



1 APPEARANCES:

2 For the Debtors/Defendants,  
3 Aldrich Pump LLC and Murray  
4 Boiler LLC:

Rayburn Cooper & Durham, P.A.  
BY: JOHN R. MILLER, JR., ESQ.  
C. RICHARD RAYBURN, JR., ESQ.  
227 West Trade St., Suite 1200  
Charlotte, NC 28202

5

Jones Day  
BY: BRAD B. ERENS, ESQ.  
MORGAN R. HIRST, ESQ  
77 West Wacker, Suite 3500  
Chicago, IL 60601

6

7

8

Evert Weathersby Houff  
BY: C. MICHAEL EVERT, JR., ESQ.  
3455 Peachtree Road NE, Ste. 1550  
Atlanta, GA 30326

9

10

Evert Weathersby Houff  
BY: CLARE M. MAISANO, ESQ.  
111 South Calvert St., Suite 1910  
Baltimore, MD 21202

11

12 For the ACC:

Robinson & Cole LLP  
BY: NATALIE D. RAMSEY, ESQ.  
DAVIS LEE WRIGHT, ESQ.  
1201 N. Market Street, Suite 1406  
Wilmington, DE 19801

13

14

Robinson & Cole LLP  
BY: KATHERINE M. FIX, ESQ.  
1650 Market Street, Suite 3600  
Philadelphia, PA 19103

15

16

Robinson & Cole LLP  
BY: ANDREW A. DePEAU, ESQ.  
ANNECCA SMITH, ESQ.  
280 Trumbull Street  
Hartford, CT 06103

17

18

Hamilton Stephens  
BY: ROBERT A. COX, JR., ESQ.  
525 North Tryon St., Suite 1400  
Charlotte, NC 28202

19

20

21

22

23

24

25

1 APPEARANCES (continued):

2 For the ACC: Caplin & Drysdale  
3 BY: JEFFREY A. LIESEMER, ESQ.  
4 One Thomas Circle, NW, Suite 1100  
5 Washington, DC 20005

6 For the FCR: Orrick Herrington  
7 BY: JONATHAN P. GUY, ESQ.  
8 1152 15th Street, NW  
9 Washington, D.C. 20005-1706

10 For Defendants, Trane  
11 Technologies Company LLC  
12 and Trane U.S. Inc.: McCarter & English, LLP  
13 BY: GREGORY J. MASCITTI, ESQ.  
14 825 Eighth Avenue, 31st Floor  
15 New York, NY 10019

16 Burt & Cordes, PLLC  
17 BY: STACY C. CORDES, ESQ.  
18 122 Cherokee Road, Suite 1  
19 Charlotte, NC 28207

20 For Certain Insurers: Duane Morris LLP  
21 BY: RUSSELL W. ROTEN, ESQ.  
22 865 S. Figueroa St., Suite 3100  
23 Los Angeles, CA 90017-5440

24 ALSO PRESENT: JOSEPH GRIER, FCR  
25 521 E. Morehead St, Suite 440  
Charlotte, NC 28202

EVAN TURTZ, ESQ.  
Trane Technologies Company LLC

19 APPEARANCES (via telephone):

20 For the FCR: Anderson Kill P.C.  
21 BY: ROBERT M. HORKOVICH, ESQ.  
22 1251 Avenue of the Americas  
23 New York, NY 10020

24 Orrick Herrington  
25 BY: DEBRA FELDER, ESQ.  
1152 15th Street, NW  
Washington, D.C. 20005-1706

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

2 (Call to Order of the Court)

3 THE COURT: Have a seat. Good morning.

4 (Counsel greet the Court)

5 THE COURT: Okay. We are back pursuant to the filed  
6 Notice of Agenda that's at Docket No. 1227 in the base case.

7 We'll go ahead and get your appearances, starting with  
8 the debtors. If the speaking attorneys can give me as many of  
9 your appearances as possible, that'll save us some time.

10 Mr. Erens.

11 MR. ERENS: Thank you, your Honor. Brad Erens,  
12 E-R-E-N-S, of Jones Day on behalf of the debtors. I think I'll  
13 let everybody else introduce themselves.

14 THE COURT: Okay.

15 MR. EVERT: Your Honor, Michael --

16 THE COURT: Can't remember their names, already?  
17 Go ahead.

18 MR. EVERT: It's been that kind of day already, your  
19 Honor.

20 THE COURT: Yes.

21 MR. EVERT: Michael Evert, Evert Weathersby Houff, for  
22 the debtors, along with Clare Maisano from our firm.

23 THE COURT: Okay.

24 MR. HIRST: And good morning, your Honor. Morgan  
25 Hirst of Jones Day for the debtors as well.

1 THE COURT: Okay.

2 Anyone else for the debtors, counsel or otherwise?

3 (No response)

4 THE COURT: Okay.

5 How about for the ACC?

6 MS. RAMSEY: Good morning, your Honor. Natalie Ramsey  
7 -- I'm going to try to introduce everyone -- Robinson & Cole,  
8 along with my partner, Davis Lee Wright, and my colleagues,  
9 Katherine Fix, Andrew DePeau, and Annecca Smith. Also with us  
10 is Jeff Liesemer from the Caplin & Drysdale office and Rob Cox  
11 from Hamilton Stephens.

12 THE COURT: That got it --

13 MS. RAMSEY: Thank you.

14 THE COURT: -- ACC?

15 (No response)

16 THE COURT: How about the FCR?

17 MR. GUY: Good morning, your Honor. Jonathan Guy on  
18 behalf of the FCR, who's sitting next to me. Mr. Horkovich,  
19 our insurance counsel, is on the phone, I believe, and my  
20 colleague, Debbie Felder.

21 Thank you, your Honor.

22 THE COURT: All right.

23 Anyone else in the courtroom needing to announce?

24 Mr. Mascitti.

25 MR. MASCITTI: Greg Mascitti, McCarter & English, on

1 behalf of Trane Technologies Company LLC and Trane U.S. Inc.  
2 I'm joined by Evan Turtz, Trane's General Counsel and Senior  
3 Vice President, and our local counsel, Stacy Cordes.

4 THE COURT: Okay.

5 MR. RAYBURN: Your Honor, Rick Rayburn, Jack Miller  
6 for the debtors. We do not intend to speak, but in an  
7 emergency we might have to say something.

8 THE COURT: Okay. If someone needs translation of my  
9 accent or something of that nature?

10 Anyone else in the courtroom and the courtroom proper  
11 announcing?

12 Mr. Roten?

13 MR. ROTEN: Morning, your Honor. Russell Roten from  
14 Duane Morris representing Certain Insurers. I probably won't  
15 say anything, either.

16 THE COURT: Okay.

17 Anyone else?

18 (No response)

19 THE COURT: How about telephonic appearances, those  
20 who might not have been picked up previously? Anyone?

21 (No response)

22 THE COURT: Okay.

23 Well, are we ready to proceed? Any preliminaries?

24 MR. ERENS: No preliminaries, your Honor. Our intent  
25 was to go straight to the agenda as, as provided.

1 THE COURT: Okay.

2 MR. ERENS: Item No. 1 is our continued matter on the  
3 Clark --

4 THE COURT: Let me make sure everyone else is of the  
5 same mind.

6 Did anyone else have anything by way of good-of-the-  
7 order type announcements?

8 MR. GUY: No, your Honor.

9 MS. RAMSEY: No.

10 THE COURT: All right.

11 Go ahead, Mr. Erens.

12 MR. ERENS: Item No. 1, again, is the Clark matter.  
13 We're continuing that. It's not that nothing's going on in  
14 that. It's, for whatever reason, taking some time. It's not,  
15 it's not an enormous matter and we'll get to that, hopefully  
16 soon, and get it back to, in front of your Honor since it was  
17 filed --

18 THE COURT: For the clerk's benefit, July 28th, 9:30.  
19 Okay.

20 MR. ERENS: That's for the, yes, for the next hearing,  
21 if we go forward on that.

22 Uncontested matters, there's two sealed motions, one  
23 by the debtors, one by the non-debtor affiliates. This  
24 relates, I believe, to the subcon proceeding. Mr. Hirst can  
25 address this, if you have any questions.

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

3 Anyone opposed to the sealing motions there?

4 MR. HIRST: There was no opposition, your Honor. It's  
5 the same motion --

6 THE COURT: Right.

7 MR. HIRST: -- concerning the same matters for both  
8 the debtors and the nondebtors.

9 THE COURT: Okay. All right. That being the case,  
10 those are both allowed.

11 All right.

12 MR. ERENS: That gets to the substantive matters,  
13 starting with Item No. 4. This is a continued motion on the  
14 debtors' -- excuse me -- continued debtors' motion for an order  
15 authorizing issuance of subpoenas on asbestos trusts and  
16 Paddock Enterprises.

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

19 MR. ERENS: You may recall at the last hearing there  
20 was a dispute with, well, actually, all parties. The ACC and  
21 Paddock objected. The rulings from your Honor speak for  
22 themselves. Obviously, there's a transcript on this. As we  
23 indicated in our letter to the Court of June 8th, your Honor  
24 ruled that the motion was granted with one exception, that the  
25 debtors were not entitled to serve the subpoena on Paddock



1 until June 30th, which is actually today.

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

4 MR. ERENS: We sent pursuant to Local Rule a form of  
5 order to both the Committee and Paddock at the time, gave them  
6 the required three days' notice to comment. No comments from  
7 the ACC. From Paddock, they sent us back an order that  
8 effectively exempted them from the entire ruling, which we were  
9 sort of confused by, but they interpreted your Honor's ruling  
10 in saying, you know, no relief as to them. We said, "That's  
11 not what the transcript says. That's not what your Honor  
12 said." Latham on behalf of Paddock attached the, the two pages  
13 from the transcript where your Honor said, "Look, I'm approving  
14 the relief, but I do have a concern that," you know, "Paddock's  
15 in bankruptcy. I don't want to make Judge Silverstein think  
16 that I'm prejudging whether this is subject to the stay or the  
17 Barton doctrine. So," you know, "take your chances. "if you  
18 want to serve the subpoena without going back to Judge  
19 Silverstein and be subject to a potential motion for," you  
20 know, "violating the stay or the Barton doctrine, that, that's  
21 your choice. But otherwise, go forth and do what you want to  
22 do."

23 So we submitted an order to that effect, basically,  
24 again, just extending the, the time that we could sue or, not  
25 sue, but serve a subpoena on Paddock till today.

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

3 MR. ERENS: That was our form of order. It actually  
4 required some definitional changes because there was, now, a  
5 divide between Paddock and everybody else subject to that order  
6 in terms of the timing. But otherwise, there was no  
7 substantive change. Again, Latham & Watkins on behalf of  
8 Paddock submitted a form of order that exempted themselves from  
9 the entire ruling, which is just not what your Honor provided.

10 So those are the two forms of letters that we sent to  
11 the Court. Ours was June 8th, Latham, or Paddock's was June  
12 10th, and we filed a reply to Paddock's letter also on the 10th  
13 basically saying, you know, we think the ruling speaks for  
14 itself.

15 I will just inform the Court that Paddock's  
16 confirmation hearing is done. Both the bankruptcy court and  
17 the district court have confirmed the plan. I don't believe  
18 it's gone effective. Maybe Mr., is it Lieseman, from the  
19 Caplin firm who represents the committee in that case can  
20 inform us when they're going effective. Doesn't, wouldn't  
21 surprise me if it's today, your Honor. It's the last day of  
22 the month, last day of the quarter. That often happens, but,  
23 of course, I don't know. But presumably, they're going  
24 effective shortly.

25 So this whole automatic stay/Barton doctrine issue to

1 us is really not very relevant because it won't be relevant for  
2 more than a very short period of time, if any, going forward.

3 So we would ask again, pursuant to the letter we sent  
4 your Honor on the 10th or -- excuse me -- on the 8th --

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

7 MR. ERENS: -- that the Court enter our form of order.  
8 We have not served any subpoenas on any trust or Paddock as a  
9 result of the fact that this is still pending in front of your  
10 Honor.

11 THE COURT: Okay.

12 Anyone else wish to be heard on that?

13 MR. LIESEMER: Your Honor, just to respond to  
14 Mr. Erens. Jeffrey Liesemer --

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

17 MR. LIESEMER: -- on behalf of the Committee.

18 The Paddock plan has not gone effective yet.

19 THE COURT: Okay. What's the effective date, do you  
20 know?

21 MR. LIESEMER: It hasn't gone effective. So there's  
22 no effective date and I'm not aware of when the intended  
23 effective date is.

24 THE COURT: Okay. So when you say it hasn't gone  
25 effective, both courts have confirmed?

1 MR. LIESEMER: Yes, that's correct.

2 THE COURT: Okay.

3 MR. LIESEMER: Bankruptcy court has confirmed and  
4 that's been upheld by --

5 THE COURT: And the district court's enjoined.

6 MR. LIESEMER: -- the district court.

7 THE COURT: Right, okay. But we don't have a, a clue  
8 as to when that would be. All right.

9 Anyone else wanting to weigh in on this? That got it?

10 (No response)

11 THE COURT: Well, what I was trying to do -- and maybe  
12 I was not clear enough -- was effectively to say that the  
13 ruling is what the ruling is, but at the end of the day Judge  
14 Silverstein, 'cause she has the ultimate control over the  
15 debtor's affairs, might view that as a stayed matter or a  
16 matter that you, was within the doctrine and the like and you  
17 were going to have to take your chances and talk to her at the  
18 end of the day. It was a savings clause, that if that court  
19 articulated concerns about it, then somebody would have to  
20 appeal. But my ruling was my ruling and I was not intent on  
21 excluding Paddock from the details of those rulings.

22 So I'm going with the debtors' version of the order,  
23 all right? So if you'll send that.

24 MR. ERENS: All right. Thank you, your Honor. Do we  
25 need to upload or logistically, how do you want to do this?

1 THE COURT: Mr. Miller --

2 MR. MILLER: We -- we --

3 THE COURT: -- you want to get in?

4 MR. MILLER: Excuse me. We, we will need to upload  
5 the order. I don't believe we've uploaded the --

6 THE COURT: I think I've got --

7 MR. MILLER: -- proposed form of order yet.

8 THE COURT: I've got a Comparative version of it and,  
9 and a couple of proposals that are exhibits. But that'd be the  
10 cleaner way. Quicker way, too.

11 MR. MILLER: Will do it. Thank you, your Honor.

12 THE COURT: All right?

13 Go ahead.

14 MR. ERENS: Okay.

15 Your Honor, as you can tell from the agenda we don't  
16 expect this hearing to last that long. So we intend to upload  
17 the order this afternoon?

18 THE COURT: Okay, hopefully.

19 MR. ERENS: Is that the -- okay.

20 MR. MILLER: I'm sorry.

21 MR. ERENS: So we were just saying we're going to  
22 intend to upload the order this afternoon.

23 MR. MILLER: We will do it, yes.

24 THE COURT: Okay.

25 MR. ERENS: All right.

1 THE COURT: Very --

2 MR. ERENS: That gets to the next item on the agenda,  
3 which is the dispute concerning the personal injury  
4 questionnaires. That's Item No 5. It's, you know,  
5 effectively, the debtors' and the FCR's joint motion for a bar  
6 date and PIQ. Mr. Evert will be handling that on behalf of the  
7 debtors.

8 THE COURT: Okay.

9 MR. EVERT: Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. EVERT: I have a PowerPoint. May I approach?

12 THE COURT: You may.

13 MR. EVERT: I'm going to warn the Court in advance it  
14 is neither particularly insightful nor that easy to read 'cause  
15 it's, because it's hard to --

16 THE COURT: Obscure and unhelpful.

17 MR. EVERT: Exactly.

18 THE COURT: That's a great way to describe your own  
19 pleadings.

20 MR. EVERT: That's -- that's -- that's what I'm  
21 leading to. It's hard to --

22 THE COURT: You can tell it's the summer, isn't it?

23 MR. EVERT: It's, it's hard to tell -- it's hard to  
24 weed through this, this extensive document without some sort of  
25 program. So that was the effort.

1 THE COURT: Okay.

2 MR. EVERT: However translating some of these large  
3 pages to a --

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

6 MR. EVERT: -- PowerPoint slide is not that easy.

7 But --

8 THE COURT: Right.

9 MR. EVERT: -- in, in any event, hopefully, it's  
10 useful.

11 I would encourage the Court if you've got our letter  
12 on this issue, Exhibits A and B to the letter. Exhibit A is  
13 the full PIQ as we propose it be entered. And Exhibit B is the  
14 portions of the DBMP IQ, PIQ that compare to ours such that the  
15 Court can see, in the Court's mind, whether or not it's  
16 consistent with the Court, with what the Court did there.

17 THE COURT: Okay. Thank you.

18 MR. EVERT: All right.

19 So, so just to set the timeline, your Honor, the --

20 We can go to that first slide.

21 It seems like only yesterday, December 2020, we filed  
22 our PIQ bar date motion jointly with the, with the FCR. At  
23 that time the PIQ contained exactly the same format that we are  
24 fighting about now. So this is not changes that have occurred  
25 since the initial argument of the motion. This is,

1 essentially, the same format that we had then.

2 In January of '22, ultimately, after other things got  
3 in the way and slowed us down a little bit, the Court granted  
4 the bar date and PIQ motion. A bar date was entered for April,  
5 for July of 2022. We separated the PIQ from that because  
6 during that period of time the ACC requested that we talk about  
7 potential changes to the PIQ that they had learned from their  
8 experience in Bestwall and they wanted to seek improvements.

9 We're now down to, after, literally, hundreds of  
10 format changes, font changes, movements around the entire  
11 document, we're down to, I think, only two things. It might be  
12 2-1/2 after my conversation with Ms. Ramsey this morning, but  
13 only 2 things that we're, still can't seem to reach agreement  
14 on and they involve the use of equipment, occupation, and  
15 activity codes to try to characterize the work and the request  
16 of the ACC for a site list for our equipment.

17 So let me start with the codes and let me try to bore  
18 your Honor incessantly with this PIQ and what we are trying to  
19 do. One of the differences here in this case that is different  
20 from many other asbestos cases, bankruptcy cases, that have  
21 come before it is that, ironically enough, these debtors never  
22 made an asbestos-containing product. These debtors were  
23 largely engineering firms that made equipment and that  
24 equipment at various times may have contained, generally,  
25 sealing-type products, gaskets and packing, to prohibit



1 whatever the flow through that equipment was from escaping.

2           So you talk about airflow equipment, you talk about  
3 liquid equipment, and these, these debtors, of course, at the  
4 time were merely buying what was on the marketplace. So the,  
5 the Johns-Manvilles of the world who'd been through their  
6 asbestos bankruptcies, they would buy the raw asbestos from the  
7 asbestos mine, they'd incorporate it into some product, and  
8 they'd sell that product. Well, we were the customers of those  
9 people like that because we wanted to protect our particular  
10 customers from our -- from our -- the flow failing and there  
11 being, you know, whatever, hot liquid come out, whatever it is.

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

14           MR. EVERT: We, frankly, didn't care whether it was  
15 asbestos, whether it was lettuce, whether it was plastic, who  
16 cares, right? We just wanted it to work. However, all the  
17 nuances of that various equipment is what is driving these  
18 claims. These claims are that when that equipment was  
19 dismantled for whatever reason, that there was exposure to  
20 these internal parts which may have, these internal gaskets and  
21 packing or other parts that may have contained asbestos.

22           So from our perspective, it's not the equipment itself  
23 that drives the claims. It's the dismantling of the equipment  
24 and whether or not the equipment needed to be dismantled,  
25 whether or not the equipment was one that you just replace and

1 throw away, whether or not all those things. All those little  
2 nuances matter. So what we have tried to do here in order to  
3 give a transparent direction to the claimants, we've tried to  
4 list every brand name of equipment for which we've ever had any  
5 claim and you can see that, if you, if you dare to look, that  
6 there are different brand names for pumps, for furnaces, for  
7 compressors, for condensers, for blowers, which are all these  
8 kinds of mechanical equipment we engineered from the various  
9 entities. And the idea here is that this will allow the  
10 claimant to go through this list and say, "Okay. This is what,  
11 this is what I remember dismantling," right?

12 So that's the equipment codes.

13 The activity codes --

14 Next slide.

15 -- are what did you do with this stuff? So what we're  
16 trying to ask is, did you personally replace? Did you  
17 personally repair? Was it gaskets? Was it packing? Was it,  
18 was it other stuff? Were you, were you a bystander? So all  
19 the questions that, as we'll go over in just a minute, are  
20 present in these PIQs, typically. We've tried to streamline it  
21 through the use of these codes. So --

22 If you go to the next slide.

23 -- looking at the Aldrich codes specifically, because  
24 they're easier because there are fewer Aldrich-engineered  
25 products than there are Murray-engineered products. So the

1 first four: Did you remove gaskets? Did you remove packing?  
2 Did you replace gaskets? Did you replace packing? Those  
3 actually, frankly, are straight out to the Garlock PIQ. That's  
4 exactly the way they did it in Garlock.

5 Next one. Did you work in the presence of those  
6 removing or replacing gaskets? In other words, were you  
7 around?

8 So then -- and when you get to the next one, this  
9 illustrates the nuance. So okay. So for the Aldrich claims  
10 that arise from our drilling and mining equipment, which are  
11 Equipment Nos. P-9 through P-14, that's not gaskets. That's  
12 brakes and clutch facings. So it asks, "Did you remove  
13 friction products, brakes and clutch facings, from that  
14 particularly equipment if you checked those boxes?" All right.

15 So that's, that's what these codes are all about.

16 And then there's one other set of codes.

17 If you go to the next slide.

18 That is occupation codes which, again, try to give us  
19 some consistency as to what it was the claimant did. What was  
20 the claimant's job? Were they a pipefitter? Were they a  
21 steamfitter? Were they, did they have certain naval  
22 classifications, whatever. And, and this is, effectively,  
23 straight out of Garlock.

24 If you go to the next slide.

25 So in the Garlock PIQ they used very similar

1 occupation codes just like these and, and, and Ms. Ramsey can  
2 correct me, I'm sure. I don't really think these are the  
3 disputes. I think, really, the disputes surround the equipment  
4 and the activity codes. I -- I -- I mean, maybe I'm wrong, but  
5 I think they're largely okay with the occupation codes. Again,  
6 we've said all along because of the gasket and packing claims  
7 this case is a lot like Garlock. This is what they used in  
8 Garlock. So we essentially usurp that here.

9 So if you go to the next slide.

10 Using these codes is really nothing new. So in both  
11 the Bestwall and DBMP PIQs, they use industry codes, which are  
12 kind of similar to our occupation codes and they ask what  
13 industry were you in. Now the, the difference there, again, is  
14 that they made products and, and, and they made products that  
15 contained asbestos. So they want to know what industry the  
16 claimant was in to give them a sense of the likelihood of that  
17 particular claimant using their particular products. In ours,  
18 its about repair and dismantling. And so in ours it's sort of  
19 a different look. What, what were your qualifications to do  
20 this? And it gives us a sense of how we can categorize the  
21 claims.

22 Putting all this together --

23 Next slide.

24 -- Part 6 of the PIQ, which is what -- this --

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. EVERT: -- this is where all this applies --

3 THE COURT: Right.

4 MR. EVERT: -- is where we ask for this information.

5 What we -- essentially, at the end of the day, what did you do?

6 What product did you use? What was your job? What did you do

7 with it?

8 DBMP does this in a couple of boxes, which we'll show

9 you in just a minute, because, essentially, they've got

10 asbestos cement pipe and roofing, all right, and, and, and

11 variations thereon. We have this long list of equipment that

12 you've seen. So let's, let's kind of walk through and see how

13 this works. Now this is the one that's really hard to read.

14 So if you, if you, if you really want to read it, the, you

15 will, you will find the DBMP section on the left in your

16 Exhibit B and you'll find on the right in Exhibit A.

17 But here's the bottom line. You'll see on the left

18 that's how DBMP deals with their asbestos cement pipe and

19 roofing products. As you can see, there are only, really, a

20 couple of different types and then they've got some nuances in

21 there. That's as compared to our equipment list which, as you

22 see, is quite extensive. Lots of brand names, lots of

23 different types, blowers, furnaces, condensers, compressors,

24 all those things, even mining equipment, even railroad

25 locomotive equipment at some point in the process. So what

1 we're trying to do is come up with a way to take this one page  
2 where DBMP tackles the products and we at the same time say,  
3 "Okay. Let's use this list, use, use these codes."

4 So how does it work in the, in the, in the form  
5 itself? Well, what happens is you -- I'm sorry. Again, I  
6 should say this is the activity codes. This is where we try  
7 to, again, match what happened in the DBMP form through the use  
8 of our activity codes. And let me blow a little bit of it up  
9 so you can see it a little better.

10 So what does DBMP say in their particular, in their  
11 particular sections? The first section says, "Check this box  
12 if you personally cut or machined CertainTeed ACP using manual  
13 pipe cutter." That's kind of like our AC-1 and AC-2, "Did you  
14 personally remove gaskets or packing?"

15 Next one, "Check this box if you personally cut or  
16 machined CertainTeed ACP using a power saw." That's sort of  
17 like our AC-3 and AC-4, "Did you replace the gaskets and the  
18 packing?"

19 Next box, "Were you in the proximity of others who did  
20 it," which is kind of like our AC-5, "worked in the presence of  
21 others."

22 And then they, of course, ask even more detailed  
23 questions, "Were you within ten feet? Were you outside ten  
24 feet? What was the distance if you're uncertain," those kinds  
25 of things.

1           So again, we're, we're trying to get the same  
2 information in a more organized way. The way it works in the  
3 form --

4           Go to the next slide.

5           -- is when you get to Part 6 -- so this is Part 6B in  
6 our form because we have Part 6A for the Aldrich products and  
7 "B" for the Murray products -- when you get to Part 6, it says,  
8 "All right. Tell me where you worked. What jobsite? Where  
9 did you work?" "I worked at," you know, "Joe's Foundry." "All  
10 right. When you were at Joe's Foundry, what was your  
11 occupation?" Here, in order to answer that question we have a  
12 table of occupation codes.

13           Now let me say if you fill this in online, there's  
14 going to be a drop-down menu. So it's going -- it's -- you,  
15 you're going to be able to go on and say, you know, "Here's the  
16 dropdown for the codes. I'm going to pick this one." But,  
17 "What was your occupation when you were at," and there's, "when  
18 you were at Joe's Foundry?" And there's the, there's the list  
19 of occupation codes.

20           Next slide.

21           So once you say where you worked and what your job was  
22 and when you were there, it's asked, "What equipment did you  
23 use," and it lists, in the case of Murray, all the equipment  
24 with all the brand names that we've been able to derive over  
25 these years and there's your list on the right that you go to.

1 Again, in the, in the fillable online form it'll be a drop-down  
2 menu, but for -- if, if they elect to, instead, print it out  
3 and fill it out, then they'll have these boxes, they'll look at  
4 the, at the codes, and they'll check the box.

5 Okay. So you, you're at Joe's Foundry. You're there  
6 from "X" to "Y." You were a steamfitter and you checked these  
7 three pieces of equipment. Then what happens?

8 Next slide.

9 "So what'd you do with it," all right? Well, as  
10 you'll see, the question is, "Tell me what equipment you're  
11 talking about. Pick your activity code." "I used gaskets,"  
12 or, "I removed gaskets or packing," you know. "I replaced. I  
13 was a bystander when somebody, when somebody else did it." And  
14 again, in the, in the fillable, this'll be a dropdown. And for  
15 the printout, they can simply insert the code. And then it  
16 asks what was the frequency. And you walk through that for  
17 each jobsite that the claimant recalls and is testifying or  
18 intends to testify about his exposure to Aldrich or Murray  
19 products.

20 Next slide.

21 So, so the bottom line, Judge, is that we have tried  
22 to get at the same information in an organized fashion in a way  
23 that allows us to, to get there without needlessly expanding  
24 the form. If we do it like DBMP, I think we would need seven  
25 new sections that, that are like DBMP's half a page where they



1 go through the, that we went through a minute ago where you  
2 check each box, were you ten feet away, were you, you know, did  
3 you do this, did you do that, which is going to expand the form  
4 and, frankly, I think, not give us any more information. It's  
5 just going to be, I think, more cumbersome.

6           The other thing is is that using the codes allows us  
7 to -- and, and both sides -- to get some uniformity about the  
8 responses. So "what's your occupation," I mean, people are  
9 going to answer that a lot of different ways. "I'm a judge.  
10 I'm a lawyer." Okay. "Well, you're both." How does that  
11 work? Use of the codes will provide an opportunity to sort of  
12 get some uniformity in that and this is particularly true when  
13 you think about the fact that, at least the experience has  
14 been, I believe, in Bestwall, that the vast bulk of the PIQ  
15 responses have not come through filling out the form. One of  
16 the concessions that we made in the course of the negotiation  
17 with the ACC is agreement that the claimants could submit  
18 documents in lieu of actually completing the form. So they can  
19 submit deposition transcripts or they can submit other indicia  
20 instead of completing the form. Well, we then have to take  
21 that for our -- and remember, the whole point here, right, is  
22 so that our, our experts and the claimants' experts and the  
23 FCR's experts can try to provide the Court with information  
24 that assists the Court in estimating the value of the claims,  
25 right? I mean, that's, that's the whole point.

1           So when we're trying to take this hodgepodge of  
2 submitted information, having the codes there will also allow,  
3 give us the opportunity to be a little more consistent in how  
4 we characterize that information. So a long-winded way of  
5 saying we believe this is, frankly, a rather elegant solution  
6 to a, a complicated problem.

7           I think what you will hear from the other side is that  
8 they see it as, as, as too complicated. The fact of the matter  
9 is it's a lot of information. One of the things we've done as  
10 recently as last night or this morning as Ms. Ramsey and I were  
11 trying to get the form better is we've, we've added, for  
12 example, under the equipment codes we've added an Other and  
13 directed the claimant if they can't remember the type of  
14 equipment or the brand name, which, obviously, we, we, we, we  
15 would, we would fuss about because, you know, he's dismantling  
16 something. You would think he'd know and we could fight about  
17 all that later. But we've added an Other category, directed  
18 the claimant to the section that says, "If you, if you think  
19 you did work that doesn't fall inside any of these codes, then  
20 fill out this section." And in addition --

21           THE COURT: Is that only as to equipment or activities  
22 as well?

23           MR. EVERT: Only equipment. Because we, we think the  
24 activities have covered pretty much everything. You, you  
25 either have repaired or replaced asbestos-containing material

1 sort of or you haven't. And that's kind of where it all, or  
2 you're bystanding when that happens. However, we have also  
3 made in the last 24 hours a change to the activity requested by  
4 the ACC and added a new one that goes to this issue of how old  
5 the equipment is that you're working on. The ACC said to us,  
6 fairly, "Look, a lot of times our guys aren't going to know.  
7 They're, they're not going to know how old this piece of  
8 equipment was. So we need an activity category that says,  
9 'Okay. Yeah, I did this work, but I don't know how old the  
10 equipment was.'" So seems like a fair request, so we've added  
11 that.

12 Now we think at the end of the day this will, again,  
13 give us all the best opportunity to categorize the claims in  
14 some fashion which will assist the Court and that's, that's,  
15 obviously, where we're trying to get here.

16 So these are, these are the codes. Again, to me, the  
17 alternative based on what the Court did in DBMP is we could  
18 mimic the DBMP form in some fashion that would add a lot, but  
19 that would be -- if, if the Court, too, sees this as confusing,  
20 -- I say elegant. Court says confusing. That's not good for  
21 me -- then we would, you know, then that would be the potential  
22 fallback. But frankly, I think that would even be more  
23 cumbersome at the end of the day.

24 And I will say, Judge, that Ms. Ramsey did bring up  
25 the codes at the time that this was originally argued. The

1 Court did grant our order and, and we're, we're ready to get  
2 this moving. So we think this is a good solution.

3 All right. So what's the other remaining issue and it  
4 has to do with their request for a site list. This was argued,  
5 as you know, before the Court in DBMP.

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

8 MR. EVERT: We are in a similar position to DBMP in  
9 that we don't have a site list. And you, you can imagine, as  
10 you think back to those equipment codes, why, why we wouldn't.  
11 A lot of these compressors, pumps, condensers are effectively  
12 portable equipment. A lot of them are sold through  
13 distributors such that we don't know, ultimately, where they  
14 end up and a lot of them come from businesses that, that we  
15 divested literally 50 years ago. And so there's, there's no  
16 remaining records in, in regard to sales and the like. So  
17 there's no list.

18 Now does that mean that it's not an appropriate  
19 pursuit for discovery for the ACC to come in and say, "Well,  
20 give us what you have," and, you know. All right. So if we  
21 have, you know, if we have an engineering drawing for the U.S.  
22 Navy that indicates that we were selling a hundred pumps to the  
23 U.S. Navy Fulfillment Center in Philadelphia in 1951, then, you  
24 know, certainly we'll give it to them and they can, they can  
25 use that for whatever we want or if we have marketing materials

1 that said, says we've installed equipment for these customers,  
2 then we can certainly provide that. But again, the, the issue  
3 that we're seeking in the PIQs is did the claimant dismantle  
4 the equipment. Was there exposure, not was it present at the  
5 site.

6 Now if the ACC in discovery wants to, again, pursue  
7 whatever we do have in terms of indicia of present at site and  
8 they want to give that to their experts and their experts can  
9 then use that in some form or fashion in regard to  
10 interpretation of the, of the PIQs, that's certainly their  
11 prerogative. But from our perspective, the, the site  
12 information should not hold up this process. We, we'd like to  
13 get this going.

14 And on that last point, Judge, we have the bar date  
15 coming in July 29, a month from now. We've got to get this  
16 form finalized and, and ready to go so that the technology guys  
17 that I don't understand can turn this into a web-based, you  
18 know, fillable PDF, all that kind of stuff. We really need a  
19 month to, to get that done. So in order for us to stick with  
20 the schedule we've got, we, we, we really need to put this PIQ  
21 behind us.

22 So I hate to bore the Court with this stuff in the  
23 weeds, but it's where we are. Two more comments.

24 One, I, I guess from talking to Ms. Ramsey this  
25 morning -- we, we thought we had an agreement on the, a due

1 date -- but I think the ACC would like to talk about that some  
2 more. We had proposed -- the, the Court in DBMP ordered that  
3 the PIQs would be due 75 days after the bar date. So, we --  
4 that would be October, roughly, October 20th in our case and  
5 that's what we had proposed. I think, since earlier  
6 discussions, I think the ACC has rethought that and they want  
7 more time. Again, your Honor, we think 75 days is plenty.  
8 It's the same as in DBMP and we think that's an appropriate  
9 amount of time.

10 THE COURT: Even though you've got a lot more products  
11 and a more complicated form?

12 MR. EVERT: Well, your Honor, it, we've made it so  
13 elegant, that I think that -- that -- that I think that their  
14 ease in completion is going to, frankly, be much faster than  
15 the DBMP form.

16 THE COURT: Okay. Thank you.

17 MR. EVERT: And then there is one issue with the PIQ  
18 order --

19 THE COURT: Right.

20 MR. EVERT: -- which I'm going to turn over to Mr. Guy  
21 because that is an FCR issue rather than a debtor issue. So it  
22 has to do with one paragraph in the PIQ order.

23 And other than that, Judge, if you have any questions,  
24 unless you have questions, we're done.

25 THE COURT: Okay. That's fine.

1 Mr. Guy.

2 MR. GUY: Good morning, your Honor. Jonathan Guy for  
3 the FCR.

4 Your Honor, I think you received a letter from Mr. Cox  
5 on this issue --

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

8 MR. GUY: -- concerning the language in the order.  
9 And I had some communications with Mr. Wright earlier about  
10 this, too. And the, the language in the order -- I'm  
11 paraphrasing -- which, by the way, has been all along.

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

14 MR. GUY: And we filed our motion back in 2020.

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

17 MR. GUY: -- it basically says that, "The information  
18 shall be preserved for the trustee for any future trust,"  
19 asbestos trust. Why is that language important, your Honor?  
20 Because we've learned from Garlock that the more information  
21 that the trustee has, the better he can estimate what claims  
22 will come in, from what occupations, for what diseases, for  
23 what work, for what products, and when you have that  
24 information you're going to have a much more accurate  
25 valuation. And in Garlock, it's worked. It's one of those

1 rare trusts that has actually increased the amounts that are  
2 being paid to claimants.

3 And, your Honor, we don't need to strain too hard to  
4 understand why this makes sense because we actually did it in  
5 Garlock. The court approved the TDP and the plan in Garlock  
6 and -- the CRP. I'm sorry, your Honor -- and let me read the  
7 language of the CRP that was approved by the court, accepted by  
8 the ACC, and works. It says:

9 "In determining maximum settlement values, the medical  
10 information factors, the maximum annual payment to the  
11 full extent provided by the plan, and any orders  
12 entered by the bankruptcy court, the trustee shall  
13 have access to and may rely upon, among other things,  
14 the debtor's various claims databases, including  
15 information provided in response to each asbestos  
16 claims bar date, the settled claims bar date, the  
17 debtor's questionnaires, and the forecasting models  
18 and estimates of the debtors, the ACC, and the FCR."

19 Your Honor, we're, we're not interested in this  
20 information to make some legal liability case. We don't agree  
21 with that legal liability case. We're interested in this  
22 information because we hope, we hope that reason will break out  
23 and we will have an asbestos trust just as happened in Garlock,  
24 in Paddock, and when we do, that information needs to be  
25 provided to the trustee so he can have as much accurate



1 information as possible. It's not an issue about  
2 confidentiality. It's none of that. It's just giving the  
3 trustee as much information as possible.

4 The ACC has said, "Well, we don't need to do that  
5 because you can put it in the plan," but the ACC is also  
6 saying, "Well, there's no plan we would ever accept here."  
7 They've been very plain about that. "We want back to the tort  
8 system." So I don't know what's going to happen in the future.  
9 We're hoping that position will change and we're trying to come  
10 up with as many creative ways as we can to make that change.

11 But regardless, there's no principled reason not to  
12 put it in the PIQ order because it's needed. The only reason  
13 that they could argue that it shouldn't be in the PIQ order is  
14 because they don't want that information to be preserved for a  
15 trustee and that's not a defensible position, your Honor.

16 Your Honor, I, I'll have a lot more to say about delay  
17 and other issues that were teed up in the CMO, but I'll raise  
18 that for the CMO. And I'd like to reserve some time in  
19 response 'cause I'm -- we didn't -- we just got the letter.

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

22 MR. GUY: Thank you, your Honor.

23 THE COURT: Okay.

24 This side?

25 MS. RAMSEY: Thank you, your Honor. For the record,

1 Natalie Ramsey, Robinson & Cole, for the Asbestos Claimants'  
2 Committee.

3 Your Honor, I'd like to start with actually asking if,  
4 if we could share the debtors' PowerPoint instead of handing up  
5 another one.

6 THE COURT: Sure.

7 MS. RAMSEY: We, we had copies as well of the various  
8 sections we're talking about and it doesn't seem to make any  
9 sense to have two versions of the same exact slides.

10 MR. EVERT: We object, your Honor.

11 MS. RAMSEY: So, your Honor, we, we had made a number  
12 of fairly extensive proposals for how we would like the  
13 personal injury questionnaire form changed. Many of those  
14 proposals were identical to proposals that we made with respect  
15 to the DBMP PIQ form.

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

18 MS. RAMSEY: And, and we understand that the Court has  
19 recently heard argument on many of those and has ruled and our  
20 expectation was that the Court would stick with those rulings  
21 and prefer not to hear the same arguments again. So --

22 THE COURT: Hoping for consistency, right?

23 MS. RAMSEY: Okay, your Honor.

24 THE COURT: Okay.

25 MS. RAMSEY: So -- so -- so with that in mind, your

1 Honor, for the record we continue to believe that the PIQ form  
2 should be modified to, to contain, for example, boxes that say  
3 that "investigation is ongoing." We would continue to propose  
4 the certifications of the debtor and debtors' counsel be  
5 modified, and all of the identical arguments that we made in  
6 DBMP, but we're not going to reargue those and we understand  
7 the Court is going to rule consistently.

8           There are, as the Court has heard --

9           And if we could go to the occupation codes here.

10           -- there are some significant differences, as the  
11 Court noted, in this form. The occupation codes are very, very  
12 specific and, and while we understand that in some respects  
13 that kind of specificity could be useful for purposes of  
14 categorization, it's also confusing. There are, for example,  
15 if the Court were to look at the occupation codes, Occupation  
16 Code 3 is maritime machinery repairman. Occupation 4 is  
17 maritime machinist's mates. If you look at Occupation Code 5,  
18 you have a millwright with certain industries, 5B or 5A. 5B is  
19 other industries. Occupation Code 9A, a fireman, again certain  
20 industries. 9B, a fireman, other. There's just an awful lot  
21 of very specific information that may or may not be available  
22 and one of the things we proposed with respect to the  
23 occupation codes was to consolidate a lot of these so you'd  
24 have a occupation code for maritime, an occupation code for,  
25 for millwright, and an occupation code for fireman, those types

1 of more general categorizations that would both streamline the  
2 occupation codes, but also would allow for some specificity.  
3 We think that the occupation codes here are just so very  
4 specific and complex and when you add to that the drop-down  
5 menu that someone's going to have to make sure that they hit  
6 the right box, we think the potential for inadvertent error is  
7 also significant.

8           So we had proposed that, as an alternative, there be a  
9 fill-in-the-blank answer and Mr. Evert earlier was addressing  
10 the fact that that would necessarily increase the length of the  
11 PIQ form, which is not really our desire, either. There is an  
12 Other option here, 061, and we, we believe that what is likely  
13 is a lot of claimants will choose Other so that the occupation  
14 that is described is described in a way consistent with the way  
15 that it has been described, to the extent it has, in deposition  
16 testimony or in answers to interrogatories or in a complaint.  
17 And so at the end of the day, all of this may not be utilized,  
18 even, and simplifying it might make it more likely that you  
19 would have somebody complete these, these forms.

20           So we, we do ask that, that the Court consider one of,  
21 of those two options, but we also recognize that there is,  
22 candidly, with respect to the occupation codes an option that  
23 would give someone the opportunity to, to hit Other and  
24 describe the occupation in their own words.

25           The other thing that we noticed is -- is -- seems to

1 be missing from this is the potential for secondary exposure.  
2 So exposure through an exposed person. And again, we believe  
3 that would likely fall within Other, but it is not present  
4 here.

5 And before I go any farther, I just want to regress  
6 for one second. Mr. Evert started by talking about the nature  
7 of the liability --

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

10 MS. RAMSEY: -- of the debtors and how that liability  
11 comes to exist against their companies. I am not in a position  
12 to respond to that, your Honor. I -- I --

13 THE COURT: Hmm.

14 MS. RAMSEY: I'm, I'm not equipped and my clients  
15 aren't here to contest it. So I just want to sort of put a pin  
16 in the fact that, that the debtors' representations regarding  
17 the nature of its alleged liability are not necessarily ones  
18 with which our clients would agree. I, I just don't know.

19 THE COURT: Okay.

20 MS. RAMSEY: So moving on to the next set of codes,  
21 which are the equipment codes. With respect to the equipment  
22 codes, your Honor, there are a significant number of detailed  
23 types of codes here. And again, with respect to, for example,  
24 let's just go to the Murray equipment codes, P-16, American  
25 Standard. You have, then, all of these, like sub, sub types of

1 products in Acme and American Radiator and Aerco. Our concern,  
2 again, is many people will not know. If you had a parent that  
3 was exposed in early 1950s and your parent is deceased and  
4 you're completing this form with respect to identifying that  
5 your parent worked on a boiler, you may or may not be able to  
6 drill down to these little sub names. And so adding a option,  
7 which the debtor has agreed to -- to agree -- to add now, of  
8 Unknown or Uncertain and saying what you do know, we think it's  
9 very important. But again, this almost seems like it is set up  
10 in a way to do one of two things, maybe one of three things:  
11 Cause inadvertent error, cause the argument that there can't be  
12 reliable exposure because someone didn't choose P-19, but  
13 instead, chose Other or Unknown and indicated an investigation  
14 is ongoing or, worst of all, that someone checks a box, again  
15 either intentionally or inadvertently, that describes something  
16 one way today and then learns through additional discovery  
17 later or just changes the description later to a different but  
18 equally accurate way say there's inconsistency. There's,  
19 there's fraud.

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

22 MS. RAMSEY: And there's, there's significant concern  
23 over the potential that this form, whether intended to or not,  
24 could result in a "gotcha," which brings us, then, to the  
25 activity codes, the third set of codes.

1 As Mr. Evert indicated, one of the concerns we had  
2 here was, as originally drafted, we have "personally replaced  
3 asbestos-containing thermal insulation installed prior to 1955;  
4 installed after 1955." There may be claims in which that  
5 information would be known. But again, taking my example of  
6 the child who is completing, working on developing a claim for  
7 a parent who is deceased --

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

10 MS. RAMSEY: -- and maybe even for a living claimant  
11 that was exposed, how in the world would you know when the  
12 insulation itself was initially installed, even if you knew  
13 when the equipment was because there was some stamp on it or  
14 something? The installation -- the -- the -- the insulation  
15 itself, the chances of anyone knowing that information is, is  
16 pretty slim.

17 But it, it again, I think, is resolved to some extent  
18 through the, the offer to or the agreement to add a provision  
19 that allows for "if you know, answer that," but otherwise is  
20 more general.

21 One of the other things that, again, is missing from  
22 the activity codes is exposure through another person,  
23 secondary exposure. So that is another, another issue that we  
24 had raised in connection with the activity codes and I think in  
25 the conversations that Mr. Evert and I have had the last couple

1 of days, that issue was lost. So I don't, in, in our  
2 discussion. So I don't know whether the debtor would be  
3 willing to add that or not if these codes go forward.

4 But our primary concern is that the various codes that  
5 you are now being asked to complete over and over and cross-  
6 reference, that what you are doing is increasing the likelihood  
7 not of getting accurate information, but getting inaccurate  
8 information. Because if one of the inputs is wrong, it's going  
9 to be wrong throughout and it's going to affect all of the PIQ.  
10 And if the Court is inclined to permit some form of these  
11 codes, the timing that will be required to complete these codes  
12 with the degree of specificity that is requested is going to be  
13 significant.

14 So those are, are some of the, the concerns with the  
15 specific form that the debtor has proposed.

16 The other --

17 THE COURT: Let me --

18 MS. RAMSEY: -- big issue -- and I'm going to come  
19 back --

20 THE COURT: Let me --

21 MS. RAMSEY: Oh, I'm sorry.

22 THE COURT: -- before you move on --

23 MS. RAMSEY: Yes.

24 THE COURT: -- let me ask two questions there.

25 How much time do you think would be necessary if we,



1 if all of this were approved?

2 MS. RAMSEY: So we have two requests that we have, we  
3 have made of the debtor. One is that this form would be  
4 complete 75 days after the DBMP PIQ form is completed so that  
5 firms would not be trying --

6 THE COURT: Both at the same time.

7 MS. RAMSEY: -- to do them at the same time. As an  
8 alternative, the, what the, the claimants believe is reasonable  
9 would be to add 60 days to the 75 days that the Court entered  
10 in DBMP and put the return date for the PIQ sometime around  
11 mid-December.

12 THE COURT: Okay.

13 MS. RAMSEY: Their preference would be a sequencing,  
14 but, but they think that, that it could be accomplished.

15 THE COURT: When you say when the DBMP PIQ is, is  
16 completed, you don't mean --

17 MS. RAMSEY: The return date.

18 THE COURT: -- each individual --

19 MS. RAMSEY: No, the return date.

20 THE COURT: -- party.

21 MS. RAMSEY: Yes --

22 THE COURT: Okay.

23 MS. RAMSEY: -- the end date.

24 THE COURT: The return date.

25 MS. RAMSEY: Correct.

1 THE COURT: All right. Second question based on what  
2 you had just said. When you said that it didn't address the  
3 secondary exposures, I was looking at the new form -- and I  
4 think it was in the original form -- that asked about -- this  
5 is Page 13 of the, the PIQ right now -- that asked about  
6 secondary exposures and then has a variety of questions about  
7 that.

8 Is -- is that not what -- does that not adequately  
9 cover what you're talking about?

10 MS. RAMSEY: It -- it -- it may cover what we're  
11 talking about, but the, the problem is it's not cross-  
12 referenced with the -- with the form -- with the -- with the  
13 activity and occupation codes.

14 THE COURT: Right.

15 MS. RAMSEY: And so while somebody could complete  
16 that, it leaves a, a difficulty in how do you complete the  
17 other questions that require that.

18 So, so there could be a clarification that cross-  
19 referenced it to that and, and that seems like an easy fix.

20 THE COURT: All right. You're ready. Whenever you're  
21 ready.

22 MS. RAMSEY: Okay. All right.

23 So I think that, actually, with that, your Honor, I  
24 think we only have the one issue left, which is the issue of  
25 what we've sort of generally talked about, a site list or --

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

3 MS. RAMSEY: -- product information, is, is how I  
4 would classify it. And I agree with, with something Mr. Evert  
5 said, which is the whole point of this exercise is to provide  
6 everyone with the information that will assist the Court in  
7 estimating the liability. It is also interesting as part of  
8 the presentation Mr. Evert was saying that the debtors were  
9 "customers" of the sellers of asbestos insulation.

10 THE COURT: Right.

11 MS. RAMSEY: If those records exist, your Honor, those  
12 records, we believe, should be made available and they should  
13 be made available at the very beginning of this exercise. We  
14 know, for example, with respect to boilers that in state court  
15 litigation often the first question that was raised in, by the  
16 debtor, in defending claims was, "What's the serial number?"  
17 So we know there must be some serial number log that the  
18 debtors maintain with respect to boilers. We believe that with  
19 respect to valves that there must have been sales records.  
20 There must have been distribution invoices. There must be  
21 information that is held by the debtor and retained by the  
22 debtor as part of its defense of these claims and its knowledge  
23 of what its liability and potential liability is and it's our  
24 contention this information is not just important for the  
25 Committee, but it's important for purposes of the claimants.

1 And we assume some of this must have been provided to or shared  
2 with the FCR as part of the FCR's estimate of what the future  
3 liability is because that's kind of crucial information.

4           So whatever information the debtor has, we believe  
5 that the debtor should make available in some accessible  
6 location, whether it is in a warehouse or online, depending on  
7 the nature of the, the information so that people who want to  
8 know and are looking to fill out the PIQ in, frankly, a form  
9 that would be most helpful to the Court, which is a more  
10 informed basis of liability, will be able to access that  
11 information and hopefully, complete the form in -- in -- with,  
12 with better information, more full information to the extent  
13 that that, there are claimants out there that want to be in a  
14 position to submit a more fully informed form. And we just  
15 don't understand the debtors' position that that process should  
16 await a future time of discovery as we, as we go forward in the  
17 case. We think it's critical that that information is  
18 available and is available sooner rather than later.

19           And to the extent that there's information the debtor  
20 has to go find through its records, that information can be  
21 added. It doesn't have to be all available Day 1, but whatever  
22 is available we do ask that as part of this, if there's not a  
23 site list, if there's not, you know, if there are holes in the  
24 records, that's fine. Tell us what they are. There have been  
25 representations there is no site list.

1 But whatever there is, whatever a lawyer, a defense  
2 lawyer would get or turn to by way of looking at whether it had  
3 potential liability, we should have those, that information,  
4 your Honor.

5 THE COURT: I understand that argument more in the  
6 context of the initial disclosures you're asking for in the  
7 next motion, but what's the chances that someone who's filling  
8 out this ostensibly burdensome form is going to be out there  
9 searching around on a, on a discovery room trying to find  
10 additional detail like that? Is that really likely?

11 MS. RAMSEY: We, we believe based on conversations  
12 with the bar that there are law firms that would --

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

15 MS. RAMSEY: -- send some of their staff who does this  
16 for a living and to review those records.

17 THE COURT: Okay. All right.

18 MS. RAMSEY: And then, finally, your Honor, the issue  
19 that Mr. Guy argued with respect to the form of order. As he  
20 indicated, it is our position that this is premature. It  
21 doesn't belong in the PIQ order. We can address whatever  
22 issues there are about what a future potential trust would need  
23 or want at the appropriate time. That time, we believe, is not  
24 now when we don't know what a plan might look like.

25 THE COURT: Would it cause heartburn to your side if,

1 if the paragraph simply said that they will be preserved  
2 pending further ruling? The bottom line is that if we get into  
3 the course of a plan and the formulation of a plan, that we  
4 could have that fight then. The -- what I'm asking, really,  
5 essentially is as long as the information is not disposed of in  
6 the meantime, then we can have the fight later.

7 Does that resolve the, the concern the Committee has?

8 MS. RAMSEY: The, the only concern with that, your  
9 Honor, is the same one that we keep coming back to, which is  
10 the potential that someone will try to get access to that  
11 information for purposes outside this case.

12 THE COURT: Right.

13 MS. RAMSEY: And that is the heartburn that creates,  
14 but from a perspective absent that concern, the answer would be  
15 no. But that concern is ever present in --

16 THE COURT: Sure.

17 MS. RAMSEY: -- all of these cases.

18 THE COURT: All right. But -- and that makes it an  
19 either/or game between what the ACC's concerned about and what  
20 Mr. Guy is concerned about. Essentially, if I don't put some  
21 provision in there, then arguably, the demand would be that  
22 you, you delete this information as soon as the PIQ work's  
23 done.

24 MS. RAMSEY: That's correct, your Honor.

25 THE COURT: Sounds like we're still jumping down the

1 road a little bit to issues that we don't necessarily need to  
2 address today. I mean, we're going to be preserving whatever  
3 information's obtained for some period of time, so.

4 MS. RAMSEY: That's correct, your Honor.

5 THE COURT: Okay.

6 MS. RAMSEY: We could always come back to the Court  
7 and revisit that at a later point in time.

8 THE COURT: Okay, very good. So you just don't want  
9 me to rule in advance that if a trust is set up, the trust gets  
10 that information automatically?

11 MS. RAMSEY: That's correct, your Honor.

12 THE COURT: Okay. All right.

13 Anything else?

14 MS. RAMSEY: No, your Honor.

15 THE COURT: Anyone further on this matter?

16 MR. GUY: Yes, your Honor.

17 THE COURT: Mr. Guy.

18 MR. GUY: I just want to add that the Garlock codes,  
19 the occupation codes, they've been used since the trust has  
20 been set up and they are detailed and they're detailed for a  
21 reason. Because depending on what job you did, that determines  
22 how valuable your claim is.

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

25 MR. GUY: Why do we have that language? Because this

1 Court found that only certain activities resulted in the  
2 exposure to asbestos fibers when you're working around  
3 encapsulated products.

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

6 MR. GUY: And as counsel for the FCR, I get  
7 frustrated, as I know that the Court sees, with the references  
8 to DBMP and Bestwall. We have to wait for them and wait for  
9 them. They're not this case. They are completely different  
10 products.

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

13 MR. GUY: The questionnaire, which we presented to the  
14 Court in 2020 --

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

17 MR. GUY: -- and was ruled on in early 2021, and now  
18 we're talking about getting the answers to that at the end of  
19 2022 and maybe later tied to like DBMP? We, we need to move  
20 forward.

21 As the ACC has said many times, currents are a tiny  
22 little population. This information is critical for the  
23 trustee to get it right and not get it wrong. And every time  
24 the ACC says, "Well, we don't want the trustee to have detailed  
25 information." Sorry, Judge. "We, we, we want that to be



1 discarded. We want to start afresh. We don't know what the  
2 plan will be," while they're also telling the Court, "There's  
3 no plan we would ever accept," that, that's just not acceptable  
4 to the biggest creditor constituency in this case and it's not  
5 fair to them, either.

6 So, your Honor, your proposal like, yes, the  
7 information should be preserved, that works perfectly fine for  
8 us, your Honor.

9 THE COURT: Okay.

10 MR. GUY: We don't need like the gloss on that --

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

13 MR. GUY: -- but we will be coming back --

14 THE COURT: Sure.

15 MR. GUY: -- and saying because --

16 THE COURT: If we ever get to that happy day where we  
17 have a confirmed plan.

18 MR. GUY: Exactly, your Honor.

19 The other thing I would add is --

20 THE COURT: Confirmable plan, whatever.

21 MR. GUY: -- I concede that this form is  
22 complicated --

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

25 MR. GUY: -- but it's complicated to try to get to a

1 fair result --

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

4 MR. GUY: -- so that we have more information than  
5 this. And there will be some claimants who know exactly what  
6 job they have, that they were pipefitters or they worked on  
7 valves and they knew exactly where they worked and how long  
8 they worked and those people will have the strongest claims and  
9 we need to be able to say, "Okay. Well, that's part of the  
10 liability," but the other people who legitimately won't  
11 remember and that's the other category, your Honor. And it  
12 doesn't -- it's not trying -- it's not a "gotcha." There's no  
13 individual review here. This is an aggregate review.

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

16 MR. GUY: I mean, it can all be anonymized. I mean,  
17 we're just trying to get as much accurate information as  
18 possible.

19 Thank you.

20 THE COURT: Okay.

21 The debtor had something else?

22 MR. EVERT: Your Honor, just quickly just to follow up  
23 on a couple things the, the Court asked and Ms. Ramsey  
24 answered.

25 So I think the, the core inability that we've had to

1 communicate on this issue is that I, I don't understand why  
2 more specificity is confusing. To me, more specificity is less  
3 confusing. I find that counterintuitive. So that might, that  
4 might be just because I'm from Georgia or something. I don't  
5 know, but, but that, that's what I've struggled with.

6           And so you, you know, with the -- I feel like with the  
7 equipment codes all those brand names that Ms. Ramsey said she  
8 thought would be confusing, I feel like if we didn't list them,  
9 then on the other side they'd say, "Well, golly, you didn't  
10 tell us what all the brand names were. So our claimant had no  
11 idea whether it was yours or not."

12           On the, on the occupation codes, to Mr. Guy's point,  
13 they were highly useful in Garlock and, and serve as a, a real  
14 datapoint for the experts to try to gauge where the exposures  
15 are. And, of course, that'll be true for the ACC's experts as  
16 well.

17           On the secondary exposure issue you asked about,  
18 you're, you're correct. In fact, I was quite impressed with  
19 your knowledge of the form, that you quickly went to the right  
20 page on secondary exposures. It's also in the activity codes.  
21 I think AC-13 and AC 23, I believe, are "worked in the presence  
22 of others" for both Murray and Aldrich. So we think we've got  
23 that covered.

24           But at -- at the -- at the end of the day, Judge,  
25 what, what we're seeking here, obviously, is information that

1 the claimant had. These are all claimants who sued us. And so  
2 lawsuits have been filed. We've been named. Allegations have  
3 been made. We're trying to figure out what they know and we  
4 want to know what they know so that our experts can help us  
5 try to understand that information and provide evidence to the  
6 Court that allows you or assists you in estimating the value of  
7 those claims.

8           And the -- from, from the site list perspective, your  
9 Honor, that, that's what, to me, discovery is exactly for.  
10 When, when they say, "Well, we want everything they have,"  
11 well, what, what does that mean and, and how does that  
12 translate if we've got a set of engineering drawings that show  
13 that something went into a, a site in 1952 and they've got a  
14 claimant that, that was there in 1970, but he never dismantled  
15 the equipment? What, what does all that mean? And that's for  
16 the experts, it seems to me, to try to sort out and I think  
17 we'll be able to do that during the course of discovery.

18           So we'd ask that the Court enter the order as is.  
19 Obviously, we'll leave it to the Court. On the timing issue,  
20 you've got, I'm sure, some ideas about that. We, we think that  
21 -- we're ready to go. If they need 30 more days, then, you  
22 know, 30 more day isn't going to, you know, isn't going to  
23 break the bank.

24           So with that, thank you, your Honor.

25           THE COURT: Okay.

1 MS. RAMSEY: May I, your Honor? Just a couple of  
2 things.

3 THE COURT: Sure.

4 MS. RAMSEY: First of all, this, this case isn't  
5 Garlock. The, the number of times Garlock gets raised is, is  
6 kind of extraordinary.

7 The second thing is that it is different for the  
8 debtor to disclose all of its products than it is for it to ask  
9 the claimants to necessarily know every single name of every  
10 product that they may have been exposed to. They're just --

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

13 MS. RAMSEY: -- different things. So I think that's a  
14 -- a -- not, not the same thing.

15 The, the most important thing, though, is -- two  
16 things. One other small point, which is for secondary  
17 exposure, we're not just talking about people in the vicinity  
18 who were exposed to other workers. We're talking about the  
19 spouse who laundered the clothes that may have --

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

22 MS. RAMSEY: -- contained asbestos.

23 So it's a, it's a broader universe, just to clarify  
24 that.

25 Also, your Honor, there are -- and I think the Court

1 brought this point up in DBMP quite correctly -- there are  
2 people who worked doing a whole bunch of things. Not -- may,  
3 maybe one of these boxes is not enough and they, they have to  
4 have options of, of multiple occupations, multiple activities,  
5 etc. But the point I wanted to really hit again is what the  
6 debtor says is, "We need to know what they know" --

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

9 MS. RAMSEY: -- but that's not the point of this  
10 exercise. The point of this exercise is the debtor intends to  
11 take that information. Remember, the PIQ is the debtors'  
12 efforts, the debtors' theory of how it values claims or it's  
13 estimating claims.

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

16 MS. RAMSEY: The debtor is taking this information  
17 and, as Mr. Guy said, it's assessing a value --

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

20 MS. RAMSEY: -- to each of these claims. It may be  
21 doing it anonymously in, in the aggregate, but it starts with  
22 an individual assessment.

23 THE COURT: Sure.

24 MS. RAMSEY: That's not -- the point is not what do  
25 the claimants know. The point is what do they put down on this

1 form that allows the debtor and -- because we'll respond -- the  
2 other parties to take a look at the information that's obtained  
3 and address what the merits or value of that claim are. And  
4 so, again, we ought to start the other way with what the debtor  
5 can tell us about its liability and not with respect to just  
6 what the claimants know. That's a litigation strategy that  
7 really does not apply to an estimation process.

8 THE COURT: Okay.

9 MS. RAMSEY: Thank you.

10 THE COURT: Mr. Roten, come on around.

11 MR. ROTEN: Thank you, your Honor.

12 We don't have a dog directly in this fight so I'm not  
13 going to get into the battle of the forms or any of that stuff.  
14 But as I understood poorly from the back of the courtroom,  
15 there's some generic request that information be produced.

16 THE COURT: Right.

17 MR. ROTEN: I note --

18 AUDIO OPERATOR: Could I get you at the microphone?

19 MR. ROTEN: Shall I go up there?

20 THE COURT: Right.

21 AUDIO OPERATOR: Please.

22 THE COURT: Come on around.

23 MR. ROTEN: May I come up here, your Honor?

24 THE COURT: Yes, sir.

25 MR. ROTEN: Thank you.

1 AUDIO OPERATOR: Thank you.

2 MR. ROTEN: Thank you, ma'am.

3 I know there were some reference made to litigation  
4 files.

5 THE COURT: Right.

6 MR. ROTEN: And so there can be confidential  
7 information in those litigation files that has a direct impact  
8 on my clients and their rights and communications they've  
9 had --

10 THE COURT: Right.

11 MR. ROTEN: -- attorney-client privilege and all,  
12 whole bunch of issues that can be raised from that.

13 So I would just request, your Honor, if there's going  
14 to be any sort of request made for information, it should go  
15 through discovery and it should be in writing and we should get  
16 notices of depositions and all those sort of things so we can  
17 come into that and protect our rights.

18 Thank you.

19 THE COURT: Thank you, Mr. Roten.

20 Anyone else?

21 (No response)

22 THE COURT: That got it?

23 (No response)

24 THE COURT: Okay. Well, the only reason I, I was able  
25 to pick out that one piece was I was looking at the various



1 forms of PIQs that had been used, including the original motion  
2 here and the one that we have now. And I think what we've got  
3 in the current version, except for the changes that have been  
4 agreed and one or two other minor issues, is consistent with  
5 what was proposed when the motion was originally formed and I'm  
6 inclined to go with the debtors' version of the form. I'm  
7 inclined to give the ACC the, the request for the claimants to  
8 have a longer time period to respond. I'm not in the current  
9 context inclined to try to create a discovery room or anything  
10 of that point. We'll talk about that again in the next motion.

11 To a certain extent, whatever suspicions may be as to  
12 what the individual parties may use with this, from the Court's  
13 perspective I view the questionnaires as, basically,  
14 preliminary information that shouldn't be really controversial.  
15 It's, effectively, what do the claimants know about the claims.  
16 I fully appreciate that until you get to the point of a trial  
17 you probably don't know about all the exposures, particularly  
18 if you just filed these actions. I know the differences in  
19 notice pleadings in the state courts and Iqbal and Twombly in  
20 our court and the bottom line is that I appreciate that they  
21 don't know, but I'm looking from a more neutral perspective  
22 that this is information that all parties can use.

23 So it would be easy if there were four or five  
24 products and that was it and that you could, and it was only  
25 used in three or four locations whatever the products were.

1 You might be able to do something there. But here, with the  
2 multiplicity of products and context and the way the products  
3 were sold, I don't think that information room is appropriate  
4 for the PIQ.

5 So I'm inclined to go with the debtors' version with  
6 this with the ACC's agreed changes and with the, the last  
7 *caveat* being that that paragraph, was it 16, that says --

8 MR. GUY: Yes, your Honor.

9 THE COURT: -- that says that, that it would be  
10 preserved to be given to the trust, I'd just simply say  
11 preserved pending further order of the Court on notice and, and  
12 argument.

13 So I'm going to try to get us moving on that time  
14 frame and, but go with the debtors' version of this at the  
15 present time, all right? If you'll make those changes.

16 MR. ERENS: Yes, your Honor. For purposes of the  
17 order, what is the due date, then, for the PIQs?

18 THE COURT: Well, there was two different options. I  
19 thought the, the last, the second option that Ms. Ramsey  
20 said -- and I'm trying to remember the dates -- it was, what,  
21 60 plus 75?

22 MS. RAMSEY: 60 plus 75, your Honor.

23 THE COURT: Right. I think that's easier. Let's just  
24 have a specified date in the order, okay?

25 MR. ERENS: So I apologize. 60 plus 75 means, what?

1 THE COURT: Well, it is, was whatever the date was  
2 here on, on the disclosure.

3 MS. RAMSEY: You better clarify this one for me.

4 Because --

5 MR. EVERT: Your Honor, I think I can help here.

6 MS. RAMSEY: Yeah. Yes.

7 MR. EVERT: I think we're talking about October 20,  
8 plus 60 days.

9 MS. RAMSEY: Correct. It -- yes.

10 MR. EVERT: So --

11 MS. RAMSEY: It's -- it's --right. It's the date --

12 MR. EVERT: 75 days from the bar date --

13 MS. RAMSEY: From the bar date --

14 MR. EVERT: -- would be October --

15 MS. RAMSEY: -- end date. Yeah, the bar date, right.

16 MR. EVERT: -- would be October -- would be October  
17 20. It actually is October 17 --

18 MS. RAMSEY: 17.

19 MR. EVERT: -- but we magnanimously moved to the 20th.  
20 So we're going to try to pull that back now and say it's 60  
21 days from the 17th, if we can agree on that, so.

22 MS. RAMSEY: I think, I think that sounds right,  
23 depending on the calendar.

24 THE COURT: All right.

25 MS. RAMSEY: Just check the dates to make sure it's

1 not a weekend or something.

2 THE COURT: I'm, I'm reluctant to, as to the first  
3 proposal, I'm reluctant to tie the cases together because  
4 something might happen in DBMP that affects this and I'd rather  
5 just have hard-line dates that we, we all know.

6 MS. RAMSEY: Thank you, your Honor.

7 THE COURT: Okay on that?

8 MR. ERENS: So we're talking about, roughly, December  
9 15th?

10 MR. EVERT: Roughly.

11 MS. RAMSEY: Roughly, December 17th.

12 MR. ERENS: Could I have one second, your Honor?

13 MS. RAMSEY: Oh. Take --

14 THE COURT: I was about to take a recess, if anyone  
15 needs to collaborate, and we could come back --

16 MS. RAMSEY: Your Honor, December 17th is a Saturday.  
17 If, if we could make it the 19th?

18 (Counsel conferring - inaudible)

19 THE COURT: I would also point out. Be very careful  
20 about having conversations.

21 MS. RAMSEY: Yes, right.

22 THE COURT: Those microphones --

23 MS. RAMSEY: Those mikes are --

24 THE COURT: -- are really --

25 MS. RAMSEY: Yeah, hot.

1 THE COURT: -- incredible.

2 MS. RAMSEY: Uh-huh (indicating an affirmative  
3 response).

4 THE COURT: And you might find out something you don't  
5 want to know.

6 We'll go off record for a moment.

7 (Off record)

8 MR. ERENS: That's acceptable, your Honor. We'll put  
9 in a date roughly around December 15.

10 THE COURT: Okay. Thank --

11 MS. RAMSEY: Wait. I'm sorry. I was looking at the  
12 19th. I'm sorry. Was that -- is that -- are you looking  
13 forward? I was look -- the 17th is a, is a Saturday. So I  
14 would propose either December 16th, which is a Friday --

15 MR. EVERT: You want to, you want to ruin --

16 MS. RAMSEY: -- or the 19th, or a Monday.

17 MR. EVERT: -- people's weekend, or you want to save  
18 them from the weekend? That -- that's -- that's --

19 MS. RAMSEY: You know, I don't know.

20 MR. EVERT: That's --

21 MS. RAMSEY: They, they work the weekend, anyway.

22 MR. EVERT: That's really the choice.

23 MS. RAMSEY: Maybe, maybe the 16th. Should we do it  
24 the 16th?

25 MR. EVERT: That's --

1 MS. RAMSEY: Is that --

2 MR. EVERT: That's fine.

3 THE COURT: Let's do it on --

4 MS. RAMSEY: Okay.

5 Thank you, your Honor.

6 THE COURT: Okay. 12/16, then.

7 That got it?

8 MR. EVERT: Thank you, your Honor.

9 THE COURT: Let's take our morning break, ten minutes,  
10 and then we'll come back and hear the last matter, all right?

11 (Recess from 10:45 a.m., until 10:55 a.m.)

12 AFTER RECESS

13 (Call to Order of the Court)

14 THE COURT: Have a seat, everyone.

15 Okay. Ready to pass on to the next matter?

16 MR. ERENS: Yes, your Honor. The last -- the next  
17 item is the last item on the agenda. That means a variety of  
18 items, but basically, we're going to take, I think, 6, 7, and 8  
19 altogether --

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

22 MR. ERENS: -- which is the dispute regarding case  
23 management orders and categorical privilege logging. Mr. Hirst  
24 will be handling those matters on behalf of the debtors.

25 THE COURT: Okay, very good.

1 MR. HIRST: Good morning, your Honor. I'm not quite  
2 as "elegant," to use Mr. Evert's words, as he is. So I'll  
3 stand at the podium a little bit today.

4 THE COURT: You must not be from Georgia, then.

5 MR. HIRST: Hey, that's exactly right. The Illinois,  
6 the Illinois thing wears the elegance off.

7 MR. EVERT: Is that what that is?

8 MR. HIRST: I think it's what it is.

9 THE COURT: Well, while we're diverted, what part of  
10 Georgia are you from, sir?

11 MR. EVERT: I live in Atlanta, your Honor, but I was,  
12 I was raised in Columbus, Georgia.

13 THE COURT: Okay, very good.

14 MR. HIRST: And as Mr. Erens said, Mr. Wright and I  
15 spoke outside. We are going to handle these three motions  
16 together 'cause they all, essentially --

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

19 MR. HIRST: -- fall in one of the same.

20 If I can approach, Judge, we've actually made some  
21 progress on things and things have changed. So --

22 THE COURT: Okay.

23 (Documents handed to the Court)

24 THE COURT: Thank you. There you go. Whoever  
25 designed this bench was giving us plenty of room, but assumed

1 we had quite long arms.

2 MR. HIRST: Judge, did I give you the wrong thing?

3 Let me check to make sure.

4 THE COURT: I'll take a look.

5 MR. HIRST: I grabbed the wrong folders here.

6 THE COURT: For the benefit of all, Proposed Revised  
7 Case Management Order for Estimation of Mesothelioma Claims and  
8 Order Authorizing the Parties to Use Categorical Privilege  
9 Logs.

10 MR. HIRST: Correct, your Honor.

11 So, your Honor, as I handed up to you, we have made --  
12 I know there's nothing your Honor enjoys more than a good CMO-  
13 privilege log-ESI discussion and argument and I know you  
14 haven't had a chance to hear any of them over the past couple  
15 of weeks, so.

16 With that in mind, we've actually, we have been  
17 working very hard and I think the ACC's been working very hard  
18 to try and narrow our disagreements and, and compartmentalize  
19 them as much as possible for you and we have made a lot of  
20 progress, I'm, I'm happy to say, including even up through last  
21 night, and as a result, even -- and your Honor, I think, has  
22 seen -- we had an original proposed case management order that  
23 the debtors attached to our motion.

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



1 MR. HIRST: We had a revised one that we attached to  
2 our reply brief on Monday and I'm happy to say we've even made  
3 more progress. And so what you have in front of you is a  
4 further revised one to reflect more agreements and, and to take  
5 more issues off the table for your Honor to have to deal with.  
6 And I think at this point we're essentially down to five issues  
7 on the, the case management order and five disagreements  
8 between the parties that your Honor will have to rule on for  
9 us. First is the amount of time we're going to take for  
10 written discovery. Second is the form of the categorical  
11 privilege logs that we, we produce in this case. The third one  
12 is the role of the PIQ in the CMO itself. Is the CMO going to  
13 be referenced? Fourth is the ACC's proposal on certain initial  
14 disclosures they've asked to be included.

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

17 MR. HIRST: And fifth is what form of the discovery  
18 plan that we're going to, we're going to abide by here.

19 And I mean, our goals as, from the debtors' side are,  
20 are kind of threefold. No. 1, how do we get the information  
21 that parties both need and both want in this estimation; how do  
22 we do it both expeditiously but in an organized fashion so  
23 nobody's feeling sandbagged or anything like that; and third,  
24 how do we do it while minimizing the burdens that are imposed.  
25 We know this is going to be significant discovery. We know

1 it's going to be burdensome discovery. How do we avoid some of  
2 the undue burdens that, at least from the debtors' perspective,  
3 we've seen happen, particularly in the Bestwall case?

4           So let me start on the timing, your Honor, and that is  
5 at, at least on ours, Paragraph 9 of the revised proposed CMO I  
6 handed up to you. And this is -- I'm not going to take much  
7 time on this. The -- we originally proposed 180 days. The  
8 Committee posed, proposed 365 days for written discovery. The  
9 FCR proposed 270 days. We saw the proposals. We decided we'd  
10 meet in the middle and we offered 270. In talking to the  
11 Committee last night, they still are focused on 365. You know,  
12 we'll, we'll deal with whatever your Honor decides to impose.  
13 From our viewpoint, if you impose 365, if it takes less than  
14 365, everybody's still using 365. If you impose 270 and we  
15 need more time, we can come back to you and get more time.

16           And so in the interest of trying to move as quickly as  
17 possible, we would ask for the shorter time period, but  
18 obviously, we will --

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

21           MR. HIRST: -- respect it either way and we can work  
22 on it either way.

23           The next one and probably the lengthiest part of what  
24 I'll have to say today refers to the categorical privilege log.  
25 And we obviously had a motion on that, a separate motion,

1 which, I think, is Docket 1206, and then it's reflected in the  
2 CMO itself. And, and our proposal is in Paragraph 11 of the  
3 CMO and kind of the details of our proposal, I think, are in  
4 Paragraph 3 of the categorical log order as to what we would  
5 provide here.

6 And just to level set and I think your Honor's  
7 probably now seen that from the papers --

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

10 MR. HIRST: -- the disagreement is no longer whether  
11 there will be a categorical privilege log or whether it should  
12 happen in this case. I think all the parties now agree that a  
13 categorical log should happen in this case and I think that's  
14 with quite good reason. This is the exact case that the Rules  
15 were set up and the Committee Commentary was set up and the  
16 case law around the country describes. This is the exact type  
17 of case a categorical log is proper for. We don't know how  
18 many privileged documents we're going to have yet. We don't  
19 even know what their discovery requests are yet, but based on  
20 Bestwall we can expect them to be significant. We can expect  
21 them certainly to be in the tens of thousands and, and,  
22 perhaps, in the hundred thousands.

23 So this is the case for categorical privilege logging.  
24 The disagreement and what your Honor will have to wade in on  
25 for us is what exactly is going to be covered by these

1 categorical logs and what information needs to be provided  
2 about the individual documents within each category as to those  
3 logs.

4           And, your Honor, just to reset. I know your Honor's  
5 been lucky enough to not have to prepare a categorical log or a  
6 regular log or any privilege log for some time and I've,  
7 unfortunately, not been as lucky. But the basic idea of a  
8 categorical log is rather than doing, because of the volume of  
9 privileged documents, rather than individually logging each  
10 document and individually providing a privilege basis for each  
11 document, you try and divide those up into categories and,  
12 and --

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

15           MR. HIRST: -- that way, you, you identify the  
16 privilege basis based on the category. You identify a date  
17 range for the documents that fall in it, the, the To and From  
18 within it, the number of documents within it. That's the basic  
19 idea of a categorical log.

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

22           MR. HIRST: And in this instance, your Honor, we  
23 actually go much farther than that and we've offered to provide  
24 to the Committee for every individual document we have the  
25 information for all of the computer metadata that's not

1 privileged that we can provide for them so they can at least  
2 match up what we are saying. If a document falls into a  
3 category, they can look and see that metadata, that electronic  
4 data, confirm what falls into it. And so we think we're  
5 proposing much more than the case law suggests we need to.  
6 It's certainly much more than the cases in the, within the  
7 Fourth Circuit have proposed and, and we think we've gone well  
8 beyond what, what the Rules provide.

9           What the Committee is proposing, I actually don't  
10 think, while, while they have said they agree that categorical  
11 logging is proper, what I think they're proposing is not a  
12 categorical privilege log. They are -- there are at least two  
13 or three aspects of it that make it different than any of the  
14 case law that we've seen and, and kind of defeat the entire  
15 purpose of doing categorical logging.

16           The first thing is the Committee wants all of the  
17 categories that will be determined for privilege to be decided  
18 before a single discovery request is submitted and that, that's  
19 completely backwards, your Honor. And if you look at the  
20 cases, you look particularly at the ones in the Fourth Circuit,  
21 what in those cases happens is the, the responding party  
22 decides to use a categorical log. They end up getting a motion  
23 to compel because the other side isn't happy about it and then  
24 the, the court weighs in as to whether or not it's proper.

25           We're not trying to do that at all here. We want to,

1 we want to get it straightened out upfront, but I don't think  
2 we're in a position where we can determine every single  
3 category of privilege before we get a discovery request, before  
4 we look and assess the documents in place. We can certainly  
5 start talking about them and we're happy to do so, but we  
6 shouldn't be confined in the way that the Committee wants to,  
7 apparently, confine us. They want to confine us to these nine  
8 narrow categories that they've proposed, which I don't think  
9 cover many of the documents, to be perfectly honest with you,  
10 your Honor. I don't know yet because I haven't seen, but I  
11 think it's going to leave a huge volume of documents to be  
12 individually logged and we think that kind of defeats the  
13 entire purpose and, in fact, actually will add more work at the  
14 end of the day.

15           The other thing that the Committee's proposal, I  
16 think, is problematic on is the Committee not only wants  
17 individual information that we're offering, the, the  
18 computerized metadata that we can simply download and give to  
19 them, they want us to provide a, a number of fields of  
20 information that will require us to manually, essentially, log  
21 every document, at least manually insert information about  
22 every single document which, again, (a) defeats one of the  
23 major purposes of categorical logging, which is to eliminate  
24 burden of logging individually all of these voluminous  
25 privileged documents, and second, and perhaps most importantly,

1 it's not endorsed by any of the case law we have seen out there  
2 and, and is a requirement far beyond any of the authority that  
3 we've seen out there.

4 Your Honor, we attached -- and actually, if I can find  
5 it, I will bring it up -- we attached to our original  
6 categorical log motion as Exhibit G, the, the categorical log  
7 that the Court in the Eastern District in Virginia approved in  
8 the Asghari case. And if you look at that document, your  
9 Honor, the log the Asghari case, court approved is far less  
10 detailed than what we've provided for here. Actually, let me  
11 see. I may have it.

12 (Pause)

13 MR. HIRST: I apologize, your Honor. I thought I had  
14 a handout for that one and for whatever reason, I don't. But  
15 it is Exhibit G to the categorical log motion. And if -- I'll  
16 give your Honor a chance if --

17 THE COURT: Let's see if I've got that.

18 MR. HIRST: -- it's in your papers.

19 THE COURT: It's Exhibit G?

20 MR. HIRST: Exhibit G, your Honor.

21 THE COURT: If I'm looking at 1206, debtors' motion --

22 MR. HIRST: 1206, yep.

23 THE COURT: -- my Exhibit G is a transcript from  
24 Bestwall.

25 MR. HIRST: Perhaps it's Exhibit H, then.

1 THE COURT: Okay.

2 MR. HIRST: One of the very last exhibits. It should  
3 be very short --

4 THE COURT: Okay.

5 MR. HIRST: -- just a table.

6 THE COURT: I'm with you.

7 MR. HIRST: Okay. And if you look at that, that's the  
8 log that was approved by the court in that case. And, of  
9 course, keep in mind, that case, the volume of privileged  
10 documents was about 500, I think.

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

13 MR. HIRST: But it's, it's a very simple log. It  
14 provides the categories, the date range, the senders and  
15 recipients involved, and then the number of documents in each  
16 category. And as I mentioned, we're offering to go well, well  
17 beyond what's in that log in terms of what we would provide in  
18 terms of detail about the documents, both categorically and  
19 individually, in this case. And so we think what we've  
20 proposed far exceeds what the courts have required and far  
21 exceeds what we've seen in, frankly, any of the cases that  
22 we've been looking at around the country. And as to those  
23 cases, none of those cases require the specificity that the ACC  
24 is demanding here in its, in its papers.

25 And so with that, your Honor, we respectfully ask that



1 you grant the categorical log that at least on a high level  
2 both parties have agreed is proper and that you grant our  
3 proposed order attached to the categorical log motion to set  
4 the standards for what we're going to use going forward.

5 THE COURT: Okay.

6 MR. HIRST: The next area of disagreement is the role  
7 of the PIQ. And this'll be short 'cause you obviously heard  
8 significant argument already about the form of the PIQ. We, we  
9 simply want that the PIQ process to be encompassed within the  
10 case management order.

11 The case management order, both sides have provided  
12 here, and one of the nice things, I think, for your Honor is  
13 that both, both parties' case management order forms basically  
14 track the same way. It's the idea that we're setting a written  
15 discovery schedule and that we're going to complete that  
16 schedule, we're going to complete written discovery, we're  
17 going to resolve all of the disputes about written discovery  
18 before we jump to the next phase. And obviously, a significant  
19 part of the discovery process for the debtors is the PIQ.

20 And so all we want to make sure that happens, just  
21 like the ACC doesn't want to feel like it's been sandbagged or  
22 something else with their written discovery and that they're  
23 forced to go to the next step before all disputes there are  
24 completed, we want to have the same thing as it relates to the  
25 PIQ. We want to ensure that we're not moving on to depositions

1 or expert discovery until we've reached the substantial  
2 compliance phase of the PIQ. And obviously, that took some  
3 time in the Bestwall case and Judge Beyer just recently ruled  
4 that substantial completion had occurred and we simply want  
5 that built into the PIQ process here. It's, undoubtedly, a  
6 part of the estimation case. We think it should be a part of  
7 the estimation case management order.

8 Initial disclosures -- and I heard your Honor mention  
9 this a couple of times -- that's a fourth area of disagreement.  
10 And specifically, the ACC has two categories now of initial  
11 disclosures they've asked for after various agreements we've  
12 made about some of the original proposals the ACC made. We're  
13 basically down to two disputes on initial disclosures. The ACC  
14 wants disclosures concerning sources of data, custodians, non-  
15 custodian sources of data, etc. And then secondly, the ACC  
16 wants initial, very detailed initial disclosures about various  
17 parts, pieces of equipment that the debtors used.

18 And let me make real clear what our objection here is.  
19 Our objection is not to providing that information to them.  
20 Our objection is that it be imposed upon us through some sort  
21 of pseudo Rule 26 disclosure. And indeed, we aren't even going  
22 to wait for discovery on a lot of this. Last night, as we had  
23 mentioned to the ACC before, we produced 30,000 pages of  
24 information concerning our equipment in terms of both  
25 interrogatory and discovery responses that were submitted in

1 the tort system, along with source documents about the  
2 equipment, and we're willing to engage and, and complete more  
3 of that in discussion with them as we move forward. We expect  
4 to get discovery on that, which we'll supplement it further.  
5 We have no problem producing that information and we anticipate  
6 doing so.

7           The same thing on custodians and sources of data, your  
8 Honor. The current discovery plan that your Honor entered 18  
9 months ago calls for the parties to meet and confer on  
10 custodians and, and non-custodial sources of data. We're  
11 prepared to do that. We expect to do that. We expect to do  
12 that very soon with the Committee.

13           What we don't think, though, is that we should have  
14 imposed on us disclosure requirements which eliminate certain  
15 rights of responses that are contained in the Federal Rules,  
16 includes disclosure requirements which aren't called for by the  
17 Federal Rules or aren't called for by the case law. We don't  
18 think it should be imposed upon us that way. We think it  
19 should work through a combination of voluntary discussions and  
20 formal discovery responses to deal with that and to allow the  
21 parties the rights they have under Rule 33 and 34 to properly  
22 respond to those types of discovery requests.

23           So that takes us to the last disagreement, which is as  
24 to the discovery plan itself. And that's covered in Paragraph  
25 2 of the revised CMO. Your Honor, as I said, entered an agreed

1 discovery plan back in November of 2020. That discovery plan  
2 was the result of good faith negotiations between the parties  
3 that reached it. It's Docket 415. It was entered and by its  
4 terms says it will "govern discovery of electronically stored  
5 information in the chapter 11 cases." So that's in place. We  
6 have it.

7           The ACC's proposal really is to overhaul that  
8 discovery plan and we don't agree. We don't think it's  
9 necessary to do that. Most of the ACC's proposals, if not all  
10 of them, are simply things that add burden on the debtors,  
11 things that add initial, additional requirements on the debtors  
12 that we think are going to create burden, we think are going to  
13 create undue burden. We don't believe they're necessary. They  
14 weren't necessary in the PI litigation which, obviously, was a  
15 different piece of litigation, but still, it, it, it  
16 demonstrates that this plan worked.

17           And, your Honor, I note there were a lot of discovery  
18 disputes in your other cases you're handling on the PI. There  
19 was a relatively limited number of them here. We had one, I  
20 think one motion to compel that we argued in that case. And so  
21 I think it's evident that the discovery plan you have in place  
22 works and we don't think it's necessary to revisit that now and  
23 impose a bunch of additional burdens, frankly, on the debtors  
24 in, in responding to discovery here.

25           So that's it. Those are the five disputed issues, as

1 we see them and I think the ACC sees them, that your Honor's  
2 going to need to weigh into that. We think the proposal in the  
3 revised case management order I handed up to your Honor is the  
4 one that reflects what is within the Rules, what is endorsed by  
5 the case law, and is consistent with what your Honor's already  
6 ruled. We would ask that you enter that once we -- and we can  
7 -- we'll put it on the docket later today, is, I guess, our,  
8 our most up-to-date revised proposed case management order. We  
9 ask that you enter that order, along with the order that we  
10 proposed attached to the categorical privilege log motion.

11 And absent any questions, I'll pass the podium to the  
12 ACC.

13 THE COURT: When you said that you were already giving  
14 product information and you weren't opposed to giving the ACC  
15 other information in discovery, are, are you proposing that  
16 that start immediately, that those --

17 MR. HIRST: So we started immediately. I mean,  
18 we've --

19 THE COURT: I know.

20 MR. HIRST: -- already started it and we can, and we  
21 can continue to start it. Yeah, we just want -- we want our  
22 rights --

23 THE COURT: You just want the discovery rules.

24 MR. HIRST: We want the discovery rules. That's all  
25 we're asking for there, your Honor. We're not trying to hold

1 them up. We just, we don't think it should be a Rule 26  
2 disclosure when Rule 26 says it's not, so.

3 THE COURT: Okay. All right.

4 MR. HIRST: Okay. Thank you, your Honor.

5 THE COURT: Okay.

6 Counsel?

7 MR. DePEAU: Good morning, your Honor. Andrew DePeau  
8 for the Committee from Robinson & Cole.

9 MR. GUY: If I can go --

10 MR. DePEAU: Oh.

11 MR. GUY: Andrew, if I can go before, whatever.

12 THE COURT: Yeah. Why don't we play team ball here.

13 And I assume you're on the same side as the, the  
14 debtor in this one, Mr. Guy?

15 MR. GUY: Generically, yes.

16 THE COURT: Yeah.

17 MR. GUY: Sure.

18 THE COURT: Okay. Let's -- let's --

19 MR. DePEAU: Please proceed.

20 THE COURT: Then we'll let you bat cleanup.

21 MR. GUY: Yeah. I didn't want to, I didn't want to  
22 hijack your argument.

23 Your Honor, we're making a very strong plea for  
24 streamlining an expedition here, your Honor. I listened  
25 recently to the Bestwall and DBMP hearings and our colleague

1 here, Ms. Ramsey, pointed out in Bestwall that, I think she  
2 said that every original member of the ACC is now deceased  
3 Mr. Neier in DBMP recently said that five or so members of the  
4 DBMP committee are deceased. We don't know the exact number in  
5 this case and we haven't seen much substitution of members, but  
6 it's going to be the same because if you have mesothelioma, the  
7 chances of living more than two years is very slim.

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

10 MR. GUY: And I know, your Honor, I'm a bit of a  
11 broken record on this, but that's an unacceptable result for  
12 us. I think reasonable minds would agree that anybody who has  
13 a valid claim for an asbestos related disease for having worked  
14 around any of these debtors' products, that they should get  
15 paid quickly.

16 And I just wanted to pull up -- we did a summary of  
17 the fees and expenses and I'm not criticizing any lawyer in  
18 this room, your Honor. I'm not.

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

21 MR. GUY: Because I, I know that deep down they want  
22 to get this resolved, too, but they don't have the privilege of  
23 one client.

24 Your Honor, I don't have a handout -- I'm sorry -- but  
25 just in our case alone we've spent \$52 million. In DBMP -- and

1 this is just through April -- it's \$59 million. And in  
2 Bestwall, it's \$157 million through March, through February.  
3 Every one of those dollars should be spent on paying a  
4 claimant. It's gone. It's wasted. That -- no one's getting  
5 that back. The claimants aren't getting that back. And I, I  
6 look at those numbers, your Honor, and I think that's a  
7 failure. I feel that is a professional failure because I feel  
8 my job is to get an asbestos trust created as quickly as  
9 possible to get money to the people who need it, not to pump,  
10 not to, necessarily, their children years and years later when  
11 they need it now. They need it now. We all know what the cost  
12 of healthcare is in this country and how difficult it is.

13 We're not getting money to these claimants because of  
14 issues that I just don't understand. Because the same  
15 professionals, the same committee members, law firms in  
16 Paddock, they confirmed the plan. It followed a pre-petition  
17 restructuring just like this one. It had a funding agreement  
18 just like this one and the vote on that plan, your Honor --  
19 this is from the Paddock docket, Docket No. 1331, a declaration  
20 from, called Restructuring -- the final tabulation reflects  
21 that the plan was accepted by 69,171 claims. That's 99.993  
22 percent of the claims, represented by many of the same law  
23 firms we have on this Committee. You know how many rejected  
24 it? Five. They -- those were probably a mistake, your Honor.

25 The claim amount in that declaration, the total amount



1 of those claims is \$741 million. That's just current claims  
2 and your Honor will remember that the settlement that was  
3 reached after mediation -- and that's critical. The parties in  
4 Paddock went willingly to mediation -- the settlement number  
5 was \$610 million. That compares very favorably with the number  
6 that the FCR has negotiated here with very different parties.

7           And your Honor, I would say -- the ACC has said,  
8 "Well, this case isn't Garlock." Ms. Ramsey's absolutely  
9 right. It isn't Garlock, but it has tremendous amount in  
10 common with Garlock because it's mostly encapsulated products  
11 that are exactly the same ones that were in the Garlock case,  
12 exactly. Packing, gaskets, they're encapsulated. That's what  
13 makes it very different.

14           But in Paddock, your Honor, we didn't have any  
15 fraudulent transfer. We didn't have any endless delays. We  
16 didn't have any subcon complaints, not, not fighting about  
17 whether it should be four days here or five days there.

18           In Bestwall recently, Mr. Waldrep said in response to  
19 the failure to comply with the court's order --

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

22           MR. GUY: -- on the PIQs -- and I don't know what's  
23 going to happen here, but I hope that doesn't happen -- but  
24 Mr. Waldrep said, "You know, in America, you could never get 70  
25 percent of people to agree to anything," and he pointed to the

1 last election and he said that was 67 percent. He said, "82  
2 percent is great. That, that's good enough." I'm not  
3 rearguing that. All I'm saying is when the law firms that  
4 control these committees want something to happen, it happens.  
5 99.993 percent.

6 Some of the claimants in Paddock, your Honor, will  
7 have claims in these cases. How can it be that in this case  
8 where it's stuck in this quagmire, this endless quagmire, that  
9 in Paddock with the same lawyers they're saying, "We're okay  
10 with the pre-petition restructuring. We don't mind. We're  
11 fine with it. It works. Let's get to an asbestos trust"?

12 Your Honor, the ACC have said in this case and the  
13 other cases before this Court -- you saw from Judge Beyer --  
14 that they, it's all about getting money to the claimants. In  
15 fact, Ms. Ramsey said that very recently. She's right. It's  
16 all about getting money to the claimants, but their actions  
17 belie their words. They also say, "We don't want an asbestos  
18 trust in this case under any circumstances. There's no plan  
19 that we would ever accept." And the cynic, your Honor, would  
20 say when you look at those numbers up there, that sends a big  
21 message to anybody who, as to any company who's thinking that,  
22 "Well, we'd like to fairly address our asbestos liabilities  
23 with the right amount of money." That sends a big message.  
24 "This is going to be very, very expensive and it's going to  
25 take a very, very long time." And I'm not suggesting, your

1 Honor, the request for extra time, I get it. The PIQ's  
2 complicated, your Honor. I get it, but we're two years in and  
3 we're so far from getting close to getting a confirmed plan.

4 So there are going to be inflection points. Keep --  
5 there are going to be inflection point after inflection point  
6 where it could be 30 days, 60 days, 80 days, 90 days, and then,  
7 and then there'll be, well, we didn't do the PIQs and then  
8 we'll have some motions to enforce the PIQs and then there's  
9 going to be trust discovery and then there's going to be delays  
10 and there's going to be appeals and it's going to go to the  
11 Fourth Circuit.

12 All I would say, your Honor, is every chance that you  
13 give, please encourage the parties to be quicker in this Court.

14 Thank you, your Honor.

15 THE COURT: Thank you.

16 I was hoping at the end you were going to give me the  
17 way to get to that end result, Mr. Guy.

18 MR. GUY: I'm still working on it, your Honor.

19 THE COURT: Ready to go?

20 MR. DePEAU: Your Honor, I -- I -- Andrew DePeau for  
21 Robinson & Cole on behalf of the Committee.

22 And, and I do have some slides --

23 THE COURT: Okay.

24 MR. DePEAU: -- with some printouts here. So --

25 THE COURT: You may approach.

1 MR. DePEAU: -- if I may approach.

2 THE COURT: Yes, sir.

3 (Presentation handed to the Court)

4 THE COURT: Thank you.

5 MR. DePEAU: All right. Just a couple of preliminary  
6 things before I get into my slides. I, I probably should have  
7 aligned with Attorney Hirst beforehand so that we followed the  
8 same -- we agree on the same five disagreements, which is good,  
9 and, but we, we did them in different order. So hopefully,  
10 this won't confuse --

11 THE COURT: Okay.

12 MR. DePEAU: -- the Court. But --

13 THE COURT: Take it in the one you --

14 MR. HIRST: You should have sent me your slide deck in  
15 advance. I could have matched up.

16 MR. DePEAU: But just to comment on the, the, the  
17 proposed revised CMO that the debtors provided today.

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

20 MR. DePEAU: That does incorporate certain agreements  
21 that the parties have made. It also includes a lot of the  
22 disagreements. It's still the debtors' view on that. We're  
23 not to the point where we've centered around one document. So,  
24 so I just want to make that clear, that the disagreements are  
25 still within that, that proposed agreement.

1 THE COURT: Okay.

2 MR. DePEAU: And, and just to the FCR's point, you  
3 know, I'm not the expert on, on the Paddock case, but this is a  
4 different case. I -- I'm not -- I'm not sure what some of that  
5 has to do with the CMO, but, but in terms of what we're here to  
6 do today, I, I think a lot of the points that, you know, and,  
7 and the provisions we're looking for are so that we can  
8 efficiently move on in this case. And so, so hopefully, that,  
9 that comes across here. But --

10 If you'd go to the next slide.

11 Okay. So I agree with the debtors' position today.  
12 We have agreed on a lot of different areas that -- that --  
13 there's been some good faith negotiation back and forth. The  
14 debtors' CMO still had some critical issues, these five large  
15 issues, and they all go to, I think, two areas, this, you know,  
16 conditions that the Committee needs. The first is the  
17 efficient and necessary disclosure of certain information  
18 that's going to allow us to take the written discovery we need,  
19 sort of the information that we need before we know what to ask  
20 for. And then the second one is to require adequate privilege  
21 logging that allows the parties to assess and, and contest the  
22 privilege. 'Cause I think there are going to be privilege  
23 issues that arise in this case and hopefully, we can resolve  
24 them without having to bring them all to the Court's attention,  
25 but --

1           So there's the five. This is the five categories:  
2 The, the inclusion of the PIQ, the initial or early  
3 disclosures. And I'll get to that. I mean, the initial  
4 disclosure is, obviously, something under Rule 26, but what  
5 we're really looking for is -- we're a little flexible on that  
6 issue as long as it's early disclosure of the information, the  
7 idea being -- and I'll get to this -- but the idea being, just  
8 to preview it, that we, we don't know what we don't know. And  
9 so we're going to need some information. We did get the 30,000  
10 documents which, I was up late last night, but not, not that  
11 late to look through 30,000 documents, so. And then the  
12 categor, categorical privilege logging, the discovery plan  
13 issues, and then the, the timeline at the end.

14           So the first issue that we're going to address here is  
15 the PIQ. We just want the PIQ process to remain independent  
16 from the other CMO and there's a couple of reasons for that.  
17 As we noted in our letter to the Court, the Committee's  
18 concerned that there's going to be some compliance issues and  
19 there could be compliance issues based on a good faith  
20 misunderstanding, not any suggestion that, that there's  
21 intentional noncompliance. And then the, the, the critical  
22 issue -- and I think it's in Paragraph 13 of the debtors'  
23 proposed CMO -- is, is that it would automatically cease any  
24 further discovery until the PIQ issues are resolved. And so --

25           If you can go to the next slide.

1           And that's actually Paragraph 14 in this revised  
2 debtors' CMO.

3           But -- so the PIQ deadlines should be part of a, of a  
4 separate order that's already being negotiated and, and  
5 separate from the CMO. Any sort of non-compliance deadlines,  
6 any deadlines regarding motion practice around the PIQ, those  
7 should be made part of that PIQ. And one of the things that we  
8 were thinking of that we're concerned about is that the PIQ  
9 order itself will be issued to the individual claimants and  
10 their counsel and if there's issues in the CMO that aren't  
11 served on those, on those individuals, that could cause an  
12 issue. They should be noticed as to the deadlines for, for  
13 motion practice or non-compliance motions.

14           And then the other issue is is that the Committee  
15 could be prejudiced in advancement of estimation discovery  
16 because of PIQ litigation, the idea being let's get through  
17 written discovery and see where we are and, and see if we can  
18 advance and, and take expert depositions or fact witness  
19 depositions or produce expert reports. We may get there and  
20 realize that until we have PIQ compliance we can't do some of  
21 those things, but I don't, we shouldn't automatically put  
22 something in the, in the CMO that says until PIQ issues are  
23 fully resolved we're not going to advance the ball in any other  
24 way other than written discovery.

25           Next slide.

1           Okay. So then the second issue here is reasonable  
2 initial disclosures. And, and what I was talking about before  
3 goes to that and, and Attorney Hirst had the, the two issues  
4 correct. We wanted a minimum number of custodians and  
5 noncustodians disclosed at the outset of discovery. And, and I  
6 understand we can meet and confer on that, but I think the idea  
7 being the CMO should enter, decide a certain amount so that we  
8 don't end up back here fighting over that we want 20 and they  
9 only want to give us 15. I think we wanted to tee up the issue  
10 now and, and address that. And, and just to point out what the  
11 custodians are, is they're the people with knowledge or  
12 identifying --

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

15           MR. DePEAU: -- the people of knowledge about the  
16 asbestos liabilities.

17           And then non-custodial people, those are the working  
18 professionals. And I'd note that there's been 21 law firms  
19 that have appeared that, they appear to be asbestos defense  
20 firms that are retained in the bankruptcy. It should be pretty  
21 easy to disclose ten working professionals who are non-  
22 custodial sources of information.

23           Next slide.

24           And then the second issue here is our, Committee's  
25 proposed CMO seeks disclosure of basic information related to



1 the debtors' asbestos-containing products and here's some of  
2 the, the issues. It's, it's the products that contained  
3 asbestos, the years that they were sold. Formulations is  
4 probably a, a carryover from some of the other cases. It's  
5 probably not a good fit here, but, but sources of asbestos and,  
6 and some of the manufacturing locations, to give us a baseline  
7 of information for us to prepare interrogatories and requests  
8 for production. Because practically speaking, what's going to  
9 happen, if we don't have that information, is this is going to  
10 be our first set of interrogatories and then we're going to  
11 have to sit and wait until that comes back, wait until we have  
12 that information, and then formulate the actual requests for,  
13 for production and interrogatories.

14           And, I mean, just to give a, an analogy, I mean, this  
15 is a little bit different, but in a civil litigation scenario  
16 you would have pleadings. You would have a, a complaint where  
17 they, you allege what happened and the basic facts around that  
18 and, and then you'd have an answer and you, you know,  
19 everything in discovery would, would fall within that umbrella.  
20 And here, we don't have that. And so this is sort of filling  
21 that gap and, and that's the idea of, of, of why we're looking  
22 for that information. And I think what I've heard Attorney  
23 Hirst say today, that they don't contest that it's relevant or  
24 discoverable or, or that there's some privilege issue. And I  
25 think it goes to the core central issues of estimation and, and

1 we should be able to get that information upfront through  
2 initial disclosures or some other accelerated mechanism.

3 Next slide.

4 And, and this just covers some of the stuff. This is  
5 all in the briefing, but, you know, the debtors' objection is  
6 really, it's twofold. On the one hand, they say, you know,  
7 "Rule 26 doesn't apply. We don't have to do initial  
8 disclosures," and then they say, "We're beyond the scope of  
9 Rule 26." So it, it's sort of which one is it. We think we're  
10 within Rule 26 because, you know, it provides for copies of, of  
11 documents, electronically stored information, tangible things  
12 that, that you're going to use to support your claims and  
13 defenses and we think that, you know, one of the core issues  
14 for supporting the claims and defenses is going to be, or the  
15 claims here, is going to be the products that actually caused  
16 the liabilities that are trying to be resolved or estimated  
17 through this, this process. And even if Rule 26 wasn't  
18 applicable, you know, we still fall back on this issue of  
19 facilitating discovery, streamlining the process, and, and  
20 moving this, this process along, especially given that the  
21 debtors aren't objecting to, seemingly not objecting to  
22 producing the information.

23 Go to the next slide.

24 Okay. So then the next issue here is the categorical  
25 privilege log. And I just want to make clear at the outset

1 why, you know, what the Committee's position is on this. The  
2 Committee doesn't oppose on principle the use of the  
3 categorical log and, and we've identified nine categories that  
4 we think we could agree to with the debtors, that the use of it  
5 in the future is fine for those nine categories, but what the  
6 debtors are asking for is, is a, an authorization before  
7 discovery is taken, before they know how many documents there  
8 are -- and it's open ended -- and -- so that they can make the  
9 decision as to what categories, what the categories are down  
10 the road and we think that that's not authorized by the law, by  
11 the case law or, or the Rules and, and that they'll ultimately  
12 result in, in more litigation and more efficiencies.

13 And just to make clear the --

14 THE COURT: I'm not sure I understand the statement  
15 that it's unauthorized by the law. As I understood it, the,  
16 the Rules really don't say anything about the form of privilege  
17 logs and who, and what categories. Elaborate a little bit as  
18 to why it's unauthorized.

19 MR. DePEAU: Sure. And, and, your Honor, if, if  
20 you'll allow me to kind of go through the -- I think --

21 THE COURT: Well --

22 MR. DePEAU: -- you're two slides ahead of me, but --

23 THE COURT: Okay. Well, then --

24 MR. DePEAU: Okay.

25 THE COURT: -- proceed.

1 MR. DePEAU: Let's go to the next slide.

2 And I just want to make clear that, that our position  
3 on the categorical privilege logging, this is for estimation  
4 purposes only. We're not taking a position as to whether or  
5 not logging would be appropriate in the adversaries.

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

8 MR. DePEAU: And I'll breeze through this because I do  
9 think you, you've heard a lot of these arguments before. But  
10 the point of Rule 26 is, is to provide a privilege log that  
11 enables the other side to assess the privilege, right? I mean,  
12 that's the purpose.

13 THE COURT: Right.

14 MR. DePEAU: So it's enough information to do that.

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

17 MR. DePEAU: Next slide.

18 And the, the Advisory Committee Notes talk about  
19 categorical logging. It says it may be unduly burdensome when  
20 it, when there's voluminous documents that are claimed to be  
21 privileged and you can describe them in categories. And then  
22 the very next sentence talks about getting a protective order  
23 if that happens, if you can meet those voluminous and  
24 basically, this unduly burdensome standard.

25 So it is authorized by law in, the concept of it is

1 authorized by law.

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

4 MR. DePEAU: The order that they're seeking is, is a  
5 little cart before the horse because it's putting, it's seeking  
6 the authorization prior to knowing what the privilege is and  
7 what the categories are.

8 THE COURT: Okay.

9 MR. DePEAU: Go to the next slide.

10 And, and this goes to this Thrasher test that courts  
11 in the Fourth Circuit have used before.

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

14 MR. DePEAU: And the two tests are, you know, would a  
15 document-by-document log be unduly burdensome to the producing  
16 party and would the categorical log provide sufficient  
17 information to assess the validity of the privilege claims.

18 Next slide.

19 So our nine categories -- and I won't go through all  
20 of them because they are fairly long -- but --

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

23 MR. DePEAU: -- there are certain things that you can  
24 identify and you can say, for instance, draft interrogatory  
25 requests or draft discovery work product in the underlying --

1 THE COURT: I read through them last night, so.

2 MR. DePEAU: Okay. But that's a good example of  
3 there's no reason to provide detailed document-by-document  
4 descriptions as to each of those documents that fit within that  
5 category. If there's a way to contest the privilege, you can  
6 do so on a categorical basis without getting additional  
7 information.

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

10 MR. DePEAU: Go to the next slide.

11 So the debtors in their brief say that, "The privilege  
12 claims will fall into one of a handful of relatively discrete  
13 categories." And so begs the question what are those  
14 categories. If they're discrete and a handful, we should be  
15 able to meet and confer and discuss what they are now and, and  
16 make that, see if we can reach an agreement on the categorical  
17 use beforehand. But otherwise, the debtors should have to wait  
18 until they actually get the document requests, they actually  
19 assert the privilege, and then they actually can come to us  
20 with real categories that we can either agree to or we can  
21 seek, or the debtors can seek authorization from the Court.  
22 And I won't repeat my cart before the horse comment, but --

23 And, and I don't want to belabor this, either, but the  
24 debtors' privilege log motion relies solely on the experiences  
25 in Bestwall and there's no case law to support the, the meeting

1 the standards under Thrasher by looking to another case and how  
2 expensive it was in another case or how difficult it was, and I  
3 don't think we should presume that the same litigation and  
4 discovery disputes in Bestwall will be repeated here.  
5 Hopefully, we've, we've all learned some, some lessons.

6 Next slide. I don't think that's the next slide.

7 Next.

8 And I just want to point this out -- and this is in  
9 our brief, too, your Honor -- but, you know, just, just to  
10 point out the issue here. Bestwall doesn't necessarily support  
11 having a categorical log here. And, and back in January Judge  
12 Beyer was dealing with a motion to compel production and she  
13 specifically pointed out at the end of a hearing, a fairly long  
14 hearing as I understand it, that 188,000 documents had been  
15 marked with the same exact privilege description, essentially a  
16 categorical log. You went in and you gave the same privilege  
17 description for every single document, 188,000 of them. And  
18 the court found that problematic and said that they needed to  
19 clean it up because in order to deal with this motion to compel  
20 you needed a more detailed description to, to determine if the  
21 privilege had been properly alleged.

22 So there are going to be circumstances in which  
23 categorical logging is not going to be appropriate and, and at  
24 this point we can't evaluate every single possibility that's  
25 going to, that's going to occur prior to discovery even being

1 served.

2 All right. So just to summarize. You know, the  
3 debtors can't meet the Thrasher test. They don't know what  
4 information the Committee will seek. They can't tell you how  
5 many responsive documents there are. They can't tell you what  
6 types of privilege will be asserted or what categories they,  
7 they put on the log. And, and just to point out. This  
8 statement at the very bottom here, this is right out of their  
9 proposed order. They would have you make a finding that  
10 individual logging on a document-by-document basis is unduly  
11 burdensome and would provide little benefit. And I don't know  
12 how your Honor would make that finding without knowing how many  
13 documents there are, what categories, or any of the other  
14 requirements under, under the Thrasher case.

15 THE COURT: Unless I take judicial notice of Mr. Guy's  
16 attorney fee estimates. I suppose that would, would inform the  
17 question somewhat.

18 MR. DePEAU: Fair enough, your Honor.

19 THE COURT: Fought over, fought over everything else,  
20 so we assume we'll fight over this as well.

21 MR. DePEAU: Okay. So I -- just to, just to conclude  
22 here --

23 THE COURT: Your point's well taken. I didn't mean to  
24 get you off topic. So go ahead.

25 MR. DePEAU: No, no. no problem.



1           So the Court should authorize the use of the  
2 categorical privilege for the nine categories that we've  
3 authorized, that we've outlined today in our proposed CMO  
4 because they're identifiable and, and they meet those Thrasher  
5 requirements and they, they should reject, the Court should  
6 reject the debtors' efforts to obtain a, a preemptive and  
7 overly broad authorization to use the categorical privilege  
8 logging.

9           And I just want to point out that the, the Committee's  
10 position on this, if, if additional categories were identified  
11 down the road and, and could be, you know, stated and, and, and  
12 evaluated, then we would, we would meet and confer on good  
13 faith and, and consider those categories at the time.

14           Next slide.

15           So the next category is just, this is the fourth  
16 category of stuff. It's, it's really -- and I won't spend a  
17 lot of time because this is really in the weeds -- but, but I  
18 do think it's important.

19           Both parties have sought to modify the joint discovery  
20 plan. So, so to the extent the debtors are saying this old  
21 discovery plan from nearly two years ago should, should govern  
22 the case and we shouldn't change it, the debtors are seeking to  
23 add the categorical privilege. That's, that's a change from  
24 the joint discovery plan, but they oppose three areas that,  
25 that we've tried to add that are either estimation specific or,

1 or, really, most of these are, are just things that we've  
2 learned over time that, that we think adding will, will  
3 facilitate discovery and estimation.

4 All right. So the first one is just these privilege  
5 log requirements and, and we've asked for a players' list,  
6 which is just a key --

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

9 MR. DePEAU: -- that would provide basic information  
10 about the individual. So when we see the e-mail entry that  
11 says it was from John Smith to Tom Jones, we, we know who John  
12 Smith and Tom Jones are.

13 THE COURT: Is that being contested now? I thought I  
14 read somewhere that that had already been provided in, in some  
15 form or fashion.

16 MR. HIRST: So on the players' list specifically, your  
17 Honor, we'll agree to give them a players' list if that's what  
18 they want. We, we think --

19 THE COURT: Okay.

20 MR. HIRST: -- that's something that --

21 THE COURT: Let's take something off --

22 MR. HIRST: Yep.

23 THE COURT: -- the table there.

24 MR. DePEAU: All right. We're making progress.

25 THE COURT: Okay.

1 MR. DePEAU: So the common interest assertion, this is  
2 another area where, particularly in this case with the, you  
3 know, the multiple debtors and the underlying operating  
4 entities, we've, we want to make sure that any description of  
5 the document held on the basis of common interest has some  
6 detailed description about this common interest so that we can  
7 assess the, the claim.

8 And then the categorical logging, it's really just a  
9 description of, of the attorneys and the employees and third  
10 parties involved and I think the debtors have already agreed to  
11 provide metadata and if they've agreed to do the players' list,  
12 I think that covers a lot of what we're looking for in terms of  
13 the categorical logging details. It -- but -- and this all  
14 goes to just getting the information that we need to properly  
15 assess the privilege.

16 Go to the next slide.

17 Okay. And this is the most in the weeds of the issues  
18 here. So I won't spend a lot of time. We originally agreed  
19 that -- that absent -- that mobile devices wouldn't be searched  
20 as part of the ESI protocol and this was an issue that I think  
21 was originally, came out of a, a COVID period, time, that, and  
22 we weren't trying to place a burden on trying to track down  
23 whether people had data on their phones or their iPads and  
24 we're willing to maintain that position, but we'd like a  
25 certification from the custodian saying that they don't use the

1 devices for business purposes. And, and I think we'd have some  
2 flexibility on that if, if there's a certification from the  
3 entity, the employer, that said, you know, "The employees never  
4 use their, their mobile devices for business purposes." We  
5 could, we could do it that way if there's some difficulty in,  
6 in getting a certification from the custodian, him or herself.

7 Next slide.

8 And then the last discovery, joint discovery plan  
9 issue is just this, this 12-day motion, 2-day opposition  
10 briefing schedule, which is an accelerated briefing scheduled,  
11 that was actually initially in the debtors' proposed CMO or the  
12 joint plan attached to the debtors' proposed CMO at 7.1. And,  
13 and, and we have agreed to that, but it seems like the debtors  
14 have now backtracked on, on that and want just the joint  
15 discovery plan, the original joint discovery plan, which  
16 contains no accelerated briefing schedule, which I think kicks  
17 us back to just having the, the standard briefing schedule that  
18 may put us in a situation where, you know, months could go by  
19 or, or a couple hearings could go by before something is  
20 properly briefed and before your Honor. And, and we just think  
21 with a discovery issue we want to get it in front of the, the  
22 Court quickly. And if, if there is a particularly complex  
23 discovery dispute, then the parties could address extensions of  
24 time at that time.

25 But, but we do want to be able to raise discovery

1 issues quickly because they tend to be bars to, to, to  
2 advancing other discovery issues.

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

5 MR. DePEAU: If we don't have the documents, we're in  
6 a position where we can't take depositions, for instance.

7 Next slide.

8 Okay. So the -- now this is the, the -- I think I'm  
9 at the last slide here or next-to-last slide -- just the fifth  
10 topic is just the 365 days and I, and I think all of this back  
11 and forth, the history in some of these other cases,  
12 particularly Bestwall, shows that this is going to, this  
13 written discovery period is going to be particularly intense,  
14 even if you have categorical logging. You're -- the debtors  
15 are still going to have to look at every document to mark it  
16 for privilege and determine if it's responsive. We're going to  
17 have to look at it and, and evaluate it. There's potential for  
18 discovery disputes, privilege disputes, and it would just weigh  
19 in favor of the 365 days, given that it's, it's not a huge  
20 difference.

21 And the only other point I would say is that the  
22 Committee doesn't have a lot of the documents. They -- we're,  
23 we're playing catch up here. The, the debtors are the ones  
24 that possess all the, all the relevant information and we're,  
25 we're the ones asking for a little bit more time to make sure

1 that we can do the work we need to do to be prepared for  
2 estimation.

3 THE COURT: I read that last night and I was wondering  
4 about it. Given that, that the Committee is effectively the  
5 major law firms, why wouldn't a good deal of that information  
6 already be available to the Committee?

7 MR. DePEAU It, it hasn't been, your Honor. My  
8 understanding is that --

9 THE COURT: Just asking real world. It's not  
10 available to you for the asking?

11 MR. DePEAU: Well, I think the problem is is we have  
12 individual discovery related to individual tort claims --

13 THE COURT: Right.

14 MR. DePEAU: -- but trying to compile that across --

15 THE COURT: Thinking in the aggregate --

16 MR. DePEAU: -- the company in --

17 THE COURT: -- of all the claims.

18 MR. DePEAU: Yes, your Honor.

19 THE COURT: Okay. All right. I understand.

20 MR. DePEAU: And the, and the practical reality is  
21 that we haven't obtained substantial production from, from  
22 the --

23 THE COURT: From the Committee.

24 MR. DePEAU: Yeah.

25 THE COURT: Okay. All right. Very good.

1 Anything else?

2 MR. DePEAU: Could I just have a, a moment to confer?

3 THE COURT: Take, take a moment.

4 Ms. Ramsey.

5 MS. RAMSEY: Your Honor, if, if I might. There were

6 some arguments made by Mr. Guy that were more aggregate case

7 issues --

8 THE COURT: Right.

9 MS. RAMSEY: -- and just so the record is complete, if  
10 I could just respond to those briefly.

11 THE COURT: Please.

12 MS. RAMSEY: The first point that Mr. Guy made is,  
13 "We'd like this case to move quickly." We would like this case  
14 to move quickly. So we are completely onboard with that. At  
15 the same time we have to balance that, that quick schedule with  
16 our ability to do the things that are being asked of us in this  
17 case. And so we are trying to strike that balance.

18 The, the second proposition and related to that is  
19 the, the fees in these cases. Again, our position is the  
20 debtor came to this court. The debtor raised the issues that  
21 the debtor is raising. It chose the forum and we certainly  
22 dispute the suggestion that the money that is being spent on  
23 these cases are coming out of monies that are available to the  
24 debtor. We hear all the time that the, that the funding  
25 parties have sufficient assets to pay all of that and whatever

1 the liability is.

2           The third is that Mr. Guy is correct regarding the  
3 state of Bestwall. It's been 4-1/2 years. The living members  
4 of the Committee have at this point all died and it is  
5 certainly the case that, and indisputable, that individuals  
6 with mesothelioma have a relatively short terminal illness.  
7 However, I did receive a note from Mr. Neier who says that in  
8 the DBMP case he did not make those statements on behalf of the  
9 Committee. If they were made, they were made by someone else.  
10 I don't think it was me, but just to make that clarification  
11 for the record.

12           THE COURT: Okay.

13           MS. RAMSEY: And the fourth, your Honor has heard  
14 multiple times the references to the Paddock bankruptcy and  
15 the --

16           THE COURT: Right.

17           MS. RAMSEY: -- argument that there was a settlement  
18 there, why not here. And again, just for the record, there was  
19 a different pre-petition structure. There was no effort by the  
20 debtor to obtain injunctive relief, preliminary injunctive  
21 relief for the nondebtors. It was a different product, wholly  
22 different circumstance, different case, different committee,  
23 different parties, different FCR, and we believe wholly not  
24 relevant to the issues here.

25           Thank you.



1 THE COURT: Okay. Thank you.

2 Anything else?

3 MR. HIRST: Yes, your Honor.

4 THE COURT: Mr. Roten hadn't had a chance to get in.

5 MR. HIRST: Oh, sorry.

6 THE COURT: So let's give him the opportunity.

7 MR. ROTEN: Come around again, your Honor?

8 THE COURT: You may.

9 MR. ROTEN: Russel Roten for Certain Insurers.

10 Your Honor, I apologize for making exactly the same  
11 point I made when this issue was argued a few minutes ago.

12 THE COURT: Okay.

13 MR. ROTEN: The insurers are parties in interest in  
14 this case. We have a lot of concerns about what is going to  
15 happen in this case. Certainly, we're going to be asked to  
16 fund the trust, to some extent.

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

19 MR. ROTEN: If we aren't, then I'll be happy to leave  
20 and wouldn't bother the Court anymore. But the -- the -- this  
21 vague expansion of Rule 26(a) is very, very troublesome.

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

24 MR. ROTEN: We know what 26(a) says. Those  
25 disclosures can be made and then if they want any more

1 information, they should follow the Rules of Civil Procedure  
2 for discovery. We can monitor that if we see document requests  
3 that are, that we would object to or interrogatories. We can  
4 attend depositions. We can protect our interest. We can't  
5 protect our interest this way.

6 Your Honor, the bullet points that the Committee had  
7 on, in their presentation about the kind of information they  
8 want under this expansion of Rule 26(a) could be easily put  
9 into a set of, first set of document requests and a first set  
10 of interrogatories and served within the next 30 days and we  
11 would be past this whole procedure and on into discovery.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 Mr. Hirst.

15 Excuse me. Mr. Mascitti.

16 MR. MASCITTI: Your Honor, Greg Mascitti on behalf of  
17 the non-debtor affiliates. Just a big picture item which I  
18 don't believe is in dispute.

19 The ACC had requested that the non-debtor affiliates  
20 be parties to the estimation proceeding. Having thought about  
21 that, we think it makes practical sense. There is, there are  
22 likely to be overlapping issues with respect to the adversary  
23 proceedings, including purported damages and solvency analysis.

24 So we're happy to participate as parties in the  
25 estimation proceeding. We just wanted to draw that to the

1 Court's attention. Again, I don't think that's in dispute.

2 One thing I would just ask is that we're not waiving  
3 any Stern-related rights by virtue --

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

6 MR. MASCITTI: -- of our participation.

7 Thank you, your Honor.

8 THE COURT: Okay, very good.

9 Yes, sir.

10 MR. HIRST: I assume Mr. Guy -- go ahead.

11 MR. GUY: Your Honor, I'm very disappointed that no  
12 one took me up on my suggestion that there be some sort of  
13 sampling here. Maybe the parties can work towards that.  
14 Obviously, we're not fighting on the discovery because we don't  
15 have discovery to produce.

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

18 MR. GUY: But it, it's the debtors' contention that  
19 there was suppression of evidence. I mean, I'm not speaking  
20 for them, but this is what I understand they're saying, that  
21 there wasn't information available about exposure to other  
22 products. And the ACC's contention is, "No, that's not so.  
23 You knew what was out there." And we tend to agree with the  
24 ACC on that point.

25 But do we need to review 2,400 case files for that to

1 be proven one way or the other? The, the claim files will be  
2 there. They'll have the information and it's our view, your  
3 Honor, that the ACC's entitled to that. I'm sure the debtors  
4 don't like to hear that, but if the debtors are going to say  
5 legal liability, the ACC's entitled to say, "Hey, look, here's  
6 the case file. You knew this. You knew that."

7 But do we need to review 2,400? I don't think so. I  
8 really don't think so and I -- I -- there's a lot of smart  
9 lawyers on the Committee and they'll know what's in, likely to  
10 be in those files.

11 Your Honor, you said, "Wish you had a silver bullet  
12 for me." Your Honor, we've talked about this before and  
13 Ms. Ramsey said, "Paddock isn't this case." I, I'm not going  
14 to belabor it. The Court is well familiar with all the  
15 similarities between the two cases, but one thing we know for a  
16 fact, is mediation was agreed to, ordered, and worked. And in  
17 the past, your Honor, when this has been teed up your Honor's  
18 been reluctant to say, "Well, look, if everybody doesn't want  
19 to go to the dance, I'm not going to force you to go." But  
20 we're at the point, your Honor, where we can see the future.

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

23 MR. GUY: We really can and it's going to be long,  
24 expensive, ugly, and who is not going to benefit? The  
25 claimants and we're, we're struggling with that. We just think

1 it's, it's an unacceptable result.

2           The other thing, your Honor, is we're two years in and  
3 we haven't heard from the ACC as to actually what they think  
4 the liability is. Your Honor, you'll, you'll remember from  
5 Garlock and the, all the other cases the experts look at the  
6 claims database. I understand that Bates White have the, has  
7 their legal liability theory, but they're also looking at the  
8 claims database.

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

11           MR. GUY: It's, it's all the pre-petition information  
12 there and that's a settlement database. Mr. Evert's going to  
13 correct me if I'm wrong, but I believe they only had one case  
14 that ever went to trial. So prepetition the law firms were  
15 settling *en masse* often like group settlements all in one go.  
16 What the FCR has proposed is exactly that, a settlement. Here  
17 is the settlement. Here's the number, but the point being is  
18 we don't even know what their number is based upon their own  
19 theory. We don't have anything to aim at. Maybe the Court  
20 could order them to provide it. I don't know.

21           But I think they're going to have to provide it soon  
22 because I was listening in to DBMP and I heard what was said  
23 about the fraudulent transfer complaint and that makes perfect  
24 sense. You have to say what the liabilities are.

25           And maybe I'm misquoting Ms. Neier, Mr. Neier wrongly

1 again. I hope I'm not. I really do remember him saying that  
2 and we'll find it, but it doesn't matter because I don't think  
3 anybody's debating that members are dying while we're waiting.

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

6 MR. GUY: But, you know, this shouldn't be so hard,  
7 your Honor.

8 Thank you.

9 THE COURT: Okay.

10 Mr. Hirst.

11 MR. HIRST: So a few short points, your Honor, and  
12 picking up a little bit where Mr. Guy left off.

13 I mean, the process we are trying to set up here is to  
14 get the parties the information they need, bring your Honor  
15 good faith disputes about discovery issues. If there's an  
16 issue that they believe we've covered something as privileged,  
17 it's not, let's get it in front of your Honor and make a legal  
18 ruling on it. Let's not determine whether Entry 311,444 on the  
19 privilege log looks like some other entry and, therefore,  
20 should be rewritten. That doesn't advance the ball and we  
21 think our CMO is the one that advances the ball and tries to  
22 kind of balance those two issues, getting the information out  
23 that needs to be brought out for both parties, dealing with  
24 disputes on discovery issues, and doing so expeditiously.  
25 That's what we think our CMO does. With due respect to our

1 adversaries, we don't believe the Committee's CMO does that.  
2 We believe it's largely a repeat of Bestwall and with due  
3 respect to what's going on in Bestwall, I don't want to be part  
4 of that. I don't think your Honor does, either, based on the,  
5 the motion practice I've seen.

6 As to the specific points, the time it takes for  
7 written discovery, we leave it up to your Honor. I don't  
8 really have anything else to say on that.

9 Initial disclosures, same thing. We don't think  
10 they're initial disclosures. We've already started producing  
11 information to them. We will continue to do so, keeping in  
12 mind some of the points Mr. Roten made about his clients'  
13 rights as well. We don't think they should be converting  
14 discovery requests into initial disclosures.

15 On the three that I will say something more  
16 substantively about, the PIQ's inclusion in the CMO. Under the  
17 schedule I think your Honor ordered today, the PIQ should be  
18 long over before the end of written discovery. Under either a  
19 9 or a 12-month schedule, we should be good. What we're  
20 worried about is the situation where we're not. And --

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

23 MR. EVERT: -- we've, unfortunately, seen the  
24 situation where we're not and we don't want to a repeat of that  
25 and we also don't want to be, we don't want to be stuck in a

1 position that the Committee doesn't want to be stuck in on  
2 written discovery. We don't want --

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

5 MR. HIRST: -- the bus to pass us by --

6 THE COURT: You don't want to be forced.

7 MR. HIRST: -- as we're fighting.

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

10 MR. HIRST: And so that's all we're asking for with  
11 the PIQ. It should be included as well in the CMO.

12 On the discovery plan issues, your Honor, the changes  
13 they would like to make, hitting them real quickly. The, the  
14 additional privilege assertion items that they want,  
15 particularly the one on common interest, they have a right to  
16 be able to assess the privilege that's being asserted so they  
17 can bring to your Honor any disagreements they have that we  
18 won't resolve. I think the additions they have on common  
19 interest are incredibly burdensome and do nothing to advance  
20 the ball other than to create a bunch of issues we can argue  
21 about and see whether we've written it the right way as opposed  
22 to determining whether or not there was an actual common  
23 interest being asserted. I don't think it advances the ball  
24 and I think it's going to create an enormous amount of work for  
25 us on the other end.



1           On the, on the discovery motion time practice, they're  
2 correct and I'm embarrassed to say that it was in our initial  
3 proposal and I think it was 'cause we copied and pasted it from  
4 the proposal they had sent us. Here's my position on that. We  
5 have a process for shortening time periods to get motions in  
6 front of your Honor. There may be some good discovery motions  
7 to do it. Hopefully, there will be some real discrete ones.  
8 Based on the other cases we've seen, waiving privilege over  
9 your entire 500,000 privilege entry motions, seems like it's  
10 going to take more than ten days to respond to, with all due  
11 respect. And so we just want to stick with the original motion  
12 practice schedule on that one.

13           I guess last thing is categorical privilege logging.  
14 I feel like I'm kind of damned if I do, damned if I don't. We  
15 brought this motion early because we want to get this decided  
16 so we're not coming to your Honor in five months arguing about  
17 it then after we've done a bunch of work and delaying it  
18 farther. We think this case is a prime case for categorical  
19 logging. You're right. We don't have discovery requests yet.  
20 You're right. I don't know the complete volume of privileged  
21 documents. I'm also not silly and pollyannish. They're going  
22 to send us discovery requests similar to what have been sent in  
23 Bestwall. There's going to be a lot of privileged documents  
24 come out of that. Is it going to be 20,000? Is it going to be  
25 a hundred thousand? Is it going to be 200,000? I don't know.

1 We're looking for other ways to try and deal with that, too,  
2 your Honor, and 502(d) is certainly something we're looking at  
3 internally to see if we can get that moving right away.

4 But there's no reason to not order categorical  
5 privilege logging now. There's no reason to not follow what we  
6 have proposed, which is ordering the parties to go meet and  
7 confer and start trying to figure out categories. With due  
8 respect to the Committee, we want them to be part of the  
9 process 'cause I want to eliminate disputes down the road. I  
10 don't think under the case law they actually have any right to  
11 be in part of the process of determining the categories. I  
12 think we can -- for -- I think the way the categorical logging  
13 cases work is the, the party responding gets to identify those  
14 categories and if they have a problem with it, they'll bring a  
15 motion. We're not asking for that. We want to involve them in  
16 the process. We want to get there with them.

17 But there's no reason to not order categorical logging  
18 now so we can get to the point. And again, the point is  
19 letting them test the privilege, letting them, if they have a  
20 good faith basis to believe a whole swath of documents are  
21 category documents, shouldn't remain privileged 'cause  
22 positions were taken in this case, let's get in front of your  
23 Honor quickly, let's get in front of your Honor early, and  
24 let's decide it on the law. Let's not determine whether or not  
25 some minor issue is, some minor entry in the log isn't proper.

1 Last one, going back to the discovery plan issues on  
2 the mobile devices. I do have concerns about what this is  
3 going to create. We agreed to not, from both parties'  
4 perspectives, to not collect them in the first instance. If we  
5 have to do them here, it's going to be an issue for us. We  
6 have -- a lot of our custodians, not surprisingly, your Honor,  
7 are going to be former employees. And so it's (a) going to be  
8 hard; (b) the idea that we have to certify and get those  
9 custodians to individually certify who we don't necessarily  
10 control anymore that they didn't use a mobile device, I, I  
11 think it is, frankly, just completely unworkable where we had a  
12 very workable process 18 months ago. I don't think we've been  
13 given any reason to believe that there's anything different now  
14 about mobile devices than before, so.

15 THE COURT: Okay.

16 MR. HIRST: With that, your Honor, absent any  
17 questions --

18 THE COURT: Let me ask. You're proposing that the PIQ  
19 be part of this particular discovery plan. The -- the -- the  
20 order and the plan really denote who are parties to that plan.  
21 So you're going to bring all of those claimants into the --  
22 into the same -- they're now parties to all of this?

23 MR. HIRST: I don't think they're parties to the CMO  
24 and I don't -- the actual -- part of the PIQ really only  
25 impacts --

1 THE COURT: It's just --

2 MR. HIRST: -- us. It's, it's us --

3 THE COURT: We're not going to move on until --

4 MR. HIRST: It's us -- yeah. It, it impacts two  
5 things. One, the timing for us to seek compliance.

6 THE COURT: Right.

7 MR. HIRST: In other words, if we don't think the PIQs  
8 have been properly completed, it, the CMO sets out our  
9 obligation to take some action. And two, the parties' ability  
10 to move to the next step of the litigation --

11 THE COURT: Okay.

12 MR. HIRST: -- which is all we want to protect for  
13 with the PIQ's inclusion. We don't want to be in a situation  
14 where they've now happily gotten all their written discovery,  
15 that's taken care of, and we're fighting with groups of  
16 claimants to get the PIQs completed and then skipping to the  
17 next step.

18 THE COURT: Okay, very good.

19 Anything else?

20 MR. HIRST: Thank you, your Honor.

21 THE COURT: This is where I say it's not a premium  
22 paid to being the last speaker. If you've got something,  
23 though, I'm happy to listen.

24 MR. DePEAU: Okay. Briefly, your Honor.

25 And, and I'm not sure who raised this here, but I

1 think there was a suggestion at one point that the estimation,  
2 the value of the estimation is the equivalent to the damages  
3 that might come up in the adversaries. And it -- and we  
4 just -- we don't concede that point and that's not something  
5 that -- that we're -- we just wanted to clarify that point.

6 I mean, I, I, I think one of the things that keeps  
7 coming out from, from a lot of the, the parties that have  
8 spoken today is that we're trying to move this along and I --

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

11 MR. DePEAU: -- and I think the issues that we've  
12 raised here move those issues along, but taking the PIQ out of  
13 the CMO puts you in a situation where PIQ delays won't  
14 automatically delay furthering discovery among the parties.

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

17 MR. DePEAU: There's a lot of issues with initial  
18 disclosures, which I think, it, it sounds like the problem is  
19 more of categorizing it as a Rule 26 and, and the obligations  
20 under that. I'm not quite sure what those issues are because  
21 if I served an interrogatory, that, that would be a statement  
22 under oath that they'd have to respond to. So I'm -- I'm  
23 not -- I don't understand the, the heightened reluctance toward  
24 an initial disclosure. But anyways, the purpose is to get this  
25 information early on.

1           The categorical privilege logging. I, you know, the  
2 way the cases are set out, you can either agree in advance to  
3 something or you can seek authorization when you have the  
4 categories that you, you want to do. And, and if you look at  
5 the proposed order, it sort of puts us in a situation we're  
6 going to be back before you because all it says is, "We're  
7 authorized to do it and we'll meet and confer," and then what?  
8 It doesn't, it doesn't --

9           THE COURT: Right.

10          MR. DePEAU: -- fill that in. And, and I think what  
11 would happen is that we would either agree or we'd be back --

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

14          MR. DePEAU: -- in front of your Honor dealing with  
15 it.

16          So the way we've tried to deal with it is deal with it  
17 upfront and figure these things out by agreement.

18          Same thing with the discovery plan issues. It's  
19 trying to cut through some of the -- and I understand it's  
20 going to be some more work for the debtors but, you know, at  
21 the end of the day getting a good privilege log at the, at the  
22 outset and getting the information at the outset is going to  
23 facilitate discovery.

24          And then the timeline. Obviously, these other issues,  
25 you know, to the extent we have to serve discovery to get what

1 we would ask for in an initial disclosure, for instance, those  
2 are all things that are going to warrant putting in additional  
3 time to the written discovery --

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

6 MR. DePEAU: -- part of the CMO.

7 And on that, I'll, I'll rest unless your Honor has any  
8 questions.

9 THE COURT: Not at the moment.

10 Are we all good?

11 (No response)

12 THE COURT: Everyone done?

13 (No response)

14 THE COURT: Okay. This is going to take a little  
15 digestion and, so that I can put it back to you in a  
16 comprehensible fashion. I'd like to just be able to, to spit  
17 this all out and solve all your problems. I don't think that's  
18 in the cards.

19 So first question is, I've got DBMP next Thursday  
20 where I was going to try to make a similar ruling. Would you  
21 have availability if I were to announce something in the  
22 afternoon? They're on in the morning.

23 MS. RAMSEY: Yes, for the ACC.

24 THE COURT: Anyone got a problem with --

25 MR. ERENS: Your Honor, when --

1 THE COURT: -- if we set this at 2:00 or so?

2 MR. ERENS: When you say "availability," would we do  
3 this remotely?

4 THE COURT: Yeah.

5 MR. ERENS: Okay.

6 THE COURT: Yeah. I'm not going to ask everyone to  
7 travel for that purpose.

8 Mr. Guy?

9 MR. GUY: What date is that, your Honor?

10 THE COURT: That's the 7th.

11 MR. GUY: Yes, your Honor. That works.

12 Thank you, your Honor.

13 THE COURT: Anyone got a problem?

14 (No response)

15 THE COURT: Okay. I'll try to get something in a  
16 comprehensive form. I'm reluctant to do it, but I'm going to,  
17 anyway, in hopes that negotiations might break out that may  
18 enable you to resolve some of your differences. I hear a lot  
19 of people saying the same things that "we want to move along,"  
20 that "we are all concerned about cost and time," to say nothing  
21 of the, the poor folks who have passed on. Not only do we have  
22 to worry, I'm, I'm resigned to the fact that absent a  
23 settlement, that most of the people who are present claimants  
24 will, will be deceased before we get to the end of this road  
25 and I'm starting to wonder whether all of us will be deceased



1 as well. The -- the -- watching Bestwall from a distance -- I  
2 don't try to follow it the way y'all have. I don't have time,  
3 frankly -- but watching the time period that has elapsed there  
4 and wondering if, even in the asbestos world where the time to  
5 confirmation is a very extensive time compared to other chapter  
6 11s, it looks like we're currently on tracks that are even  
7 further attenuated.

8           So I would love to do anything I can to encourage  
9 progress. Mr. Guy's suggestion about imposed mediation, I'll  
10 just say at the outset that I have been reluctant to do that  
11 in, in these cases primarily because we were at the start of  
12 the cases and secondarily, because Bestwall didn't do, provide  
13 any results. We are farther down the road. I'm not sure  
14 whether if we started tolling actions and, in the case, and  
15 sent y'all to mediation, or, alternatively, we went on a  
16 parallel path that we did the bare minimum to keep the cases  
17 moving and, and sent everyone to go talk about this, whether  
18 that would generate any, any benefit. I don't have a motion.  
19 I don't tend to, to, on an *ex parte* basis or a *sua sponte*  
20 basis, impose that sort of thing. You folks are, know your  
21 business and you have a great deal of experience in this area.

22           So generally, I always think that when the time's  
23 right to negotiate, the parties will tell me. But if anyone  
24 thinks that a motion to that effect will be helpful, tee it up.  
25 We'll, we'll talk about it then.

1 On the current matters, the, my thoughts are generally  
2 this:

3 One, as a general matter, I try to stick to the Rules.  
4 We start making up our own rules, then things get very  
5 complicated and especially if we're going to have multiple  
6 different types of case management orders in the same case.  
7 And then there's the question of whether this case, case  
8 management orders are the same in DBMP and the like. It's,  
9 it's hard to keep it all straight. So simplicity is always  
10 best.

11 I also believe that following the Rules protects the  
12 most parties. Mr. Roten's concern is one that, that I share,  
13 that if I start expanding what a Rule 26 does, that maybe I'm  
14 shortsheeting some folks on, on the protections and the rights  
15 to file motions to quash, etc., that you would normally  
16 experience. I'm not real keen on just making up our own new  
17 procedure. However, I will also point out that when we were  
18 talking about PIQs, that I was of the view that we would take a  
19 fairly expansion's view of, of discovery over the ACC's  
20 objections to effectively ask the claimants what they could  
21 tell us about these claims, the point being that we're trying  
22 to get those folks a plan that will fund them a, a recovery for  
23 what they're owed. So I thought it was to their benefit as  
24 well.

25 Well, if I'm going to take that kind of viewpoint with

1 the, with the claimants, I need to take the same viewpoint with  
2 the debtor. The debtor's here seeking a more efficient, in  
3 their mind, way of handling these claims and a final resolution  
4 of these claims and providing information as a debtor in  
5 bankruptcy is expected. So I also would view that a  
6 willingness to provide as much information as you can without  
7 impairing your case is, is also part of the equation. So I'm  
8 kind of favoring that idea at the moment.

9 As to how we do this, what I hear people saying is,  
10 "Well, we need to move quickly." And like the categorical log,  
11 sure, it'd be nice on the frontend to be able to, to scratch  
12 out what the categories are, but, until you see the discovery  
13 requests, you don't know what all the categories might be.  
14 Well, it would seem to me y'all can talk some in the interim  
15 and come up with all the categories that you think might apply  
16 and then we could augment them when we finally see the  
17 discovery.

18 I also think we can do some things to get the written  
19 discovery started quickly.

20 The last part of that is the, as to the PIQs versus  
21 the other discovery, I am going to do my best in the case to  
22 try to make sure that none of you get caught without the  
23 information you need to try this estimation. It is still a bit  
24 of a mystery to me why estimation is so important in a case  
25 where the ACC assures me that the claimants are going to vote

1 against any plan. That is a little bit of a conundrum, but  
2 I -- I -- I leave the door open to the concept that there's a  
3 lot of posturing that goes on in a courtroom and then when you  
4 really get down to brass tacks and what people are willing to  
5 do, then you may have another position. But the point is that  
6 estimation at the end of the day, if it doesn't provide the  
7 parties with a resolution, is likely to leave you with just  
8 another stalemate at the case.

9           So again, I think we need to remember that we're not  
10 actually trying the aggregate liabilities. We are trying to  
11 estimate the aggregate liabilities.

12           It would also be helpful if the ACC would step up and  
13 tell us what they think is owed. I don't have a motion and I  
14 don't know of the authority to order them to tell me that at  
15 this stage of the case, but I would encourage to get a number  
16 out there. I've been encouraging that before and the bottom  
17 line is that it may be necessary in the fraudulent conveyance  
18 context to get over the insolvency issue, if there's a motion  
19 to dismiss, to have some idea of what those claims are.

20           So anyway, those are initial thoughts. I think you,  
21 you could move some closer on what you've got now because I  
22 hear the parties saying the same things, "We want to protect  
23 our rights, but we want to move quickly." There's a lot of  
24 fertile ground there for using the discovery rules to get  
25 interrogatories and the like in a context and frontload them so

1 that the information is provided either voluntarily or by  
2 discovery requests while preserving everyone's rights to object  
3 and move to quash and seek protective orders and the like.

4           So those are just some initial thoughts. I'll try to  
5 put a better gloss on it and tell you what specifically I want  
6 to do, but I am of the thought that if there was a way to get  
7 you to a meaningful mediation on this, I would be happy to, to  
8 consider it. But my concern is that all we're going to do is  
9 delay it some further.

10           And there -- that brings the least and the last point  
11 I ought to, at least in fairness, tell you. And don't anyone  
12 get to excited about this because I don't have my current plans  
13 laid out.

14           I was recently reappointed to another 14-year term.  
15 So in theory, I could be here for quite a while and maybe long  
16 enough to get you to an estimation hearing and a, and a  
17 resolution. Practically speaking, I also turned 63 here. At  
18 some juncture there, I will start considering recall status.  
19 What that means and how it looks, Government won't pay me to  
20 stay away from here for at least two years, but the bottom line  
21 is that at some point I will give some thought to that. The  
22 longer this goes out, the more likely it is you're going to  
23 have to train up someone else to complete this case and I think  
24 Judge Beyer's conflicted in this one. I, I can't remember  
25 whether it was this one or DBMP, but Parker Poe's an ordinary

1 course professional in one of the two cases.

2           So anyway, bottom line is that for all of our sakes it  
3 -- it -- sooner beats later on all of these matters and if a  
4 settlement discussion or a mediation at this point in time  
5 avoids all of the spreading, fighting that has gone in Bestwall  
6 and appears to be breaking out here, you know, I'd be happy to  
7 accommodate you if y'all, y'all think that would help, but --  
8 doesn't look like Congress is going to resolve the issue for us  
9 as to whether Texas twosteps are appropriate or not, at least  
10 not in the short order. So we may have to figure all this out  
11 for ourselves.

12           But that's my off-the-cuff remarks and if that helps  
13 you in your negotiations, that's just sort of the way I'm  
14 seeing the matter, generally. And I'll try to get specific  
15 before next week, okay? All right.

16           MR. HIRST: Your Honor, one, one --

17           THE COURT: Yes, sir.

18           MR. HIRST: -- clarification question.

19           The proposed CMO that I handed you today which  
20 reflected some of the new agreements, would you like us to file  
21 that on the docket?

22           THE COURT: No. Let's see where we come out --

23           MR. HIRST: Okay.

24           THE COURT: -- as to -- it would be helpful to have a  
25 redline of where the new changes are that --

1 MR. HIRST: We can do that.

2 THE COURT: -- that you agree on points.

3 MR. HIRST: Yeah.

4 THE COURT: I, I know where you disagree.

5 MR. HIRST: Okay.

6 THE COURT: Last thought. The one thing I can tell  
7 you definitively is that, particularly as the litigation is  
8 spreading in this and in DBMP and as we seem to be, have  
9 another batch of business disputes breaking out in the rest of  
10 my cases, I normally hear Aldrich on a Thursday after I've had  
11 a couple days of court in other matters. We start abbreviating  
12 those time periods on briefs and motions and discovery and it  
13 becomes even more difficult for me to cover everything.

14 I'm not real keen on the idea of shortening time  
15 unless we have an emergency. I will hear you in an emergency,  
16 but I want them to be real emergencies. So don't, not just  
17 cause you don't want to wait till next month.

18 So with all due respect there, we have to deal with  
19 the resources we have and that includes you've only got part of  
20 one judge's time to, to handle your case. So I'm not real  
21 inclined to shorten those time periods on, on the discovery  
22 motions, so. All right?

23 Anything else? If not, we'll recess. I hope you  
24 travel safely.

25 MR. ERENS: Thank you, your Honor.

1 MS. RAMSEY: Thank you, your Honor.

2 MR. ERENS: Have a good holiday weekend.

3 (Proceedings concluded at 12:20 p.m.)

4

5

6

7

8

CERTIFICATE

9 I, court approved transcriber, certify that the  
10 foregoing is a correct transcript from the official electronic  
11 sound recording of the proceedings in the above-entitled  
12 matter.

13 /s/ Janice Russell \_\_\_\_\_ July 8, 2022 \_\_\_\_\_

14 Janice Russell, Transcriber

Date

15

16

17

18

19

20

21

22

23

24

25