erens, personally. A, a call came in on my computer and I just couldn't -- I can't -- I am not familiar with the technology and, and frankly, it's not Mr. Erens I found boring at all.

THE COURT: It's the rest of us?

MR. NEIER: No. It --

THE COURT: It's fine, Mr. Neier.

MR. NEIER: Thank you, your Honor. It was unintended and it's just sitting in front of your computer. I, I look forward to the days we're all back in your court.

THE COURT: As do I.

I will say my wife is an attorney, but she does a general practice and I have on occasion tried to explain what we are doing here to her and she finds it extremely boring. So that's -- I guess it's all a matter of perspective, isn't it?

Okay. Ready to go?

MR. GUY: Yes, your Honor.

THE COURT: All right.

MR. GUY: Your Honor, for the record, Jonathan Guy for the Future Claimants' Representative, Mr. Grier.

Your Honor, the ACC has said in the context of this litigation that the FCR has no interest in objecting to what would be a wholesale return to the tort system for current

claimants and the ACC has made it very clear that they're aggrieved that the FCR, which, I think, has been referred to as a non-consensual FCR, will not side with their express goal to achieve what would be an effective dismissal of these cases with no asbestos trust.

Your Honor, Mr. Grier has been appointed by you to protect the interests of future claimants and to ensure that similar asbestos claims are treated in substantially the same manner in an asbestos trust. That's his fiduciary duty. A wholesale return to the tort system, which is what the ACC wants here, couldn't be more adverse to the interests of future claimants whose interests are best served as Congress has told us, as the Supreme Court has told us, as common sense dictates by creation of a fully funded asbestos trust.

Your Honor, the evidence before the Court from the last three days is that a wholesale return to the tort system is also going to be adverse to the class of current claimants. As Dr. Mullin testified, which hasn't been rebutted, asbestos trusts provide clear benefits for all claimants in terms of prompt and fair payments. The FCR here is committed to getting to that trust as soon as possible in any way he can and we're at a loss to understand why the ACC as a creditor fiduciary for the class of current claimants isn't aligned with us.

I can confirm for the Court what Mr. Erens said. The FCR has had detailed and productive discussions with the

debtors, their affiliates, their claims experts, their insurance counsel, with his professionals, working towards a plan of reorganization in these cases. We would like the ACC to join us in those discussions and maybe they will when this litigation is concluded, but I can assure the Court if they're not willing to do so for whatever reasons, we will proceed with the debtors alone as the largest asbestos creditor class. That is consistent with the charge that you have given us, it is consistent with our fiduciary duty, and it is clear that advocating for piecemeal litigation in the tort system is not.

Your Honor, I want to turn now to the automatic stay and the preliminary injunction in detail.

First, we join and will not repeat the debtors' arguments. On the automatic stay, your Honor, the way I look at that, is it seems to be incredibly simple. The language of 362(a)(1) and (a)(3) is clear. I'm not going to read it into the record. The Court knows exactly what it says. To the extent any individual claimant wants to recover on claims related to the debtors' asbestos liabilities against an insurer or a debtor affiliate, the automatic stay applies. We don't need to think long about that.

Counsel for any claimant who wishes to pursue such a claim can, of course, seek relief from the stay for cause. They have that right. To the extent counsel believe they have direct claims against debtor affiliates or insurers that are

not stayed, then they, too, could come to the Court and make their case to ensure that they have not, they're not inadvertently violating the automatic stay. That happens all the time. Similarly, if the ACC wishes to pursue claims against debtors' affiliates or insurers on behalf of the class of current claimants, they can seek derivative standing to do so, just as happened in Garlock.

I heard the ACC say the debtors are seeking an advisory opinion here on the automatic stay. Actually, I think the ACC has it the other way around. They effectively want blanket approval to bring claims outside of this Court before explaining to the Court how they impact the estate. That's not how it works. They have the right to seek relief from the stay, but the automatic stay applies and enforcing the automatic stay in this case, as it has done in every asbestos case, will facilitate creation of an asbestos trust.

So, your Honor, we respectfully request that the Court grant the summary, partial summary judgment motion.

Your Honor, on the preliminary injunction, the horse is out of the paddock. The evidence presented to the Court showed that case is on all fours with these cases. I respectfully refer the Court to the David Gordon first day declaration in the Paddock case, which was Exhibit 10 in the binder yesterday. The Court has a lot of paper in front of it and there are lots of repeated arguments in DBMP and we have

tried very hard, your Honor, to keep our filings as succinct as possible but if I were to refer the Court to one document, it would be Mr. Gordon's declaration 'cause that disposes of all of the ACC's objections to the preliminary injunction here.

That case had significant asbestos liabilities, indeed many multiples of what the debtors are because Owens Illinois was a "big dusty." They had the friable insulation for pipes, Kaylo. Anyone who was exposed to their insulation just by being in the same room or building with an asbestos illness has a credible claim against Owens Illinois. Because it's friable asbestos. It breaks. It crumbles. All you have to do is touch it or just leave it in place and over time it will. It is completely different from an encapsulated product where people have credible claims when they work specifically on the product, as this Court has found, grinding, abrading, and the like.

Before Paddock filed for bankruptcy Owens Illinois settled its asbestos claims out of the tort system. That was strategically beneficial. If plaintiff firms that sued Owens Illinois, along with peripheral codefendants, not "big dusties," with, for example, encapsulated products like we have here in this case, those codefendants would have been able to argue persuasively to the court, not this Court, the state court, that Owens Illinois was primarily responsible. By settling all those cases out of court, that wasn't an option.

Paddock has advised the debtor and a bankruptcy court that its asbestos liabilities total 722 million.

Prepetition from October 2019 on, and maybe earlier, an *ad hoc* committee of current claimants and the proposed FCR, Mr. Patton, met with Owens Illinois. We heard that from Mr. Diaz. In December of 2019, relying on Delaware's equivalent divisional merger statute, Owens Illinois engaged in a corporate restructuring that isolated its asbestos liabilities in Paddock. In Paddock, there's a support/funding agreement to fund the asbestos trust. In Paddock, there's a multi-billion dollars publicly traded parent company, OI Glass, that back stops the funding agreement. And days after their corporate restructuring, days, January the 5th, 2020, Paddock filed for bankruptcy. Paddock and OI Glass have said that Paddock filed to address those legacy asbestos liabilities in a fair manner through an asbestos trust.

This case couldn't be on more fours, square fours with that case and it continues because the FCR in that case is represented by Young Conaway. The ACC is represented by Caplin. Four of the member law firms on the ACC are on this, these debtors' ACC. The financial advisor in this case and DBMP and Bestwall and Paddock is Mr. Diaz. In Paddock, though, no filing was made opposing the corporate restructuring. No attempt was made to dismiss the cases. No attempt was made to return to the tort system. And Mr. Maclay said at the very

beginning that Paddock is a poster child to why you don't need a preliminary injunction. He was pointing to Paddock to justify this Court denying the debtors' request for a preliminary injunction. There isn't one because there's no need for one because the debtor settled all their cases outside of the tort system. There is no incentive for the plaintiffs' bar to be bringing lawsuits against Owens Illinois in the tort system.

If you look at the docket, your Honor, it's, it's impressively barebones. You, you would look at it and you would say, "Wow, I wish I had that docket." It's just fee applications, essentially, and fee examiner filings. I mean, obviously, there's other stuff going on, but we're not seeing what we're seeing in this case or DBMP or Bestwall. Instead, the parties there worked cooperatively to permanently and efficiently resolve Paddock's asbestos liabilities and as we know, your Honor, on April 26th, they together announced an agreement on $610 million to fund an asbestos trust. As far as I know, no motion for a bar date, which would have required proof of claims asserting exposure to Kaylo, the Owens Illinois product, has been filed and all but certain there won't be one now.

The pre-petition posture of these cases are substantively similar. Significant asbestos liabilities, pre-petition corporate restructuring that isolated those

liabilities, funding agreement with non-debtor affiliates, multi-billion dollar publicly traded company back stopping the funding agreement, and then a bankruptcy filing. But here, according to the ACC, that structure is a sham. It's collusive, fraudulent transfer. It's an improper attempt to artificially suppress tort liabilities in bankruptcy and I suspect you're going to hear that as soon as I'm done over and over and over, a lot of emotional arguments about how horrible corporate restructurings are.

The fact that Paddock is probably the smoothest glide path to reorganization that I've seen and in other cases here in North Carolina, it's all weapons out. It's very problematic. Here, for reasons of its own, the ACC will not even sit down with the debtors or the FCR. There's no attempt to reach an agreement on an amount to fund an asbestos trust. The plaintiff firms that control the ACC have their own strategic reasons for reaching prompt agreement in Paddock, your Honor. We don't know what they are and the ACC has asserted privilege.

But what we do know is that no evidence was presented by the ACC to this Court over the last three days that could justify why a pre-petition corporate restructuring that isolates asbestos liabilities in a debtor entity is permissible, indeed embraced in Delaware, but in North Carolina it's a collusive sham. The reality is that the ACC here and in

DBMP and Bestwall are taking the exact opposition before this Court as to the one they're taking in Delaware. That's problematic for us, particularly when there is no justification provided for that different approach. And, of course, in opposing the PI here they're also taking the exact opposite position that has been taken in literally dozens and dozens and dozens of previous bankruptcies, including Garlock. That unexplained inconsistency, your Honor, is reason alone for the Court to dismiss their objections to the PI hearing.

Another reason that I want to focus on as to why they just -- the -- their objection should be dismissed is the harm to the classes and I want to focus on that, to the classes of current and future claims that would occur if the ACC is successful in achieving by the backdoor what it cannot do through the front door, which is dismissal of these cases and a return to the tort system. The evidence presented to the Court, your Honor, is that similarly situated current claimants receive vastly disparate recoveries by jurisdictions, even within jurisdictions, from one county to another and by law firm. The FCR appreciates why individual law firms may wish to return to the tort system for their individual clients and we respect that in zealously advocating for their clients they may want to do that. They may want to come into the court and say, "We are entitled to go back to the tort system for my claimant and we have, we can show cause for relief from the stay," but

that not, is not the result that the ACC, which is a bankruptcy asbestos fiduciary that owes a duty to all current claimants, should be arguing for.

As the evidence showed and the Supreme Court found in Ortiz, the tort system is potentially disastrous for future claimants if no funds are available to pay them in the future. Future claimants' representatives exist to ensure due process is satisfied in the creation of an asbestos trust, which the Code requires to be funded and designed to pay similar claims in the same manner. That's fully consistent with the principle that I know your Honor embraces, equal treatment for all creditors similarly situated. No FCR and certainly not this FCR should take action to undermine creation of an asbestos trust or to take actions that ensure disparate treatment among asbestos claimants.

That's especially true here when a trust is so easily within reach, which makes all of this so frustrating, this distraction. We're, we're not focusing on getting to an asbestos trust. We're litigating on issues that shouldn't be litigated a'tall or should have at least been litigated on the papers.

As the Court heard, your Honor, the debtors have access to funds and funding to pay their asbestos liabilities. The debtors' affiliates have the wherewithal to satisfy their funding obligations and they fully intend to honor them. The

Court heard that from Mr. Kuehn, Ms. Roeder, and Mr. Tananbaum. They were crystal clear. They are willing to fund an asbestos trust to pay their legacy tort liabilities in full and they have the means to do so. You heard from Mr. Kuehn this morning. I don't think anyone can question his good faith. He freely admitted that it could cost more to fund an asbestos trust than it may be to pay in the tort system. That is not a company that is trying to artificially suppress its asbestos liabilities through this bankruptcy.

Last, your Honor, the evidence showed that the ACC when it negotiates in good faith can resolve an asbestos case that follows a corporate restructuring without litigation and in a matter of months, months, ensuring no harm to current claimants by the automatic stay. The ACC has presented no contrary evidence, your Honor. The result in Paddock is what should be happening here and there's only one reason it isn't. It's because the ACC won't talk to us. It is ironic that the ACC's fundamental argument in opposing the preliminary injunction here is that current asbestos creditors are harmed. They're only being harmed here because the ACC is the cause of that delay. It's in their ability to agree to fund a current asbestos trust.

Your Honor, we have asked the ACC to meet with us repeatedly and I'm going to do it again in open court to each of the ACC's five law firms and respectfully request that they

pass this message on to the ACC members and their counsel. We are willing to meet with the Committee whenever and wherever they want, whenever it's convenient to them to reach agreement on asbestos funding.

With the right will, your Honor, it is no exaggeration to say that we could be in the same place as Paddock, agreement on a funding amount in a matter of weeks, in a matter of weeks. It's not complicated. The debtors have said repeatedly, as have the people, the parties behind the funding agreement, that they are willing to pay the legacy asbestos tort liabilities in full. That's like a rare event. We should -- the creditor fiduciary should be taking full advantage of that.

Your Honor, for these reasons and those set forth in our papers and as argued by Mr. Erens today, the FCR respectfully requests that the Court exercise its discretion and enter a preliminary injunction to facilitate the creation of an asbestos trust which will pay asbestos creditors here fairly and equally, current and future.

Thank you, your Honor.

THE COURT: Thank you, Mr. Guy.

Mr. Maclay, are you ready?

MR. MACLAY: For hours, your Honor.

Am I on?

THE COURT: You're on.

MR. MACLAY: I've been waiting for hours, your

Honor --

THE COURT: Okay.

MR. MACLAY: -- for you to give me this dance.

Your Honor, you've heard a lot of discussion today about a lot of irrelevant things. You've heard a lot of discussion today about cases that I'm lead counsel in and they're pretty much all incorrect, which I will lay out in, in, with respect to the publicly available record why they're incorrect.

But really, what you've heard today, to take a phrase from the debtors' opening statement, is one big "head fake." As we examine the debtors' motion for a preliminary injunction, your Honor, and we measure it against the law, we have to keep in mind that this situation is bizarre on purpose because these debtors are essentially fake. They're not actual pre-existing corporate entities that had a business function. They're shells created shortly before this bankruptcy for the purpose of this bankruptcy to trap and hold asbestos claimants in the bankruptcy, to put us "in the box," as, as Mr. Diaz put it. These, these fake shell entities have no employees of their own other than the seconded employees from their corporate affiliates. They have relatively little money of their own, must less than the liabilities that the debtors' predecessors have purported to dump on them. These nondebtors purportedly would make -- we have nondebtors -- excuse me -- that would

purportedly make indemnification claims against these debtors, but the non-debtor affiliates would ultimately fund the payment of those claims in a circular fashion with money from the non-debtor affiliates and those same non-debtor affiliates, who orchestrated this bankruptcy, who stand outside of it, they're the ones asking for the benefits of this bankruptcy, your Honor, without any of its burdens. And that is inconsistent with fundamental bankruptcy law principles, as you will hear for more detail in the, as I continue.

Each of the factors that courts have considered in extending a stay of the preliminary injunction must be considered with that reality, that this situation is not a natural business situation or an accident of circumstances. It was -- the entire situation was engineered by lawyers, as the evidence has shown, to accomplish Trane and Ingersoll-Rand, now TTC's, purposes and the principal beneficiaries if this preliminary injunction were to be granted would be Trane and TTC. The debtors, on the other hand, wouldn't receive any real benefit because they won't be harmed if the injunction isn't granted. Because of the funding agreements, which the debtors claim provide them access to, potentially, limitless capital from Trane and TTC, the only entities with a financial stake in this preliminary injunction are Trane and TTC. And this fact infects and defeats every single one of the debtors' arguments and requests for relief.

Now, your Honor, you heard at the beginning of his closing from Mr. Erens that it would take more than $8 billion to try the entire meso case docket. I wasn't sure if he meant for this particular corporate family or, or for the whole country, or what. But I know, what I do know is what's in the record, your Honor, and that's that it was a hundred million dollars a year spend, including indemnity and defense costs. And so just doing some straight-line math, that would imply 80 years of, of being in the tort system, which I haven't heard anyone from either side allege, and if you didn't do it on a straight-line basis but on a net present-value basis, that's more like 200 years of litigation. I don't know where it came from, your Honor, but it's not plausible, it's not credible, it's not consistent with the evidence, and it's also not relevant. Because we are not here facing a situation where a corporate entity has brought its assets and its liabilities into bankruptcy because the tort system was too expensive or too difficult or too risky. We're facing a situation, which is completely artificial, where the corporate entities holding the assets moved them away from the claimants, moved them into entities out of, outside of this Court's supervision and control, and only filed the liabilities of this particular class of claimants, the asbestos victims. It is unprecedented, it's, it's stepped in the very recent past, and all the cases they claim to rely upon from the past that they think are

similar in various ways are fundamentally different in that fundamental way, the corporate restructuring.

Now they tried to complain a lot about the fact that OI settled with what they view is some similar circumstances, your Honor, and I'm going to be addressing this at various points in various ways. But suffice it to say right now, your Honor, there's one very obvious difference between Owens Illinois and this case -- and it's in our papers -- which is in Owens Illinois there was no preliminary injunction protecting the affiliates. They say without any support in the record that that's because those affiliates didn't need the protections. Well, that's simply false, your Honor. The fact is that is what a company acting in good faith does. It doesn't artificially hinder the creditors from the assets. The creditors were fully free in that case to sue those affiliates and if they chose not to, your Honor, it's because the fact that the debtor there was acting in good faith meant they didn't need to. If you think you're about to get a relatively quick consensual resolution because of the good faith outreach from a debtor, you're not going to bother to file your lawsuit and litigate a case that is going to potentially be unnecessary.

But the fact that they separated in Owens Illinois the assets from the liabilities doesn't mean a whole lot when the claimants still had access to those assets. That's the

fundamental reason why OI is, in fact, as, as Mr. Guy put it, the "glide path" to a successful resolution here. If the claimants have access to those assets, that would solve many of these problems and would make a lot of other things, including a potentially negotiated plan, more plausible and more realistic and more appropriate.

And so the idea that somehow the restructuring in OI is analogous to the restructuring here and, therefore, was okay misses that fundamental point. If the claimants retain access to the assets, it's obviously much less of a problematic situation and that as a matter of public record is the situation in Owens Illinois. And that case did resolve consensually.

Now, your Honor, the other strange thing as a matter of social engineering are the arguments you've heard primarily from the debtors, but even, to some extent oddly enough, from the FCR, that the tort system is problematic itself. Now I would, I would tell you, your Honor, first of all, that argument would have a lot more credibility coming from an entity that it's chosen to come into bankruptcy with its assets and its liabilities the way that governing precedent makes clear is required. But even beyond that, it's not this Court's job and, and the debtors shouldn't force this Court into the position of essentially ruling on whether the tort system works correctly this concept of the tort system wastes money, it's

inefficient, we can't even tell who's really responsible. These are all arguments for reform of the tort system and this isn't the right forum for those arguments, your Honor. They're, frankly, offensive. It's not the job of this bankruptcy court to restructure the, the state tort system and it's way beyond the bounds of appropriate argument for what we're discussing here today, which is whether the debtors and their affiliates have met their burden of establishing entitlement to a preliminary injunction.

Now, your Honor, just to, to get a procedural point out of the way, you heard from Mr. Erens that the ACC here has only argued that the, the affiliates of the debtors should be, should not get the PI, but, but that's not what our papers say. No such distinction was made in our papers. It applied to all of the protected parties, as is made clear throughout our paper from Page 24 of our opposition, your Honor, where we define who the parties are from whom we seek, for whom we seek to deny the PI; from the definition of "protected parties" on Page 41 of our brief; on 64 when we note that none of the protected parties have met the public interest standard; and from the conclusion on Page 77.

So, your Honor, to be quite clear, our opposition to the motion was for all categories of potentially protected parties --

THE COURT: Uh-huh (indicating an affirmative

response).

MR. MACLAY: -- not just the insider affiliates, although, of course, their actions are the most difficult to understand or prove.

You've already heard from the debtors, your Honor, that this reorganization would theoretically be more difficult without the preliminary injunction, but you've also heard them say -- and it's in the record -- that it's not impossible and, in fact, what they surmise is that the bankruptcy might take more time or it might take more money, Trane and TTC's money under the funding agreements, that is. But that's, but even that's not necessarily true because if the denial of the preliminary injunction were to lead to an increased chance of a successful negotiation, the bankruptcy would obviously take less time and money. And Owens Illinois is a great recent example of exactly that dynamic.

As Mr. Diaz testified, your Honor, right now, the asbestos claimants are in a box of the debtors' affiliates' own creation. When an entity files its assets and its liabilities, everyone is in that box, the suppliers, the vendors, the corporate officers, and their stock, you know, reimbursement payments. Everyone bears some of the burdens of bankruptcy, but the way they have artificially structured it in a relatively unprecedented way puts all of the burdens on the asbestos victims. All other creditors get paid in full on a

real-time basis and the debtors' corporate family is free to continue on with business as usual and if this PI is granted, then they'll be able to continue on with business as usual and not even have the assets have to answer to the underlying liabilities that generated those assets and that's not appropriate.

Your Honor, moving into some of the legal standards, as a matter of law it is clear, your Honor, that injunctions are extraordinary remedies that should not be granted as a matter of course. And that's controlling Fourth Circuit law. And they have to make a clear showing that they're entitled to such relief. That's controlling Supreme Court precedent. And their attempt, therefore, to argue essentially that the burden should be shifted to the plaintiffs, that every court that's considered one of these injunctions have granted it is simply false. Not too many courts have faced a situation like this one, your Honor, and for that we should be thankful and we should be trying to prevent more of this misuse of the bankruptcy system and process.

And the other aspect of the law that's important to note, your Honor, is that -- and this law is also in our brief at Pages 26 to 27. So I won't go into it in detail -- is that denial of any of these four factors requires denial of the preliminary injunction. I heard from Mr. Erens, your Honor, at the end of his statement, at the end of his presentation, that,

in the debtors' view, no court has ever denied a PI solely on the basis of public interest. But you know what else has never happened, your Honor? No court has ever granted a PI while finding that the public interest factor has failed and it couldn't do so under controlling law, starting with the Supreme Court level.

So I, I understand their desire to get away from the public interest factor, but they're stuck with it. It's the law and their attempts to somehow suggest that their requested relief is somehow routine, citing certain asbestos bankruptcies where injunctions were granted, they don't deny, your Honor, that in the vast majority of those it was granted on agreed-upon terms and, therefore, those aren't precedential under clear black letter law. And they also ignored the fact, your Honor, that there have been many confirmed 524(g) plans in which no preliminary injunction was ever imposed. Recently, Duro Dyne and many major, massive cases, Metex, Plant, Thorpe, API, Federal-Mogul, Owens Corning, and Armstrong World Industries, among others.

And so the idea that you have to have a preliminary injunction protecting affiliates to have a confirmed 524(g) plan is provably false, your Honor, and does not justify the corporate machinations that your Honor is faced with here in the context of this preliminary injunction.

We have noted, your Honor, that the debtor's seeking a

preliminary injunction that goes right up to the line and, frankly, farther than it with respect to the permanent injunctive relief that the debtors allegedly intend to seek under section 524(g). As such, they have to show, your Honor, with respect to likelihood of success not just that they're likely to succeed in some sort of reorganization, but that they're likely to succeed in a 524(g) reorganization. And as we noted in our brief, your Honor, and it's black letter law the likelihood of a successful reorganization under section 524(g) is inextricably tied to getting asbestos creditor consent, which the Ninth Circuit reiterated in the Thorpe case in our papers. And it's also quite clear that section 524(g)(2)(ii)(IV)(bb) requires a 75 percent acceptance of current voting asbestos creditors.

Now I heard the FCR say, your Honor, that if the ACC doesn't get onboard with the debtors' scheme, which now the FCR is apparently an active participant in, that they're going to move forward without us. And let's talk about what that means, your Honor. Because an FCR only exists under the statute, section 524(g). In the absence of a 524(g) plan, there is no FCR.

So what the FCR has to be saying, your Honor, is that the FCR plans to try a cramdown of current asbestos claimants in derogation of that 75 percent statutory supermajority voting requirement. No case has ever done that, your Honor, and as I

will mention in a little bit, it's clearly illegal and it just sort of demonstrates the impropriety and the extremely aggressive unprecedented nature of this particular bankruptcy process.

So people might tell you again and again, your Honor, this is all just commonplace. This is a typical bankruptcy. We don't understand why the ACC won't talk to us, your Honor. We don't understand why the ACC won't collaborate with us, your Honor. Well, the answer, your Honor, is simple. What they're doing here is inappropriate under the law, it is inequitable, and we would ask your Court not to put it's *imprimatur* on it by granting the preliminary injunction.

Now, your Honor, it's quite clear from our perspective that they haven't shown a likelihood of a successful reorganization. Some of the cases they rely on, they say, that have rejected the kind of futility argument the ACC advances here -- that's from their reply brief at Page 11 -- but none of the cases they cite, your Honor, stand for that proposition. In fact, in the cases cited by the debtors there was either negotiation towards a plan that the court found would be helped by a stay or the court found the debtors could not reorganize in the absence of a stay, not that it would be helpful, not that it would be convenient, but they could not reorganize.

And it's interesting that they cite the Purdue Pharma case, your Honor, another case in which I'm lead counsel for

one of the primary parties, because they don't seem to understand certain aspects of Purdue Pharma. The facts of that case, your Honor, are, are thus -- and these are all public record -- first of all, the Purdue debtors entered bankruptcy with a settlement framework in place that had been agreed to with the key creditor constituency and other stakeholders, showing a creditor-supported framework for reorganizing, actual creditors with actual claims that can vote now.

And another major distinction, your Honor, Purdue put all of its companies into the bankruptcy. It didn't create some sort of special purpose shells created for the purpose of abusing the bankruptcy process. It created -- it put all of its companies into bankruptcy.

And the final reason why Purdue is completely inapposite -- and their attempts to rely on it just make no sense -- 100 percent of the value of Purdue was going to its creditors, 100 percent.

So clearly, Purdue was not a situation where undue leverage is being sought to be exerted against the victims of a mass tort poisoning plaintiff, your Honor. Purdue was a situation where a company admitted its malfeasance, didn't try to deflect blame, didn't try to criticize the tort system, didn't try to say, "Well, maybe we shouldn't even be held liable under the substantive tort laws." No, Purdue was a case where they said, "We're guilty and we're going to pay over what

we owe, all of it, to the claimants."

So the idea that Purdue supports the granting of this preliminary injunction is ridiculous.

And so likely in recognition, your Honor, of the fact that they have done little to nothing to show that these cases are actually likely to result in a successful 524(g) plan the debtors have suggested that they're entitled to a "rebuttable presumption," in their words, that a successful reorganization is likely based on alleged good faith filings and good faith efforts to reorganize. Indeed, Mr. Tananbaum in his capacity as the debtors' corporate representative stated during deposition something along these lines.

Play the clip.

One second, your Honor.

THE COURT: Take a moment.

MR. MACLAY: Oh, Judge I think we need permission to screen share, is what I've been told.

MR. LAMB: No, it's open.

THE COURT: It's open at the moment.

MR. MACLAY: Okay. One second, your Honor.

MR. LAMB: You have to choose to share the audio to Teams from video.

MS. GUERRERO: I don't have the option of sharing the audio.

MR. MACLAY: Okay.

Your Honor, I'm going to, I'm going to read the clip into the record.

THE COURT: Please.

MR. MACLAY: What Mr. Tananbaum testified to, your Honor, when asked this question:

"Q What is the basis for the statement that the debtors filed the bankruptcy in good faith?"

The answer was:

"A Now you're like asking me when did I stop beating my wife. I don't think I have to defend why I filed it in good faith. It should be presumed that the filing was made in good faith."

That was his answer.

But the debtors do not get a free pass on this prong of the injunction test, your Honor. Rather, the Court should be skeptical of the self-serving allegations by the debtors of a good faith filing in an effort to reorganize and they don't point to a single binding or appellate level authority in support of this supposed rebuttable presumption. And at bottom, your Honor, the debtors' position is essentially that they have a reasonable likelihood of reorganizing simply because they have filed chapter 11 allegedly in good faith or because they have putative assets from which claims may be paid. But if that were the standard, virtually every chapter 11 case would have a reasonable likelihood of reorganizing.

That wouldn't be a standard at all. That would be writing the standard out of the statute and that's not the way statutory construction works.

The debtors have also argued, your Honor, that their good faith is evidenced by their transparency in these cases about the bankruptcy and the genesis and Project Omega, but they have been anything but transparent. Trane and Ingersoll-Rand staffed Project Omega and meetings about it with attorneys put much of the machinations behind it under a veil of purported privilege and Project Omega and the corporate restructuring must be considered when considering whether the debtors' good faith should be presumed here as this bankruptcy and this proceeding was an inevitable step in Project Omega.

Now your Honor has heard some, again, self-serving statements that bankruptcy was just one option that was being considered by the debtors and to be blunt, your Honor, those assertions are not credible when you look at the actual contemporaneous documents that were produced in discovery.

Slide 8, your Honor, is an e-mail from the Project Omega Project Manager dated December of 2019, months even before the corporate restructuring, and it was very clear in that document, the Project Omega team was very clear that the plan was to create new holding companies, i.e., the debtors, which would be "bankrupt entities," that Trane would retain control over the "bankrupt entities," there would be funding

agreements between Trane and the "bankrupt entities," and that the final objective is to "negotiate the formation of a trust to cover future asbestos liabilities." And, of course, that relief, your Honor, is only available in bankruptcy.

So as early as December 2019, it's quite clear, that was the plan. And there are a litany of additional pieces of evidence demonstrating the same thing.

Slide 9, please.

Further illustrating the intentions of Project Omega, an internal communications plan from March 5th of 2020 specifically states that the plan is to "isolate the asbestos liabilities into standalone entities and to take the entities bankrupt" and that this was meant to allow Trane and Ingersoll-Rand to more efficiently settle asbestos liabilities. Moreover, the communications plan notes, "It would put plaintiffs' lawyers and, consequently, the plaintiffs at risk."

Now you have heard both the debtors and the FCR say the debtors are, they want to pay full value, your Honor, that they want to pay full value here. That's the plan. Well, your Honor, in a situation in which they have all the leverage and the asbestos claimants are locked in a box, it's a little hard to take that at face value. And it's also hard to take that at face value when, again, you look at he contemporaneous and, and sworn testimony. For example, the deposition of Mr. Valdes at Pages 264 to 265 have this question and answer:

"Q At the end of this meeting was it your belief that it was probable that the Trane entities would end up paying out less money to claimants if bankruptcies were filed by Aldrich and Murray?

"A In my mind from recollection, it was a probability."

So this idea that bankruptcy is somehow to help claimants is, is ridiculous, your Honor. It's not what's going on here. They knew from the very beginning that this was an attempt to pay claimants less. And the argument about the superiority of a 524(g) trust coming from the debtors is both legally paternalistic and insulting to the victims. The tortfeasor does not know what's better for the tort victims than those victims themselves and the attorneys they have chosen to represent them and it is just a, a completely not credible argument to say they went through all these corporate maneuvers and separated the assets from the liabilities without talking to a single plaintiff's lawyer so that they could pay those claimants full value. There, there's no basis for that assertion other than self-serving conclusory statements.

You've heard that every case resolves, but, your Honor, that's not true. What you have never heard is a case that's resolved in which a Texas two-step was pursued and which the assets were separated from the liabilities and where a preliminary injunction was granted. When the plaintiffs are

put in a box in that way, your Honor, it's -- it's -- of, of course, it's, it's not going to resolve any time soon, which is why in their own internal documents they projected out this bankruptcy to last up to eight years. That's not indicative of a plan to quickly enter into bankruptcy and efficiently settle with claimants for full value. That's indicative of a plan to try to force those claimants to knuckle under, to give in to the pressure of not getting paid as every single one of the current claimants dies off. That's what that's a plan to do, your Honor. It's in their own documents. That isn't for the benefit of claimants, that's not equitable, and they shouldn't be rewarded for their attempt to do it.

Slides 10, 11, 12, 13, all of these slides, your Honor, make the same point. They all reference the bankruptcy, the bankrupts. They, they all make clear that this was always the plan in spite of what you've been told during this hearing by certain witnesses that it wasn't. And Slide 13, your Honor, is, is also interesting for a different, a related reason.

Slide 13, your Honor, demonstrates that when a project manager was frustrated with the time it took the debtors to file for bankruptcy, he was told he had to wait for the boards to make an independent decision and he responded cynically with a quote, "Independent, yes," with independent in quotes to note his sarcasm. Collectively, your Honor, these facts make clear that this bankruptcy filing was preordained and dictated by the

very same non-debtor affiliates who would benefit the most in this requested preliminary injunction and indeed, it's, it makes clear that this bankruptcy was always for their benefit and this undermines any presumption of good faith as well, your Honor.

Now the debtors have argued with respect to good faith, understandably not wanting to get into the merits of it too much, but just showing they have enough assets to pay claims is enough to show their good faith. And that's from Page 9 of their reply brief. But, your Honor, first of all, as our briefs show, that proposition is simply false. It defies the common sense reading of the phrase "good faith" as well as, as well as the relevant case law and their attempts to rely on Chicora Life and Litchfield, which were not asbestos mass tort bankruptcies, certainly don't show that financial ability is sufficient to show good faith. And, of course, it's also not sufficient to show the likelihood of reorganizing is, is likely. As we pointed out, your Honor, they need to not just show this theoretical concept of reorganizing in some, in any kind of a bankruptcy. They have to show the reorganization will be under 524(g) which requires creditor consent and nothing about the way they have proceeded to date should provide any comfort that if this PI is granted, that that will happen.

And, of course, your Honor -- and I won't spend too

much time on this because it's fully developed in our briefing -- the debtors rely almost exclusively on the existence of the funding agreements for their arguments that they have sufficient assets to reorganize here. But the terms of those funding agreements make clear that, to some extent, those assertions are dubious and, in fact, they also cast doubt on the debtors' good faith because some of the terms therein appear designed to thwart any exit from bankruptcy unless it's on the non-debtor affiliates' terms.

Your Honor, the funding agreements are unsecured. They don't prevent the asset-rich nondebtors from layering on additional debt. They give those nondebtors discretion to determine what permitted funding uses are necessary. They don't prevent the asset-rich TTC and Trane entities from engaging in additional mergers and transactions, including, potentially, divisional mergers, and to transfer all or substantially all of their assets to other entities. Nothing in the funding agreements limits or prohibits dividends or other distributions of value by TTC or Trane to equity holders, potentially including their full value. And indeed, in April of 2020, just before the corporate restructuring, TTC and Trane upstreamed, collectively, $6.4 billion to their parent companies. Nothing under the funding agreement would stop them from upstreaming such huge sums on a continual basis, your Honor.

Now the debtors assert in reply at Page 34 that this isn't going to be an issue here, your Honor, because as Mr. Darland (phonetic) testified, "Trane assesses any impact on creditors before dividends are approved and paid," but as was made clear in his deposition, your Honor, from Pages, on Page 92, he has never recommended against paying a dividend, not once, not a single time. And the funding agreements in this case, your Honor, have some additional problematic features not seen in the previous versions used in Bestwall and DBMP as its scheme gets refined and made worse for the plaintiffs.

First, these funding agreements, your Honor, require as a precondition to funding a trust that it provide TTC or Trane, these non-debtor affiliates, with all of the protections of section 524(g) of the Bankruptcy Code. They have automatic termination provisions whereby TTC and Trane's respective funding obligations immediately cease automatically on the effective date of a section 524(g) plan. And this means a couple of things, your Honor.

First, it means that the funding agreements could never serve as a post-effective date evergreen source of funding such as contemplated by section 524(g), as recognized by the Plant case, among others. And combined, your Honor, with the funding agreements anti-assignment provisions, these two new provisions call into question whether the debtors could confirm a chapter 11 plan that relies on the funding allegedly

provided by the funding agreement. It is unquestionably the case that the new form of funding agreements effectively destroy the Committee's ability and right, once exclusivity has ended, to propose a competing section 524(g) plan that relies on any value in the funding agreements.

In sum, your Honor, with respect to this argument, Project Omega, the corporate restructuring, and their effects are a testament to the non-debtor affiliates' abuse of the system and creation of an unlevel playing field, not good faith.

The debtors, also, your Honor, have to demonstrate irreparable harm. And Mr. Diaz testified about this extensively, your Honor, and noted that under the debtors' own numbers they already have a massive shortfall. Aldrich's liabilities exceed its non-funding agreement assets by $108 million and Murray's liabilities exceed non-funding agreement assets by $67 million. And just to be clear, these are using the debtors' own numbers. And so every indemnity obligation, asbestos liability, or other expense that could arise if the injunction is not granted will ultimately be paid by the nondebtors, Trane and TTC, and because of this net neutral outcome the debtors cannot be harmed. If the funding agreements are as unimpaired as the debtors claim, then they have the capacity to reorganize and fully fund a trust, whether they initially pay indemnification claims out of pocket or not.

Won't affect it.

And it bears repeating, your Honor, that the debtors point only to potential harms flowing from the very corporate restructuring they contrived to position themselves for for this very proceeding. And, of course, they also continually use phrases in their motion papers of what may or could happen absent injunctive relief, not what is likely to happen. For example, on Pages 4 to 6, 28 to 29, etc.

And, of course, exposing the flaw in their argument even further, your Honor, the debtors' list of protected parties is overburdened with virtually every entity within the Trane enterprise, even though almost none of them has ever been named as an asbestos defendant. And it's quite clear under the law, your Honor, that the mere potential for harm is insufficient to meet the standard for irreparable injury set forth in the Winter case.

And, your Honor, because each of the debtors' alleged harms, potential indemnity obligations, potential prejudice from adverse decisions against nondebtors, alleged distraction of key personnel, are the direct result of the corporate restructuring designed in Project Omega it's quite clear under the law, your Honor, that where a party seeking an injunction has acted to create or even just permit an outcome, that outcome is not irreparable injury. The Caplan case, the Di Biase case, and other cases make that very clear, but yet this

is all part of a constructed, artificial framework, your Honor.

So they're not entitled to be protected from the outcomes of their own actions.

In a similar vein, your Honor, they rely heavily on their contractual obligations to indemnify, essentially, anyone in the Trane enterprise for any asbestos claims to argue irreparable injury, but again, those are self-created alleged harms accepted by the debtors voluntarily just prior to the bankruptcy and, and that should be the end of the inquiry. 'Cause that's the exact type of self-inflicted harms that courts have repeatedly found does not constitute irreparable harm necessary for injunctive relief. The Salt Lake Tribune case, Caplan, and FIBA Leasing are three of the cases, your Honor, along those lines. And there are others in our opposition at Page (distortion).

Regardless, the debtors haven't provided any precedent that the potential for contractual indemnification -- that indemnification -- excuse me, your Honor -- constitutes likely irreparable injury. They attempt to rely on the Fourth Circuit's decision in the Piccinin case, A. H. Robins v. Piccinin, but that case doesn't hold that a debtor with a contractual duty to indemnify a loan constitutes a likelihood of irreparable harm. In that case, the non-debtor directors and officers that the debtor sought to protect were also additional insureds under the debtor's products liability

insurance policy, which was property of the estate. And the debtors here as well as Trane and TTC have stated that there is no (distortion) at risk here.

And, of course, the indemnification in Piccinin was a traditional officer and director liability indemnification, not a concocted contractual one for purposes of this proceeding. And it is telling, your Honor, that just this very morning on cross-examination Mr. Kuehn testified that there was no business reason -- and I think I have those words in quotes - for this indemnification arrangement. No business reason for it, your Honor. It only had one purpose, to make this argument in front of your Honor. That's it. That's not legitimate, your Honor, and that's not good faith.

Now the debtors have argued, your Honor, that if their indemnity obligations are triggered during the bankruptcy, it would have a meaningful impact on their reorganization, but it wouldn't. First of all, indemnification claims would be stayed under section 362 and subject to the usual claims process. And again, they'll never ultimately pay them, in any event, 'cause they would all be paid from the funding agreements.

The debtors attempt, your Honor, to claim a likelihood of irreparable harm from the potential risk of *res judicata*, offensive collateral estoppel, or evidentiary prejudice. And Mr. Erens today referenced, well, there just wasn't time for that, your Honor. The reason that his witness, your Honor,

the, the company speaking through his witness, said there had never been such a holding is that there was only 49 days. The question that the witness was asked, your Honor, was not limited to 49 days. It was limited to ever. Have any of these entities ever been subject to, been held responsible from *res judicata*, offensive collateral estoppel, or evidentiary prejudice and the answer was, "No." And then he was asked, "Are you aware of any asbestos defendant ever being subjected to those," and the answer was, "No." It's not limited to 49 days and that argument was, frankly, misleading, your Honor, given the, the facts in the record.

It is also clear, your Honor, that the mere apprehension of risk isn't sufficient to constitute a likelihood of irreparable harm and the Queenie case is and others, the Queenie case and others make that quite clear. And so the fact that Mr. Tananbaum was unaware of any instance out of hundreds of thousands of cases where *res judicata* or collateral estoppel had been invoked against a protected party and couldn't think of any example of that ever happening against any asbestos defendant makes clear that they have not met their burden, your Honor, of showing a likelihood of irreparable injury based on that alleged factor.

Now you heard, your Honor, about the alleged diversion of key personnel. Again, the personnel at these debtors do not pre-exist Project Omega. They are placed where they are placed

to support an argument in this court in a, in a way dictated to, dictated by the non-debtor affiliates. In addition to that, two of them, Amy Roeder and Cathleen Bowen, aren't even employees of the debtor. They're TTC employees who, and they're not even seconded to the debtor. They're TTC employees who perform financial and accounting services for the debtors. Obviously, this $41 billion entity that sits right, right above the debtors could choose to send other people to help, if they wanted to. It's not as if non-debtor employees being distracted should even be a relevant factor but even if it was relevant somehow, they haven't provided the evidentiary support for why these particular people are necessary to the debtors' supposed negotiation of a global settlement. No evidence was offered as to that. No evidence was offered as to how much of their time would be spent on settlement negotiations, plan confirmation issues, or asbestos lawsuits and no evidence was offered about what other personnel would be available to assist, even if they were called away to do a particular task. Amy Roeder and Cathleen Bowen, your Honor, in addition to being TTC employees, perform financial and accounting services for the debtors. They have no role in managing and directing activities involved in the day to day of any asbestos litigation. Neither are seconded to the debtors, as I mentioned, and they each spend only a maximum of 30 percent of their time working for the debtors.

As Mr. Tananbaum testified, during his cross-exam, both have day jobs for Trane. Mrs. Roeder's role in the reorganization is limited to working with a financial consultant and supervising the filing of monthly status reports and the payment of professionals in the bankruptcy cases and ensuring that the debtors are adequately funded and reviewing consolidated financial statements provided by TTC and Trane on a quarterly basis. And Ms. Bowen's role is to assist Ms. Roeder in those tasks. None of these responsibilities requires knowledge or expertise so specialized or unique that only Ms. Roeder could perform them.

Further, neither Ms. Roeder nor Ms. Bowen has had a role in negotiating a plan of reorganization and neither expects to have such a role in the future, as the Roeder deposition reveals at Pages 77 to 78 and 79 to 80. And prior to the corporate restructuring neither Ms. Roeder nor Ms. Bowen participated directly in litigation or discovery in asbestos suits.

So while Ms. Roeder stated that her workload would increase if the asbestos lawsuits were allowed to continue, she said it would increase with respect to managing the claims reporting, including metrics around claims, but the debtors failed to explain, your Honor, how such reporting could possibly divert Ms. Roeder or Ms. Bowen to the point of imperiling their reorganization. And what's more -- and this

is a fundamental point -- none of the claims that would proceed in the tort system would be against the debtors. Thus, any claims reporting or metrics would be related to Ms. Roeder and Ms. Bowen's work for TTC and that's not part of the calculus under the law. And, of course, to the extent that the debtor were to permit those people to not work for them or to the extent they even have that power, that would be a self-inflicted wound. But if it's just a TTC employee, your Honor, well, there are a lot of TTC employees, but TTC has not chosen to come before you and subject itself to your jurisdiction.

Mr. Sands is, is a third person as to whom distraction is alleged, your Honor. Mr. Robert H. Sands, he's an attorney at the debtors, also seconded from TTC, as is Mr. Tananbaum. Mr. Sands is the Associate General Counsel for Product Litigation at TTC. Mr. Tananbaum holds the position of Deputy General Counsel for Product Litigation at TTC. Neither one of them are bankruptcy practitioners and neither has any meaningful bankruptcy experience. The role that each has played in the reorganization thus far is essentially that of a client. Mr. Sands has helped oversee the collection and production of documents in this adversary proceeding and has reviewed documents to be filed at the level of a, typical level of a client. He does not take the laboring oar in drafting filings or pleadings. And as the debtors' principal client contact person for the Jones Day team, Mr. Tananbaum's role in

plan negotiations has been high level supervisory only. And when he was asked some details at his deposition, your Honor, about some of the specifics of some of the filings, he was unable to answer them. And so, in fact, he admitted that he just has the most general knowledge at, for example, Page 226 to 227.

So at bottom, neither of the seconded legal personnel serves such a unique critical and irreplaceable role that their distraction, if any, should prompt this Court to grant the requested preliminary injunction. And, of course, it is already part of the record that the debtors chose to staff down, relying on the automatic stay. Presumably, they could staff back up. And I will also note that to the extent TTC is the one that needed their assistance, they could only go there if the debtors agreed under the secondment agreement, Section 1.d. The debtors would have to agree to let them go back to TTC. Of course, the debtors could say no if they were really that critically important to the debtors.

And that brings us to the balance of equities, your Honor. And it's interesting that the debtors kept referring to this portion of the preliminary injunction standard as being the balance of harms. It's not the balance of harms, your Honor. It's the balance of equities, although I understand why they would choose to flee from the equitable terminology. Any harm to the debtor here, your Honor, is contrived and illusory

because the debtors and the harms they assert were engineered for the purpose of this bankruptcy. The indemnity obligations were created or invented for the purpose of creating an argument for this preliminary injunction and ultimately, as I've mentioned before, the debtors are effectively not on the hook for any indemnification. The non-debtor affiliates are.

Contrasting against that, your Honor, are the asbestos victims. Granting the preliminary injunction would inflict delay on the asbestos victims that would significantly prejudice their claims. And Mr. Tananbaum agreed with that when he stated both in cross-examination and in his deposition that he couldn't assert that there was no harm to the asbestos claimants from delay, especially where the debtors' own documents at ACC Exhibit 18 and ACC Exhibit 192 show that their planning and their expectation is that the bankruptcy would take up to eight years.

The Fourth Circuit itself has spoken on these issues, your Honor, in the Williford case and made clear, as it specifically affirmed the denial of a sea of asbestos litigation against nondebtors while the chapter 11 case proceeded, that that prejudice was the basis for its decision. As the Fourth Circuit held, your Honor:

"Of particular significance in balancing the competing interests of the parties in the case at bar are the human aspects of the needs of a plaintiff in declining

health as opposed to the practical problems imposed by the proceedings in bankruptcy, which very well could be pending for a long period of time. A stay under such circumstances would work manifest injustice to the claimant."

And while the debtors like to pretend, your Honor, like the claimants aren't people, they're statistics and they shove them all to one big category or "class," as the FCR calls them, and says, you know, "Overall, your Honor, they're not harmed," but there are going to be people in that group, your Honor, there'll be individuals dying, sick and dying people who's primary exposure will be to this debtor entity and although the debtor, without support in the record, tries to argue you can never tell who's responsible, your Honor, they have a hundred million reasons a year in the tort system that say otherwise and those people who have been separated from the assets, contrary to the, the, the functioning purpose of the Texas statute, which I'll get to a little while later, they're being harmed. They're being prevented from collecting and it's not up to the debtor, your Honor, to try to speak for those claimants about what's better for them. Not getting paid on your claims is bad for you, your Honor, and you might lose some of your cause of action forever. In fact, some of these people will lose them when they die and, and the, the argument that a trust could undo that harm isn't helpful, your Honor, when

there may never be a trust. The kinds of behavior the debtors have engaged in and their predecessors have engaged in give no comfort and should give no comfort to anyone that they're going to actually pay the full value of the claims that they have purported to be willing to pay in front of your Honor today. This prejudice is much more significant than the mere delay that they attempt to characterize it as at Page 33 of their motion.

And it's already in our brief, your Honor, Pages 62 to 63, all of the basis for the clear black letter law that claimants will lose certain of their valuable claims forever if they have this kind of, of long delay, being stuck in the debtors' box, prevented from pursuing the assets that generated the monies to which it should be entitled under our civil justice system, which says the debtors are responsible to the tune of a hundred million dollars a year.

The debtors also argue, your Honor, that some victims may be able to obtain compensation from other defendants, but that's misguided, as I've just mentioned, first, because some victims have their strongest evidence of asbestos exposure to Trane and Ingersoll-Rand asbestos-containing products. But it's also irrelevant, your Honor. Someone doesn't get to, to shoot you in your left side and say, "Oh, I shouldn't have to pay you now for that 'cause someone else shot you in your right side and you can collect from them. So you're not harmed by

waiting to collect." That's not the way the American justice system works, your Honor. You don't get to say, "I don't have to pay you because someone else has to pay you for a different injury, or for their portion of an injury." It's not a valid defense and no case has been cited to your Honor that's ever held in that fashion. It would be an offensive holding. It doesn't exist. At bottom, justice delayed for the asbestos claimants would in many instances, you know, be justice denied.

And that brings me to the balance of the equities factor, your Honor. As is, as laid in detail in our brief, the debtors' bankruptcy and the corporate restructuring that underlies the debtors' bankruptcy bear all the hallmarks of a fraudulent transfer. That's in our brief at Pages 32 to 36 and 60 to 62 and I won't, I won't go into all those factors yet again. But in reply, the debtors argued at Pages 27 and 28 of their brief that the corporate restructuring that formed them complied with Section 10 of the Texas Business Organizations Code which permits divisional mergers. In fact, technical compliance, if that's what it is -- and it isn't, your Honor -- with the divisional merger statute is not a free pass to prejudice creditors with what this Court described in the DBMP PI hearing as the "horror story scenario," where a corporation uses a divisional merger to dump its liabilities into the company and walk away with the valuable assets.

And, your Honor, their preemption arguments here are

inapposite because, of course, we're saying if the Texas law were interpreted the way they would have you interpret it, it would be preempted by the Code. 'Cause you don't get to do the horror story scenario. Fortunately, we live in the real world, your Honor, not in a horror movie. But the reality is, your Honor, the Texas statute doesn't even permit this. In fact, it makes clear at Section 10.901 that the divisional merger statute does not intend, was not intended to and does not "abridge any right or rights of any creditor under existing laws." It was not intended to keep the assets away from creditors. It was not intended to prevent the additional obstacle to creditor recovery.

And, and this was confirmed by one of the primary authors of the Texas divisional merger statute, your Honor, who confirmed that, "Where a divisional merger is used to hinder, delay, or defraud a creditor, a creditor could exercise all of the available remedies under otherwise existing law, including under the UFTA, the UFCA, and the Bankruptcy Code." And as he went on to, to note, your Honor, "The remedy most likely granted would be for the assets of all of the entities to the merger to become subject to the claims of the creditors of the other entities to the merger."

Your Honor, granting the preliminary injunction would be required --excuse me -- granting the preliminary injunction would be inappropriate not only because it's inconsistent with

the Bankruptcy Code, it would be inconsistent with the Texas statute upon which they purport to rely. And if the statute were applied otherwise, it would be preempted. But there's no reason to, to interpret it or apply it otherwise based on all of the available evidence that we have about its intent and functioning.

It's well established as a general matter, your Honor, that a litigant who seeks equity must do equity and the debtors and their corporate affiliates have not done equity here, equity here. They have treated asbestos creditors inequitably and discriminatorily by only putting the asbestos creditors into this box in this bankruptcy when they have kept their own assets out of it and all of their other liabilities out of it and that only, that doesn't just disqualify them with respect to the balance of the equities, your Honor, it also affects negatively their likelihood of success on the merits, which I would argue is very low.

Now, your Honor, that brings us to public interest. I've already noted, your Honor, that no case has ever granted a PI when finding it doesn't serve the public interest and what the debtors rely upon is the public's interest is in a successful reorganization. This is in their motion at Page 34. Well, first of all, your Honor, that assumes that their approach could lead to a successful reorganization, which is an unsupported assumption here with which the ACC on behalf of its

many asbestos victims, actual people with whom we actually converse and talk and understand their views, don't agree.

But secondly, your Honor, this is not a typical reorganization, as your Honor noted at the very first day of this case. This is a quite atypical reorganization. Here, the debtors are mere holding companies, reduced, stripped-down versions of the former Trane and Ingersoll-Rand. Trane and Ingersoll-Rand's business operations have been left outside of this Court's jurisdiction and asbestos creditors have been left without essential creditor protections with respect to Trane and TTC such as the absolute priority rule. Trane and TTC are trying to skirt the normal bankruptcy rules and creditor protections to obtain the benefits of a chapter 11 reorganization without the attendant burdens and the public has no interest in that kind of reorganization. And all of the testimony you heard, your Honor, about how bankruptcy is difficult and costly and inconvenient, well, that's why, your Honor, the Bankruptcy Code requires that you file your assets and liabilities so everyone is subject to those pressures, so everyone has the motive and incentive and is appropriately positioned to work things out consensually. But to put one party with respect to the admitted harm of substantial delay being locked into this box for eight years plus while the other, other party has business as usual with their assets protected by this Court's injunctive equitable powers, that

isn't an appropriate outcome. That does not serve the public interest.

And then, of course, there's a side point, your Honor, which I'm sure is of great interest to certain people, that this kind of maneuver exempts the payment of the quarterly fees to the U. S. Trustee in certain cases and in others to the Bankruptcy Administrator based on the volume of assets in the case. The Bankruptcy Code is set up to, to tie, your Honor, the, the fees payable to governmental entities in a bankruptcy to the volume of assets. If you can keep all your assets out, that's really just going to be, frankly, cheating the Government as well, your Honor, as well as the asbestos victims of the justice that they deserve.

Trane and TTC should be required to play by the normal rules. If they want a broad stay of litigation, then they would need to file a chapter 11. This is not a normal chapter 11. It's a perversion of that process and, your Honor, granting the preliminary injunction under these circumstances would undermine a basic tenet of bankruptcy law. It has been the case for a long, long time, as this slide notes, that it has been a cardinal principle of bankruptcy law from the beginning that its effects do not normally benefit those who have not themselves come into the bankruptcy court with their liabilities and all their assets. To violate this principle and the appealing facts of a particular case where no specific

necessity for doing so is set forth is simply to invite a wholesale restructuring of the expectations of those involved in commercial transactions without any indication from Congress that such a profound change was intended.

And you heard Mr. Erens tell you this has only been done in asbestos bankruptcies. Well, your Honor, this has only been done three times by, coincidence or not, by this same law firm, but that doesn't mean it's not going to be done in a lot of other places if it works. If, if a company can actually do what your Honor has described as the "horror story" and dump all of its assets into one company and all of its liabilities into another and (distortion) liabilities, you can bet it's going to be done a lot more times and that would be inappropriate and inconsistent with the law.

So to summarize this part of my argument, your Honor, the Court should refuse to find a public interest in allowing large corporations to create shell entities for the purpose of offloading mass tort or other liability for their prior actions. This precedent, if allowed to propagate further in this District, could be utilized to disadvantage any disfavored creditors of any corporation and the floodgates should not be open in this way. And we already see how the floodgate process has worked.

Georgia-Pacific utilized the Texas divisional merger law to try to put its asbestos liability into Bestwall.

CertainTeed then orchestrated a similar scheme. And now we're here. And, of course, as the record reflects, the actual existence of Bestwall was focused on as the, as the original origination of this plan in the mind of Mr. Turtz and his discussions with the Jones Day team.

So this isn't a hypothetical risk, your Honor. This is an already existing problem which is continually getting worse and we would ask your Honor to put a stop to it because it's inappropriate. And certainly, the debtor hasn't justified the request for injunctive relief.

Now as an alternative to a section 105 injunction, the debtors seek a declaratory judgment that section 362(a)(1) of its own force stays the commencement or continuation of asbestos suits against the non-debtor protected parties. Well, your Honor -- and I won't dwell on this for too long because it's so clear -- for almost 40 years the Fourth Circuit has disagreed and it's held that the automatic stay applies only to debtors and not to nondebtors, relying on the plain text of section 362(a)(1).

We've already talked about Piccinin, your Honor, and how in that case there was a reliance on the existence of shared insurance and here, the debtors contend that they have exclusive rights to it. Piccinin is inapposite. Any unusual circumstances upon which the debtors rely, your Honor, was only about the court's jurisdiction to grant a stay or injunction,

not whether or not it should, in fact, do so. If contractual indemnities alone were sufficient to obtain a broad litigation stay, your Honor, whether in the form of an injunction or declaratory judgment, it would create circumstances ripe for abuse. Debtors could enter into contractual indemnifications with nondebtors within days or weeks of their bankruptcy filing and then obtain a stay or an injunction shielding nondebtors. Does that seem like a, like a farfetched scenario, your Honor? Well, it shouldn't. That's what happened here.

Aldrich, Aldrich and Murray did precisely that. As part of the corporate restructuring, they entered into their respective Divisional Merger Support Agreements and granted indemnification rights not only to TTC and Trane where all their assets had been sent, or vast majority of their assets, but also to all non-debtor affiliates and this type of manipulation should not be rewarded through either an injunction or a declaratory judgment. As the Ninth Circuit noted in the Excel Innovations case at Page 26 of our brief, "Congress intended that courts apply the traditional injunction test in considering whether to stay third-party litigation," and this Court should, should follow that clear precedent.

And finally, to repeat a theme that your Honor should be well familiar with by now from the ACC, the debtors are also off the mark because even with their indemnification obligations the debtors are not actually the real parties in

interest. Because of the funding agreements, the debtors are not the ultimate indemnitors here. None of the cases cited by the debtors feature agreement comparable to the funding agreements here or a situation where the debtors are otherwise indemnified for losses in an allegedly unlimited sum. And the debtors have, of course, in this case, your Honor, described the funding agreements as uncapped and unlimited. As the debtors are not the real parties in interest as a result of the funding agreements, a section 362 stay cannot extend and shield any of the protected parties. If the, if the other protected -- if the allegedly to be protected parties, your Honor, really wanted and deserved protection, they could come into this court and get it the way the Bankruptcy Code provides, but they haven't.

Now the debtors also make an argument under 362(a)(3), your Honor, arguing that the automatic stay applies to all claims against nondebtors for asbestos liabilities that could have been asserted against old Trane or Ingersoll-Rand, at Pages 2 and 35 to 37 of their motion where they make those points, your Honor. And they argue that section 362(a)(3) stays these claims because they are now property of the estate, but the debtor itself has, debtors themselves, your Honor, have recognized that a cause of action is considered property of the estate only if the claim existed at the commencement of the filing and the debtor could have asserted the claim, for

example, at Page 16 of their motion for summary judgment, your Honor. Well, it's a matter of black letter law that if the cause of action does not explicitly or implicitly allege harm to the debtor, then the cause of action could not have been asserted by the debtor as of the commencement of the case and thus is not property of the estate. The Educators Group Health case and the Wilton Armetale case, your Honor, both make this point clearly.

And so the debtors try to do again another version of a head fake, your Honor. The debtors try to argue that they hold every possible claim against any nondebtor for Old Trane or Ingersoll-Rand's asbestos liabilities based upon the unsupported assumption that all such claims must "allege that the 2020 corporate restructuring harmed the asbestos claimants by impairing the debtors' ability to satisfy the asbestos liabilities allocated to it in the divisional merger."

Now this assumption is wrong on at least two fronts, your Honor. First, the corporate restructuring spawned two successors each to Old Trane and Ingersoll-Rand, the debtors, Aldrich and Murray, and the nondebtors, TTC and New Trane. Now a claim against Aldrich or Murray to collect on the asbestos liabilities of Old Trane and Ingersoll-Rand, it is plainly stayed, your Honor, as that would be an action to collect from a debtor's estate, but claims against New Trane or TTC to collect on the asbestos liabilities of Old Trane and Ingersoll-

Rand do not seek to collect from the debtors' estates, only from nondebtors.

And the debtors, again in yet a third head fake argue, your Honor, that any such claim would have to be a successor liability claim, which is a derivative claim and, therefore, property of the debtors' estates, but this argument relies on some sleight of hand with respect to the term "derivative." A claim for successor liability is a claim of derivative liability, but for purposes of 362(a)(3)'s inquiry. Whether such a claim is property of the estate does not depend on the mere assertion of derivative liability, but, rather, on the creditor alleging a derivative harm -- yeah -- a harm to the creditor that is derivative of some harm done to the debtors. Has to be derivative of harm done to the debtors.

And Tronox makes this very clear, your Honor, at 855 F.3d 84, 100, "Derivative claims in the bankruptcy context are those that arise from harm done to the estate," but an asbestos claim against New Trane or TTC as successor to Old Trane or Ingersoll-Rand might assert indirect or derivative liability, but that claim is not derivative of any harm to the debtors. Rather, the claim is asserting only that New Trane or TTD are liable for the torts of their predecessors based on the relationship between them. Such an injury, such a claim does not stem from any injury to the debtors or implicate the debtors whatsoever.

The debtors also argue that such claims are not cognizable, but the merits of these claims are not before the Court and are irrelevant to whether they're property of the estate. Second, your Honor, the second fundamental flaw with the debtors' analysis is they're wrong to assume that any creditor claim alleging harm from the corporate restructuring must be derivative of harm to the debtors. Prior to the corporate restructuring asbestos creditors of Old Trane and Ingersoll-Rand had access to all of the assets of those companies to collect on their claims, as you heard from Mr. Diaz. Well, what the corporate restructuring did, effectively, was build a wall between the creditors and those assets. Instead of collecting from the assets directly, the creditors now have to wholly depend on the debtors' desires to assert whatever rights they have under the funding agreements.

Now if the debtors were on the same side of the fence as the creditors, your Honor, that would be one thing. But here, the debtors are not on the same side of the fence as the creditors. The debtors are the fence. They are the harm. That is to say, your Honor, the debtors are the instruments of their predecessors' and affiliates' scheme to isolate asbestos creditors from assets, something which was part of their plan from the very beginning. And there is an analogous fact pattern out there in the law, your Honor, related to Ponzi schemes and the debtor is a sham corporation that is an

instrumentality of equity holders to inflict harm on creditors. Courts analyzing that situation have held that "those debtors are legally incapable of suffering injury and, therefore, creditor claims against those companies' affiliates relating to the funding transaction are not property of those debtors' estates." That's at Palm Beach Partners, your Honor, 568 B.R. 874, 890 And O'Halloran, 11th Circuit, 350 F.3d 1197 at 1203.

And the debtors have argued, your Honor, that those cases are inapposite 'cause they concern Ponzi schemes, but it's the exact same concept, your Honor, and they're much more analogous to the case at hand than cases dealing with the more traditional situations. Here, as in the Ponzi scheme cases, the debtors are sham corporations contrived specifically to harm asbestos creditors for the benefit of New Trane, TTC, and their affiliates. The debtors have no operations or employees of their own. They existed for only 49 days before the bankruptcy and they have no purpose other than to isolate asbestos liabilities and drag them into bankruptcy. As such, your Honor, there'd be no violation of 362(a)(3) if asbestos plaintiffs are permitted to pursue any theory against Trane, TTC, or other nondebtors. The debtors cannot hold such claims themselves because they are legally incapable of sustaining any injury upon which any such claim would be based.

And, your Honor, it should also be quite clear that declaratory relief is not a matter of right. This Court holds

unique and substantial discretion in deciding whether to declare the right to litigants. It's a, it's an equitable relief to which equitable defenses apply and among all the other reasons, their inequitable conduct here, your Honor, precludes the debtors and their affiliates from being entitled to a declaratory judgment, just as they are not entitled to a preliminary injunction.

Now, your Honor, it's now time to discuss one of the troubling things that we've heard from the FCR's lawyer in today's proceeding, the idea that if the ACC doesn't capitulate, that the FCR and the debtors will proceed alone to confirm a section 524(g) plan. And as I mentioned, your Honor, it has to be a section 524(g) plan the FCR's talking about because, if it's not, there is no FCR. The FCR is a creature of statute that only exists in the context of a section 524(g) plan. And so Mr. Grier is essentially saying, your Honor, that Mr. Grier as the FCR can vote on behalf of the future claimants in these cases and then his vote on behalf of future claimants can provide the 75 percent supermajority vote necessary to confirm a section 524(g) plan. Now it's interesting to hear this argument made for the first time in a closing argument when it's not been in the briefs, your Honor, but this is an area of law with which I'm familiar and so I'm going to address it.

Firstly, your Honor, both the text and legislative

history of section 524(g) are plainly contrary to these arguments. First, the text of 524(g) itself makes clear that it is individual claimants that must vote to confirm a section 524(g) plan and not creditor representatives or fiduciaries. Section 524(g)(2)(B)(ii)(IV)(bb) requires "a separate class or classes of the claimants whose claims are to be addressed by the trust is established and votes, by at least 75 percent of those voting, in favor of the plan." But section 524(g) clearly distinguishes, your Honor, between demands and claims with the former referring to claims that may arise in the future and the latter referring to present claims.

So it's quite clear that this provision only refers to, to present claimants. More significantly, your Honor, in addition to that, the legislative history makes clear that the latter refers only to current claimants, not future ones. For example, House Report No. 103-825 at 41, your Honor, from 1994, states that section 524(g) requires "a separate creditor class be established for those with present claims who, which must vote by a 75 percent margin to approve the plan."

In addition, this Court's order appointing Mr. Grier as FCR at Docket 389 clearly defines the scope of his authority as FCR in this case. The FCR "shall have the powers and duties of a committee as set forth in section 1103 of the Bankruptcy Code as are appropriate for a future asbestos claimants' representative." The committees cannot vote on a plan or

otherwise bind their constituents, your Honor. It's black letter law. As Collier states:

> "Although committees are charged with negotiating the plan on behalf of their constituencies, the committees are not authorized or empowered to bind their constituencies. They are vested with considerable power and authority under the Code, but they are not the agents of and cannot bind the groups they represent. The plan will be submitted to creditors and to every securityholder for voting and those holders may or may not follow the committee's recommendations."

And that's 70 Collier on Bankruptcy ¶ 1103.05[1][d][i] (16th ed. 2014), your Honor.

And the debtors agree with this point. In their reply at Page 11 they say:

> "Despite the ACC's litigation posturing and refusal to engage in negotiations on the terms of a section 524(g) plan thus far in these proceedings, it is the claimants, not the ACC, who will vote on a plan. As such, the FCR with the same scope of authority in this case as the Committee is not and cannot be eligible to vote on a plan or otherwise bind future claimants."

And no case has ever done such an abomination, your Honor.

And this scope of authority comports with the role

shaped for the FCR in the Johns-Manville case upon which 524(g) is based. In affirming the order appointing the legal representative in that case the district court noted that "the powers of a legal representative are like those of a committee under section 1103 and that those powers are not binding." The appointment of the legal representative, the court noted, "is not to enable the representative to bind the claimants, but simply to assure that future claimants have a meaningful opportunity to be heard and participate." And that's Johns-Manville, 52 B.R. 940, 943. And what is more, the FCR in the Johns-Manville case did not vote on the plan ultimately confirmed there.

So, your Honor, it is quite clear that although there have been multiple attempts by the debtors and the FCR to put undue pressure on the constituency through, frankly, inappropriate argument and inappropriate structuring, the reality is a 524(g) case cannot result in a cramdown as a matter of black letter law and the attempt to do so is not in the interests of present or future claimants. It is, it would be unprecedented and completely unwarranted by existing law and Congress' statutory intentions.

We heard from the FCR, your Honor, that it would be disastrous if the tort, in the tort system there were no funds available to pay future claimants and I guess this is a reference to the hypothetical he asked Mr. Diaz, your Honor.

What he asked Mr. Diaz, "What if 20 years from now this debtor had no money to pay anyone? Wouldn't that be bad?" And the answer he got from Mr. Diaz, your Honor, was, "Well, these debtor affiliates are worth $43 billion. They're fairly propitiously positioned industries. There's no reason to think anything like that is plausible."

There is nothing in the record, your Honor, to support the idea that the tort system is inherently worse for claimants, future or present, than a trust would be, especially when we know from the debtors' own mouth from a contemporaneously, well, actually, from a sworn statement, not in the context, not right here in front of your Honor except through a deposition, that their intent was always or their belief was always that they'd pay less to claimants if they filed. That is a more credible assertion and one consistent with the vast amount of maneuvering they went through and the lack of any communications with the plaintiffs at any point.

You've heard about how the ACC wants to effectively end this case, your Honor. And let's talk about that for a minute because I do feel the ACC's position has been fairly significantly misrepresented to your Honor and I want to raise it with you.

Your Honor, if this Court were to, as the ACC strongly urges you to do, deny the preliminary injunction, that would place this case on a more similar footing to that in Owens

Illinois where the claimants would no longer be prohibited from pursuing claims against the affiliates. Under those circumstances, your Honor, it would be more likely that a consensual resolution could actually be reached for full value because it wouldn't just be the claimants stuck in the box. There would be a more equal risk to both parties, whereas if this preliminary injunction is granted, it will be business as usual for the non-debtor affiliates holding all of the assets. And they can forget about this case, your Honor, because however much it costs, it's a lot less than a hundred million a year that their predecessors were spending before. It's a financial benefit for them to keep this around, which is why they said two to five or five to eight years in terms of their anticipated length.

And when they talk about the, the fraudulent transfer allegations being made in other confirmed cases, your Honor, what they're essentially doing there is asking you to ignore their bad behavior prepetition, essentially assuming that their good faith or bad faith doesn't matter. But as this Honor is well aware, as your Honor is well aware, asbestos victims have been placed alone among all creditor groups in this bankruptcy apparently under the view or the hope that they'll knuckle under to accept payments at reduced values and that's not consistent with the purposes of 524(g) to fairly compensate asbestos victims. The debtors here are just a vehicle for the

non-debtor affiliates to launder their own asbestos liabilities and that's not appropriate.

And there -- this isn't a situation with respect to detrimental pressure, your Honor, with respect to the debtor entities. This is a situation with respect to equal pressure, having all the parties have the motivation to fairly engage in actual constructive discussions at full value. And we saw what happened in Bestwall, your Honor, when the preliminary injunction was granted, nothing constructive. That case is mired in litigation and there's no end in sight.

So when you've heard from the debtors, your Honor, over the past three days about their new-found enthusiasm for resolving this case consensually and quickly, their actions and documents tell a different story. As revealed in their own documents, they anticipated a bankruptcy lasting up to eight years. They didn't try to negotiate before filing for bankruptcy. They engaged in a transaction that, if the PI is granted, will have the effect of isolating asbestos creditors from the underlying assets. They've made numerous inflammatory accusations and they've served aggressive and unwarranted discovery. This new-found enthusiasm for settlement, your Honor, will vanish if the PI is granted. And as I've mentioned, your Honor, although the debtors, the affiliates, and the FCR have a great deal of interest in the Owens Illinois case, they, they have missed a critical aspect of that case.

While they focus on the restructuring transaction there, they failed to note, as I mentioned before, it was not followed by a preliminary injunction. So the claimants remained free to pursue claims against those assets and that put the parties on a more plausible path to a successful resolution.

So, your Honor, in sum, the way to solve this case, as all parties before you purport to want to do, is to deny the PI, which is not necessary for this case to be successfully resolved, as many cases have successfully resolved without one. This would put the parties in the most similar posture to Owens Illinois where both parties had incentives to reach an expeditious and consensual resolution. And then after denying the preliminary injunction, your Honor, you could order the parties to a 60-day mediation which, under those circumstances, would be more likely to result in an actual consensually negotiated resolution that would be efficient. That's the better path that is worth pursuing, your Honor.

Thank you.

THE COURT: Under that last thought, Mr. Maclay, if, if I deny the preliminary injunction, a thousand lawsuits get filed in state court against the, the, new companies, if you will, and then negotiations produce a, a plan. How do we put the genie back in the bottle?

MR. MACLAY: Your Honor, just to reflect on something, that was the situation in OI. People could have filed their

cases against the Owens Illinois affiliates.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MACLAY: And I have to be careful because I know things that I'm not permitted to say. So let me say things that are just common sense. It wouldn't make sense for people to file a thousand cases in the tort system against the affiliates if they had reason to believe that an actual good faith negotiation process was about to be undertaken that would resolve their cases in the next 60 days. 'Cause nothing's going to happen in that 60-day period, your Honor, other than the understanding that all parties are now motivated to act in good faith and to reach actual fair and full values, as happened in Owens Illinois. It's no accident, your Honor -- you could assume that the debtors in Owens Illinois were aware of what happened in Bestwall.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MACLAY: They didn't go that path. They chose a different path and that path led to a successful resolution. And so I don't think the genie-back-in-the-bottle argument is an actual problem, your Honor. If we can actually get this case on the right footing with equal pressures on all sides, that would put us in the most likely path to success and if it isn't -- well, let me just, let me just leave it there, your

Honor.

Does that answer your question?

THE COURT: Yes, sir.

All right. That it?

MR. MACLAY: For now, your Honor.

THE COURT: Has everyone had at least one shot? We'll get rebuttal arguments in a moment, but I wanted to make sure that everyone who wanted to speak has, has already had the chance or we could talk about accommodating them.

(No response)

THE COURT: My suggestion, then, is we will take about a ten-minute recess for comfort and then we'll get rebuttal arguments.

It's now 3:30. As before, if we're going to get this done, it's got to be done before 6:00 Eastern. I don't know how long y'all intend to speak on rebuttal, but we've had three groups of speakers so far and what we're effectively going to be doing is having a little more than an hour and a half of real court time, at most.

So I would ask that you try to limit your remarks to less than 30 minutes on rebuttal and don't feel the need to fill the whole 30 minutes since everyone's had a fairly lengthy opening argument. I would hope that they would be much shorter than that.

Let's take ten minutes and we'll come back at, oh --

I'm showing 26 after -- so let's say about 22 till, okay?

MR. MACLAY: Thank you, your Honor.

(Recess from 3:27 p.m., until 3:38 p.m.)

AFTER RECESS

(Call or Order of the Court)

THE COURT: Have a seat, everyone.

Okay. I guess we are back for rebuttal arguments.

Mr. Erens, from the debtors' perspective?

MR. ERENS: All right. Thank you, your Honor. And I will be relatively brief. So your concern about time, hopefully, will not be a problem. It certainly won't be a problem for me.

I just want to hit on a couple of points in response to some of the things Mr. Maclay said in his argument or some of the things he did not say.

So first of all, I heard nothing in Mr. Maclay's presentation that is contrary to what I said at the beginning, which is what the ACC is seeking is an effective dismissal of this case without filing a dismissal motion. Mr. Maclay said something to the effect of, "Well," you know, "let's, let's not have a preliminary injunction and see how it goes." Again, we put in a slide earlier today statements from the ACC counsel made just last week in the omnibus hearing.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: They said, "We expect and hope that these proceedings will be effectively done next week." The clear intent of that is they intend, they intend to prosecute massive litigation against the non-debtor affiliates. They've made no secret of that. It's not a situation where it's going to be a wait and see.

Next, Mr. Maclay said something to the effect of, "Well," you know, "if we capitulate." Your Honor, the ACC has never come to the table. It's not a question of capitulation. As we've said and the FCR has said, they have not engaged for one minute in this case to talk about a productive solution. So it's not a question of capitulation, your Honor.

Thirdly -- and this is in no particular order other than, I guess, the order that the issues were presented by Mr. Maclay, but I'll be jumping a little bit from topic to topic and I apologize -- Mr. Maclay said he was confused about the $8 billion number in the debtors' presentation. Your Honor, I think we made clear the fact that to fully defend a meso case and take it to trial costs approximately $1 million and the debtors have 8,000 meso cases today and, of course, we'll have thousands to come. The point of that is one of the most difficult aspects of the tort system which is, from a defendant perspective, it is unbelievably expensive to truly defend these cases. To truly to do -- excuse me -- to truly do so would cause significant financial distress for any company,

even a company the size of Trane. That's the point and that's the math. And, of course, that is only one of the many features of the tort system that is difficult and that can be rectified through a section 524(g) trust. I did not even go into the various aspects, fairly serious aspects, of the tort system that are well chronicled in Judge Hodges' opinion on estimation in the Garlock case.

Next, your Honor, I want to address the, the Paddock case. We may have beaten this issue like a dead horse -- and I hate the pun -- but we have to respond, your Honor, to a couple of points. Again, your Honor -- and I think the FCR made this clear in its filing in support of the preliminary injunction -- Owens Illinois and then Paddock were not in the tort system. Why were they not in the tort system? Because they were the last-standing insulation manufacturer who actually made friable asbestos in their products and these are the games that go on in the tort system, your Honor. The plaintiffs' bar wanted Owens Illinois to be outside of the tort system because if they were inside, all the other codefendants could point to them as the actual culpable party.

So there was a mutually beneficial arrangement between Owens Illinois and the plaintiffs' bar that Owens Illinois stay out of the tort system, then Owens Illinois did, effectively, the same transaction that Aldrich and Murray did, put the assets, the asbestos liabilities -- excuse me -- into a

separate company and file it for bankruptcy. The argument is that the parties were working cooperatively and, therefore, there was no need for plaintiffs to sue the non-debtor entities.

Your Honor, the non-debtor -- excuse me -- the plaintiffs had absolutely no incentive to sue the non-debtor entities because for the same reasons the plaintiffs didn't want to be in the tort system with respect to direct claims against Paddock or previously Owens Illinois. They didn't want to be bringing claims against Owens Illinois derivatively in the tort system on the exact same claims. Again, that would have put friable asbestos liability in the tort system with respect to claims against the nondebtors. The plaintiffs had no reason, no desire to do so. That is why Paddock is different from this case. It was never in the tort system. The plaintiffs had every incentive to keep it out of the tort system and, therefore, they had no desire to bring those claims during the bankruptcy against nondebtors.

A couple of other related points, your Honor. I think Mr. Maclay said something to the effect that we don't know whether there'd be claims brought against the nondebtors here if there's no preliminary injunction. Well, again, your Honor, the evidence is clear. In the, in the seven weeks or so between the divisional merger and the bankruptcy filing over a hundred such claims were already brought against the non-debtor

affiliates. And again, debtors' [sic] counsel has said we hope and expect this case'll be over with as a result of the judge's preliminary injunction ruling.

So that says that they're going to bring extensive litigation in the tort system if there's no injunction. What is going to happen if your Honor doesn't grant the injunction, I think, is fairly obvious.

Let's see. What else? There was some discussion of the Purdue Pharmaceutical case.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: And Mr. Maclay said, "Look, all the Purdue companies filed for bankruptcy. So that's not something that is supportive of the arguments of the debtors." Your Honor, in that case -- and Mr. Maclay knows this because he's involved, as he indicated -- the injunction was with respect to the Sackler family, the shareholders of Purdue. The Sacklers didn't file for bankruptcy. The Sacklers stayed outside of bankruptcy. So the analogy is the responsible party was kept out of bankruptcy, was not put in bankruptcy.

So to say all the Purdue Pharma entities filed for bankruptcy is not the issue. The Sacklers, the, the family that owns Purdue, was kept out of bankruptcy as a nondebtor with the benefit of an injunction.

Couple other things, your Honor. Mr. Maclay said the

standard, the third prong is balance of equities, not balance of harms. Your Honor, I'm simply reading from the Bestwall decision. Judge Beyer, when she says what the third prong says, when she says what the third prong is, she calls it "the balance of harms between the debtor and its creditors." So we didn't make that up, your Honor. That's at least what Judge Beyer said and that's my understanding of what the characterization in bankruptcy is of the third prong.

Next, your Honor, there's this whole discussion -- and you heard a lot of it through testimony -- about whether the bankruptcy was a foregone conclusion. The ACC continues to make this argument. Your Honor, the facts speak for themselves. The testimony was clear on this. The debtors have not hidden the fact that when they did the divisional merger it was to provide an option for the new entities to file for chapter 11, if they so chose. The bankruptcy was obviously in the air and as a result, there's every reason to expect that there would have been bankruptcy discussions prior to the divisional merger because the people within the organization who were responsible and part of the project needed to know what the ramifications of a bankruptcy would be if it were chosen.

So, for instance, Ms. Roeder testified that she in the Finance Department, of course, needed to know what the ramifications would be if that option were chosen because

that's a fairly major change within the organization. The -- Mr. Maclay has indicated that the debtors were, were considering bankruptcy to pay less, but that's not what the evidence shows. Mr. Kuehn testified this morning that they were prepared, they had to be prepared for a situation where they'd pay more. They didn't know what they were going to pay. They might pay less. They might pay more. I think the statement that Mr. Maclay took from Mr. Valdes, if you look at it, is out of context and does not support the fact that it was unclear what the result was going to be.

I will say that with respect to the couple of e-mails Mr. Maclay showed your Honor, as you recall, the debtors provided the ACC with thousands, if not tens of thousands, of e-mails. And, of course, the ACC has found three or four that they like to show, usually from people lower within the project, not necessarily people who were leading the project. And they like to say things like, "Oh, the debtors were projecting an eight-year bankruptcy." There's no support for that. There's no statement that the debtors were preparing for an eight-year bankruptcy. In fact, Mr. Kuehn testified that the companies' projections only went out eight -- excuse me -- only went out three years in terms of the potential costs. The debtors don't know how long the bankruptcy was going to last and they only projected for three years.

Your Honor, we, as we've said from the beginning --

and I think I said to you on the first day of the case -- we hope and intend not to be here for long, but the reality is the ACC has refused to sit down and talk to us and, of course, the numerous motions that we brought before the Court, they've objected and then tried to delay. The delay has not been on the part of the debtors. We are trying to prosecute these cases.

Your Honor, with respect to the funding agreement, again, the record is clear. Mr. Maclay pointed out a couple of provisions, for instance, automatic termination on the effective date of a plan. Well, that's, your Honor, because the funding agreement provides that all the funds necessary for the 524(g) trust will be provided upfront at confirmation and infused into a 524(g) trust. So the full obligation will be paid at that time and, of course, as a result, the contract will then terminate.

Mr. Maclay also said this will impair the creditors' ability to do a plan. I don't understand that, your Honor. There's nothing that says that it has to be a debtor plan that has to be funded. In fact, that's what, again, the Paddock funding agreement provided, Paddock which the ACC sets forth as a model. The Paddock funding agreement said that the debtors would only pay pursuant to a plan that they proposed or that their board of directors approved. This funding agreement says no such thing. Your Honor, if the parties agree on a funding

amount, no matter whose plan it is, the debtors' funding agreements will pay that plan. If the, if the Court throughout as a result of litigation determines a liability and that's put into a creditor plan, the debtors have to pay or - excuse me -- the debtors' funding agreements have to pay. Again, however the liability's resolved, whether through agreement or a final court order, the funding agreements provide the amounts have to be paid upfront, again to the extent the debtors' own assets are insufficient to do so.

Your Honor, with respect to the statements made by Mr. Maclay with respect to transferring monies throughout the corporate family, the one thing Mr. Maclay did not note is none of this money has left the corporate family. These are not dividends to the, to the Trane shareholders. This is normal course yearly cash system management and as Mr. Kuehn testified this morning, the entities that are parties to the funding agreement have their own cash as well as access to significant undrawn credit facilities.

So the fact that monies are being moved around for cash consolidation purposes in no way prevent New Trane or New Trane Technologies from meeting their obligations under the funding agreement.

With respect to the *res judicata* testimony, I interpreted the questions to Mr. Tananbaum as asking in the 49 days was there *res judicata* effect. Mr. Maclay says the

question was more broad. I'm not so sure what Mr. Tananbaum's interpretation was, but as the testimony showed Mr. Tananbaum has not been managing the debtors' asbestos liabilities for the last 40 years. That set of responsibilities is fairly recent. So, of course, Mr. Tananbaum could not say in the history of the 40-year litigation whether the debtors or their predecessors were ever subject to the risk of or an actual effect of *res judicata* or evidentiary prejudice. He does simply not have that long-term history. And, of course, all those cases are cases where the debtors were fully involved. Here, we're talking about cases where the debtors may not be involved, where the defendant is actually a third party that the debtors have indemnified.

Finally, a couple quick points. The ACC cites the Williford case. As we indicated in our briefing, your Honor, the Williford case supports the debtors. What the Fourth Circuit did in Williford is allow plaintiffs to continue to pursue unaffiliated --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- codefendants in the tort system to, to get recoveries while their claims were stayed against the debtors. That's what we said here. That's exactly what's happening here. Claimants can continue to prosecute their recoveries against numerous other parties.

With respect to Mr. Maclay's statements on the Texas divisional merger statute, he pointed out that the statute provides that creditor remedies like fraudulent conveyance are, are retained. And we agree with that, your Honor, but as I indicated in several instances -- and the record should be clear -- the debtors through the funding agreements have taken care of the fraudulent conveyance issue. There is no fraudulent conveyance issue but, of course, if the ACC disagreed, as was stated, they have the ability to seek derivative standing in this case to try to prosecute that type of action.

Finally, with respect to bankruptcy, the so-called bankruptcy benefits without burdens, your Honor, a couple of responses. The nondebtors have the obligation to fund these cases and the longer the cases go, the more expensive they will be. Of course, the nondebtors as well as the debtors have every incentive to prosecute these cases as quickly as possible because the longer they go, the more expensive they will be. And, your Honor, the ACC acts as if at the end of the day the liability's just gone. The liability's not gone. There is a big check to write at the end of the case.

So the idea that it incentivizes the debtors to slow down and do nothing in this case is simply incorrect. The more costly it is at the end of the day, the more the total cost to the debtors and the nondebtors will be. And, of course, the

evidence with respect to who's doing what is contrary to what the ACC suggests. The ACC has been sitting on the sidelines refusing to discuss anything with the FCR or the debtors. The debtors and the FCR have been moving quickly to try to resolve the case. There's been no evidence that the debtors are not sufficiently incentivized to reach a final resolution in this case. You heard through testimony earlier what the debtors are seeking is finality. The earlier their finality is reached, the better for the debtors as well as all other parties in interest.

I'll only make one other comment, your Honor, which is Mr. Maclay said there's only been three cases like this and they've all been filed by Jones Day. That, again, is incorrect. He's referring, of course, to Bestwall, to DBMP, and to these cases, but there actually have been at least five cases like this, Coltec, in Garlock with the facilitation, approval, and consent of the plaintiffs' bar, and Owens Illinois where Jones Day has no involvement. It's not in this jurisdiction. But again, it was an almost identical case.

Your Honor, all those cases, again, are in the asbestos context, not surprising, your Honor, because asbestos, as I said, has numerous issues that are difficult to deal with in the tort system. Those issues can be much better dealt with in a trust system. That's why this case was filed. That's why we think, your Honor, the preliminary injunction should be

issued to support that, hopefully, successful 524(g) result.

Thank you very much, your Honor.

THE COURT: Thank you.

Mr. Guy.

MR. GUY: Thank you, your Honor.

We should be under no illusions as to what's going to happen if the Court, if it doesn't enforce the automatic stay or it doesn't grant the debtors' motion for a preliminary injunction. Exactly what the Court said. We're going to be back in the tort system, there are going to be 10,000 claims out there, and there's going to be no way to put the genie back in the bottle. And evidence of that and the seriousness of whether the ACC actually wants to negotiate is they don't even have a claims expert in this case. They have, they have no expert to tell them how expensive the debtors' asbestos liabilities are. That's unusual. They're hoping that these cases are over once the Court rules.

Your Honor, the ACC's comments about Paddock should be disregarded entirely for a number of reasons. First, as you heard in the hearing and as was the case during Mr. Diaz's deposition, the ACC asserted privilege. You can't assert privilege and then have your lawyer stand up in court and say, "Oh, well, actually, it is different and here's why."

Second of all, what Mr. Maclay said is argument of counsel. It's not evidence. There is no evidence concerning

Paddock other than what is in the declaration and the other documents that the debtors provided to you directly from Paddock themselves.

Third, the arguments make no sense. The ACC's saying, "Well, because we have access to assets, we didn't need your access to assets, okay?" And if you don't need them, then why are you objecting to the PI before you've even tried to reach agreement on a funding amount? And they didn't have access to assets because, guess what? In the Paddock case the automatic stay applies, just as it applies here. And for the reasons that Mr. Erens talked about, we know why they won't be pursuing, they won't be pursuing those cases.

Your Honor, we heard a lot about the debtors' good faith. The Court is in the best position to determine the credibility of the witnesses who testified as to the reasons for the bankruptcy and whether they are serious about funding the asbestos trust. I can assert, I can represent to the Court that we have been working assiduously with the debtors. We are convinced they are acting in good faith. They have been completely transparent and they have provided all, all that we have asked for outside of litigation voluntarily in our due diligence to reach a confirmable plan of reorganization.

Your Honor, the ACC says, "Well, this has put us in a box." Putting aside that it's the same box that they were in in Paddock, they say, also, that they're the only party that

can vote, that if they don't have their approval, all bets are off. They're back in the tort system. I don't agree with that, but that, if they believe it, they should believe they have all the leverage in the world.

Mr. Maclay said 524(g) is worse than the tort system. Well, Congress disagrees, the Bankruptcy Code disagrees, the evidence presented to the Court in this hearing disagrees, and 80 bankruptcies or so that have resulted in 524(g) asbestos trusts that have been approved by the ACC in all those cases disagrees.

Your Honor, the arguments about the funding agreement being illusory, with respect, are nonsense. Because they're all put to bed once there's an agreement on funding. And money will be put in a QSF, the Court will see it, it will be approved, it will be transparent, and it will be there.

Your Honor, I didn't hear -- I was listening -- I actually didn't hear what a, a credible argument as to why the automatic stay doesn't apply here. And as we said before, it's belt and suspenders. The automatic stay takes care of this issue.

Your Honor, on motive, I heard what Mr. Erens said. I don't want to repeat it, but the fees in this case are huge and you haven't seen them, I think, in months from the ACC side. They have five lawyers, five law firms, plus FTI. There were 20 people from the, 20 professionals representing the ACC at

the hearing yesterday, I think there were that many day before, and I'm sure there's that many this day. There were numerous lawyers that attended in person, not virtually, attended each of the depositions, numerous lawyers, insurance lawyers, FTI. The -- the -- when you see all the fees that are being spent over the last four months, it's going to make Garlock look like a minnow. And, of course, the debtors are motivated to get closure. It benefits them. It's in their interest. There's no reason to believe -- and none has been presented -- and there's no evidence to suggest that, be less motivated than in Paddock.

Your Honor, and the last thing, Mr. Maclay made a lot of arguments about whether the FCR can vote. I'm not going to even respond to those 'cause it's way too premature, but, suffice to say, that we disagree with all of them.

Thank you, your Honor.

THE COURT: All right.

Mr. Maclay, anything else for you?

MR. MACLAY: Yes, your Honor. Just give me one second to finish eating a pretzel. I hadn't realized that the FCR was about to come to an abrupt end.

THE COURT: Please chew first, talk later.

MR. MACLAY: Thank you, your Honor. I'm going to be even more brief than Mr. Guy, your Honor.

I don't know why, your Honor, in this case lawyers who

aren't involved in cases I'm involved in want to talk about them so much, but I feel compelled both as an officer of the Court as well as an attorney representing the ACC in this case to correct the record on some of the incorrect statements that were made to your Honor.

Now you heard Mr. Erens, your Honor, say that there was this mutually beneficial arrangement that OI stay out of the tort system. Your Honor, you have a lot of paper in front of you. You have a lot of exhibits. You won't find anything in any of that supporting that ridiculous assertion, your Honor. OI is just like every other asbestos defendant. It got sued in the tort system. It settled some cases outside of the tort system, just like these debtors' predecessors did. The idea that there's some difference because of some weird secret arrangement without zero, zero support in the record is, it's just false. It's, it's ridiculous and it's not supported by a single scrap of paper in front of you. I'm not sure where that comes from, but it doesn't come from either reality or anything in the record.

With respect to Purdue, your Honor, they said the Sacklers weren't put into bankruptcy. Well, the Sacklers are people. When can a corporation in filing grab its shareholders and throw them into bankruptcy, too? I'd be curios to see the support for that, but it's irrelevant because the Sacklers were part of the prearrangement that I was discussing. The Sacklers

contributed billions of dollars, but the debtors' affiliates are going to put in billions of dollars right now as part of a negotiated solution. They could have made that to us before the filing like the Sacklers, in fact, did.

And so this, this idea that the Sacklers weren't part of the bankruptcy, well, that's just false. In fact, they're currently scheduled to provide -- and this is public record -- $4.275 billion into the bankruptcy. And so, again, I, I just felt the need to correct the record on that blatant misstatement.

Now, your Honor, the thing about the *res judicata* quote that Mr. Erens wanted to quibble with me about, it's in our brief. Our brief says, our interpretation of his testimony, and it says they haven't provided a single case where it's happened and they got a reply brief in response to our brief, your Honor, and they didn't say anything about this.

So it's interesting to hear an attorney at this oral argument tell you that we're misinterpreting the testimony, but they could have fixed that in the briefing, if it's true. If they had a single example of *res judicata*, they could have showed it to your Honor. They did not. It's their burden. The record is clear. They haven't met it.

Thank you, your Honor.

THE COURT: Thank you.

All done?

(No response)

THE COURT: Okay. Let's talk about where we go from here. This is going to take a little while to, to work up and as you know, I've got the DBMP case as well. And --

MR. GUY: Your Honor, I'm sorry to interrupt. My, my microphone was on mute. May I have a quick word before?

THE COURT: Oh, yes, sir. Go ahead.

MR. GUY: Yes. I really apologize, your Honor. I have to respond to what Mr. Maclay said.

And I don't -- I don't -- you don't need to put it up now, but I'm going to read into the record from Mr. Gordon's declaration in Paddock and it directly contradicts everything that Mr. Maclay just said. It says:

"In contrast to many other companies' pure litigation approach, however, most asbestos claims are presented to the debtor through a variety of administrative claims handling agreements. The company long believed that it and its various stakeholders were best served by proactively managing its asbestos-related liabilities outside of the tort system through such agreements. This strategy has historically allowed the debtor more predictability in managing risks and its annual asbestos-related financial obligations."

Thank you, your Honor.

THE COURT: Thank you.

Anything else?

MR. MACLAY: Your Honor, just because that felt like an unfair direct personal attack, I just want to say there's nothing that you just heard that's inconsistent with anything I said like almost every asbestos debtor or most cases were settled outside of the tort system. And, of course, the debtors think that's in their best interest. Beyond that -- even with respect to that, these debtors are identical or their predecessors, more accurately. But, your Honor, it's a minor point. I'll let it go, other than to say that that's not inconsistent with anything I've said.

Thank you.

THE COURT: I heard both.

Okay. Are we done for the moment?

MR. ERENS: Your Honor, I would like to say that I fulfilled my promise to get you more or less done by 4:00 on Friday. So I did, I do want to point that out.

THE COURT: You get to be late for court next month, Mr. Erens.

MR. ERENS: All right. Thank you.

THE COURT: We have to talk about how we proceed from here. As I was saying, I've got DBMP under advisement at the moment. This is going to take some time to write as will it. The question is do you want to do what we did in DBMP to allow the parties to submit proposed findings and conclusions?

That's option to you. I will tell you it is very helpful to me. It saves a lot of keystrokes, first of all, and secondly, as an outsider to this who has not been in all the depositions and lived it the way you have, there is entirely likely you will think of some findings that you would like to see in the order that I might not remember to put in and given the, the seriousness of the litigation and the assumption that it's going up somewhere, at least one level, maybe two, maybe, perhaps, more, then I don't want you go to up on appeal and find out that you don't have enough in the, in the findings of fact and that you end up with a remand. I'd rather be reversed than remanded.

So with that in mind, the question is, having put out as much work on this as you have and briefed it to this extent, is there any interest in doing that? It's not required. It's just a -- it's -- it's an opportunity to give the Judge the comparing orders and that would at least get me started in this. Up to y'all.

MR. MACLAY: Well, your Honor, you just said that it would be useful to you.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MACLAY: And I think that, frankly, answers the question itself. If it would be useful to you, I'm sure all parties would agree that it's something we should be doing and

would, would welcome doing.

THE COURT: Mr. Hirst, did you want to say something?

MR. HIRST: If Mr. Erens isn't going to tackle for us, I certainly can.

To Mr. Maclay's point, if it's helpful to you, your Honor, we certainly want to do it. We also don't want to bury your Honor and his staff with any more paper than we've already managed to bury your Honor and his staff. And we appreciate your, your patience with all that paper. And so we want to do whatever is most helpful. I don't think we want and I doubt your Honor wants another round of, essentially, post-trial briefing coming out of this.

THE COURT: No.

MR. HIRST: And so --

THE COURT: No.

MR. HIRST: -- we would -- if, if it would be helpful to your Honor to do findings and conclusions, we would suggest pretty narrow ones to make it easy for your Honor and not to be forcing you to read some additional briefing, so.

THE COURT: Right. No, I -- my assumption would be it would be a distillation of what has already been done, not, certainly not new briefing. I, I don't want that. Want to close the record at this point in time factually and, and us live with what we have at this juncture. Obviously, there's a great deal of disagreement as to what the law is in this area

and reasonable people can, can disagree on the conclusions to be drawn.

So there's a need to state clearly what we're doing and why. On the other hand, the, we still have -- and it will be the end of the month when we, at the latest, that we resolve whatever objections there are to evidence.

So I don't anticipate getting anything out in the next couple of weeks on this. It's going to take a while.

That begs another question. Let's go ahead and assume that you're submitting findings and conclusions. What kind of time do you need?

MR. ERENS: Yeah, your Honor, that was going to be my question, which is lest what time we need, as to when you want them. I know you've been sitting on the findings and conclusions in the DBMP case for a while and I think you've also expressed a desire to get this behind you, which we fully understand and agree with. So we don't want to delay your progress in DBMP, either.

So I think it's a question of when you want them and we'll do whatever's necessary to get them in front of you.

THE COURT: Okay.

Well, will you be able to do it before the -- what's the date -- the 27th, which would be the last day for us to resolve the evidentiary aspects of this? Or would you need to know whether you've got evidentiary disputes yet to, before you

could propound anything?

MR. ERENS: From my standpoint, your Honor, but I also want to ask Mr. Hirst to weigh in, if he thinks otherwise, I see doing it by the 27th as no problem.

MR. HIRST: I, I agree. I agree, your Honor.

MR. MACLAY: And, your Honor, I would definitely agree with that, especially if the parties were to reach an accommodation on what comes in as soon as possible. Obviously, it's theoretically possible you could get drafts which, which contain contested factual findings based on the evidence which maybe not be in the record, but I'm also hopeful, as Mr. Hirst and Mr. Phillips discussed earlier today, that that could be worked out consensually relatively quickly in which case the 27th is more than enough time.

THE COURT: Okay. Want to just make the deadline for the findings and conclusions the 27th, perhaps the day before?

MR. HIRST: That's fine, Judge.

Judge, one thing just to clarify and I assume this is correct. You're not looking for findings or conclusions concerning the summary judgment motion which is up before you, are you? This is just for the PI?

THE COURT: I don't think we need to make findings there. I think we all know what happened.

MR. HIRST: Yeah. Okay.

THE COURT: No. I'm talking about the injunction at

the present time.

MR. HIRST: So the 26th, your Honor, that's when you'd like those submitted?

THE COURT: Well, if -- it depends whether you think I need to read them before I hear your evidentiary fights, if we have any, on the 27th. If I get them on the 26th, I'm going to be hard pressed to get through all of it, but I'm not sure that, first of all, we'll be talking about this on that particular day.

The other question I had was since this is going to take me a few weeks to, to crank out, is there something we can do with the time in the case that would be productive? We've had a couple people mention whether a, a court-ordered mediation would be in order. I don't know, having put this up and everyone realizing there's some risk of an adverse ruling, does it make any sense to talk about some sort of mediation effort while, while the, the decision's outstanding? Or is that just something for down the road, if at all?

MR. ERENS: Your Honor, I think from the debtors' perspective we'd want to think about this a little bit. So if you're talking about issuing a ruling fairly soon after the conclusions and findings --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- it's not that long and I think the

experience in Bestwall, to be honest, is it took the mediation more than a month, maybe two months, just to get going.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: So by the time you issued the ruling, we wouldn't even have started the mediation.

So, of course, we're always in favor of any solution to try to resolve the case.

THE COURT: Right.

MR. ERENS: But I have a feeling in this particular set of circumstances, unless you, you want otherwise, we might as well wait for the ruling.

THE COURT: Okay.

Anyone feel differently?

(No response)

THE COURT: Is there anything else that we could do to advance the ball in the cases --

MR. ERENS: Well, your Honor --

THE COURT: -- during the time?

MR. ERENS: Your Honor -- and this does point out something else -- which is you may recall the debtors and the FCR filed a joint bar date and PIQ motion in December that was heard at the January omnibus hearing. Your Honor really heard all of the arguments, including the motion to defer --

THE COURT: Uh-huh (indicating an affirmative

response).

MR. ERENS: -- as well as the underlying motion and carried it to the May 27th hearing. So that's when it's now currently scheduled.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: At this point it's clear, since the findings won't even come to you until the day before, that you are not going to have ruled by that time. So I assume your request is that we continue that to the next omnibus.

THE COURT: Yeah. That -- I would like to get us past this, one way or the other, or get you folks on the way to district court, whatever. And with that in mind and the DBMP case earlier in the week, I, I asked them to consider backing up towards, I think their date was, we picked one the end of June.

Here, I think the June date would be the 24th and my suggestion would be to move those discovery motions over there in hopes that I might be able to crank out these two orders before we get to that point.

MR. ERENS: Right.

THE COURT: They're pretty big writing projects, given that we've got other cases going on right now as well, so. But you have laid it out wonderfully for me and it's going to be a question of just deciding who I agree with and who I don't.

Anyone got a problem with taking those discovery motions out to June 24th?

MS. RAMSEY: Your Honor, the -- Natalie Ramsey for the ACC.

No problem with pushing them to a later date. We are having some scheduling issues with respect to trust counsel and vacation schedules and the like.

THE COURT: Uh-huh (indicating an affirmative response).

MS. RAMSEY: And so I would like an opportunity to talk with, with counsel and, and get back to the Court with respect to a proposed date.

THE COURT: Okay.

MS. RAMSEY: Is it the Court's proposal that, that the hearing in both DBMP and in this case with regard to the PIQ bar date here and the PIQ/trust motion there be heard near, near the same timeframe, on the same dates?

THE COURT: Well, no, not the same dates. DBMP, I think we put over to June the 30th. It had been the 17th, was the normal day and I was trying to clear --

MS. RAMSEY: That is correct, your Honor. That --

THE COURT: -- out room for this, so.

MS. RAMSEY: That may move again --

THE COURT: Uh-huh (indicating an affirmative response).

MS. RAMSEY: -- just so the Court is aware.

THE COURT: Well, that's fine. And frankly -- well, in any event, I, I realize summer schedules get to be active, but July is not looking as bad for us as June is at the moment.

I don't have a problem with moving that. Whether we want to do both on the same day, I, I, don't know how long -- we had originally talked about in DBMP that being blocked out as a one-day --

MS. RAMSEY: Right.

THE COURT: -- event. So I'm not sure we could do both in one day. It might be good to do both in the same relative time period, same week, just because there's going to be a lot of overlap there.

But I'll leave that up to you. Think about dates and look at your schedules and get up with my office and we'll try to find you some time, all right?

MS. RAMSEY: Thank you, your Honor.

MR. ERENS: Thank you your Honor.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: Otherwise with respect to progress, our intent is to continue dialogue with the FCR and the insurers and we intend to make progress during the time that your Honor is considering his ruling.

THE COURT: Uh-huh (indicating an affirmative

response).

MR. ERENS: We also continue to have an open invitation to the ACC to join those discussions. That is up to them as to whether they want to do so. But the, the empty chair that's been sitting in the conference room that they haven't filled is still waiting for them to come.

So we have an open invitation for that. We will try to make continual progress in the case, your Honor, during this period of time.

THE COURT: Okay.

Mr. Maclay --

MR. MACLAY: Your Honor?

THE COURT: -- might want to invite you to some negotiations on changes to the funding agreement as well in the, in the spirit of amity.

MR. MACLAY: Right.

THE COURT: Well --

MR. MACLAY: Your Honor, a procedural question, if I could?

THE COURT: Sure.

MR. MACLAY: Does your Honor have an expectation when we get into June if we're, if we're more likely talking about or July, actually, is what it sounds like, are we going to be likely talking about in-person hearings again or are we still going to be remote at that point? Do, do you have any feel for

that?

THE COURT: You know, the, the truth of the matter is I've been so busy and with our move and all that's gone on this month, I have not formulated anything more specific than a general desire and I think Judge Beyer may have made some noises about that in Bestwall as well. We would like to get back to in person. We have no concrete plans at the present time of how to make that happen and part of it is I, I need to take your temperature on how you folks feel about getting on airplanes right now. We all know -- it's not true of all of our cases but in cases of this magnitude there's a lot that we can do by the Zoom technology because the case can, can afford it, if you will.

So it's sort of a work in progress at -- at our -- at this point. I will tell you, our district court has gone back to in-person trials and we are going to start moving that way but to what extent and when, I couldn't tell you, okay?

MR. MACLAY: Thank you, your Honor.

THE COURT: Okay. We won't do anything without telling you first, though, so.

Anything else for today?

Well, I thank you for --

MR. ERENS: No, your Honor.

THE COURT: -- the quality of the presentation. I know it's been a great deal of effort and I don't think any of

us anticipated it would take us almost a year into the case to get here, but it's been well presented and I think you'll have a record there that someone can stand on when it gets to time for appeals.

And with that in mind, the only thing I would say is we were talking about the exhibits. And if you would, file something in writing when you've got it resolved as to whether there are objections to specific exhibits and otherwise, the ones that were enumerated will still be counted in, okay?

All right.

MR. HIRST: Okay.

THE COURT: Well, have a nice weekend. We will recess at this point.

MR. ERENS: Thank, thank you, your Honor.

(Proceedings concluded at 4:19 p.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Janice Russell* May 18, 2021

Janice Russell, Transcriber Date