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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: : Case No. 20-30608-JCW
 : (Jointly Administered)
ALDRICH PUMP LLC, ET AL., :
 : Chapter 11
Debtors, :
 : Charlotte, North Carolina
 : Thursday, October 27, 2022
 : 9:30 a.m.
 :
: :

OFFICIAL COMMITTEE OF : AP 22-03028 (JCW)
ASBESTOS PERSONAL INJURY :
CLAIMANTS, on behalf of the :
estates of Aldrich Pump LLC :
and Murray Boiler LLC, :

Plaintiff, :
 :
v. :
 :

INGERSOLL-RAND GLOBAL :
HOLDING COMPANY LIMITED, :
TRANE TECHNOLOGIES HOLDCO :
INC., TRANE TECHNOLOGIES :
COMPANY LLC, TRANE INC., TUI :
HOLDINGS INC., TRANE U.S. INC., :
and MURRAY BOILER HOLDINGS LLC, :

Defendants, :
 :
: :



1	OFFICIAL COMMITTEE OF	:	AP 21-03029 (JCW)
	ASBESTOS PERSONAL INJURY		
2	CLAIMANTS, on behalf of the	:	
	estates of Aldrich Pump LLC		
3	and Murray Boiler LLC,	:	
4	Plaintiff,	:	
5	v.	:	
6	TRANE TECHNOLOGIES PLC,	:	
	INGERSOLL-RAND GLOBAL		
7	HOLDING COMPANY LIMITED,	:	
	TRANE TECHNOLOGIES HOLDCO		
8	INC., TRANE TECHNOLOGIES	:	
	COMPANY LLC, TRANE INC., TUI		
9	HOLDINGS INC., TRANE U.S.	:	
	INC., MURRAY BOILER HOLDINGS		
10	LLC, SARA BROWN, RICHARD	:	
	DAUDELIN, MARC DUFOUR,		
11	HEATHER HOWLETT, CHRISTOPHER	:	
	KUEHN, MICHAEL LAMACH, RAY		
12	PITTARD, DAVID REGNERY, AMY	:	
	ROEDER, ALLAN TANANBAUM, EVAN		
13	TURTZ, MANILO VALDES, and	:	
	ROBERT ZAFARI,		
14		:	
	Defendants.		
15		:	
	: :		
16			
17			

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

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Senior Vice President and General
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1 P R O C E E D I N G S

2 (Call to Order of the Court)

3 (Counsel greet the Court)

4 THE COURT: Okay. All right. We're back in Aldrich
5 Pump LLC. There was an agenda filed a couple days ago. I, I
6 trust everyone's had a chance to see that.

7 We'll start with taking appearances. I don't think we
8 have a sign-up sheet. So we'll start in the courtroom and if
9 primary counsel will announce for as many of your cohorts as
10 you, you can, I would appreciate that. That'll speed things
11 up.

12 We'll start with the debtor. Mr. Erens.

13 MR. ERENS: Thank you, your Honor. Brad Erens, E-R-E-
14 N-S, of Jones Day on behalf of the debtors. I got with me
15 Morgan Hirst of Jones Day as well and Michael Evert from the
16 Evert Weathersby firm. We'll be the three speakers at today's
17 hearing.

18 In addition, in the courtroom we have other people
19 from Jones Day. We also have our co-counsel --

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

22 MR. ERENS: -- Rick Rayburn, Jack Miller, and Matt
23 Tomsic.

24 THE COURT: Okay.

25 MR. ERENS: And also, Chief Legal Officer of Aldrich

1 and Murray, Mr. Allan Tananbaum.

2 THE COURT: Okay, very good.

3 How about on this side?

4 MR. LIESEMER: Good morning, your Honor. Jeffrey
5 Liesemer, L-I-E-S-E-M-E-R, Caplin & Drysdale, on behalf of the
6 ACC. With me is co-counsel, Davis Wright of the Robinson --

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

9 MR. LIESEMER: -- & Cole firm and Robert Cox of the
10 Hamilton Stephens firm.

11 THE COURT: Very good.

12 The FCR?

13 MR. GUY: Good morning, your Honor. Jonathan Guy for
14 the FCR with Mr. Grier and my colleague, Debbie Felder, is on
15 the phone, your Honor.

16 Thank you.

17 THE COURT: We'll get the phone announcements here in
18 a moment.

19 Others in the courtroom needing to announce?

20 MS. ABEL: Shelley Abel, Bankruptcy Administrator.

21 THE COURT: Okay.

22 MR. MASCITTI: Good morning, your Honor. Greg
23 Mascitti, McCarter & English, on behalf of Trane Technologies
24 Company LLC and Trane U.S. Inc. I'm joined by Evan Turtz,
25 Trane's Senior Vice President and General Counsel.

1 THE COURT: Okay.

2 MR. TAYLOR: Good morning, your Honor. Joshua Taylor
3 from Steptoe & Johnson on behalf of the Travelers Insurance
4 Companies.

5 THE COURT: Very good. Thank you.

6 Mr. Roten?

7 MR. ROTEN: Morning, your Honor. Russell Roten from
8 Duane Morris and we represent the London Market Insurers.

9 THE COURT: Anyone else in the courtroom needing to
10 announce?

11 (No response)

12 THE COURT: Okay. I'm not sure how many we'll have on
13 telephone that haven't been called before, but let's, let's
14 give it a try. If it gets cumbersome, I'll, I'll break it up
15 by alphabet.

16 But telephonic appearances?

17 MS. HARDMAN: Good morning, your Honor. Carrie
18 Hardman from Winston & Strawn on, as well as David Neier from
19 Winston & Strawn on behalf of the Committee.

20 THE COURT: Anyone else?

21 (No response)

22 THE COURT: Okay, very good.

23 All right. Are there any preliminary announcements
24 or, or state-of-the-union type statements? Mr. Erens, what,
25 what would you like to say?

1 MR. ERENS: Yeah. We thought we'd give a brief
2 status. We haven't been in front of your Honor since the July
3 hearing.

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

6 MR. ERENS: So it's been over three months. That
7 might give some impression that nothing's really happening in
8 the case. That's not at all the case. There's been quite a
9 bit of activity, but it hasn't been transparent to your Honor
10 because a lot of it has to do with the third-party discovery --

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

13 MR. ERENS: -- that your Honor authorized us to go out
14 and issue back in June and July, or I guess in June.

15 THE COURT: Right.

16 MR. ERENS: There's been quite a bit of activity on
17 that. So we thought we'd give you a brief status just so you
18 have some sense of what's been going on and what may be coming
19 down the pike. Some of it --

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

22 MR. ERENS: -- is coming back here. Mr. Hirst has
23 been primarily responsible for managing that litigation. So
24 I'm going to turn it over to him for the status.

25 THE COURT Mr. Hirst.

1 MR. HIRST: Thank you, your Honor. We -- I have a
2 short presentation which I will not put on the screen, but I
3 think it'll be easier for you to follow along just because
4 there's so many moving pieces.

5 So may I approach?

6 THE COURT: You may.

7 MR. HIRST: All right.

8 (Presentation handed to the Court)

9 MR. HIRST: So your Honor, as Mr. Erens said, we have
10 been, at least for me it's been an active three months since I
11 last stood up before you on June 30th.

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

14 MR. HIRST: Just to update you on kind of where we're
15 at, what you might be seeing, and, and just so you know where
16 I've been going.

17 You'll recall the trust discovery motions genesis back
18 to April when we filed it in front of your Honor. We had oral
19 argument. After objections from the ACC and from one of the
20 subpoena targets -- that was Paddock -- we had oral argument in
21 May. Your Honor at that time made your oral ruling granting
22 our motion. That order was then entered after the June 30th
23 omnibus on July 1st and that order authorized us to basically
24 serve four sets of subpoenas, subpoena on the, the Paddock
25 entity which was at that point just emerging from bankruptcy;

1 on DCPF, Delaware Claims Processing Facility, and a number of
2 related trusts that DCPF processes claims for; on the Verus
3 Claims Service facility and a number of trusts they process
4 claims for; and then the Manville Personal Injury Trust. We
5 went about and served those subpoenas. To make everybody's
6 July 4th perfect, we made it on July 5th, a few days after your
7 Honor's order, and since that time, your Honor, we basically
8 have been embroiled in litigation with everybody who got a
9 subpoena and a bunch of people who didn't. And so to kind of
10 update you as to where we're at, I'll start with Paddock.

11 As your Honor recalls, Paddock was, I think at the
12 time on June 30th, was about to emerge from bankruptcy in front
13 of Judge Silverstein up in Delaware. That has since happened.
14 Upon receipt of the subpoena, Paddock, the trust that, the
15 Paddock Trust or the Owens-Illinois Asbestos Personal Injury
16 Trust, to get the, the name right, the Owens-Illinois TAC, and
17 the FCR to the trust all filed motions to quash that subpoena
18 in front of Judge Silverstein. We at the same time had
19 actually filed motions to compel up in Michigan where, was the
20 place of compliance.

21 Ultimately, we all ended up in front of Judge
22 Silverstein and had oral argument on that on August 31st, as I
23 recall, on the motions to quash. Judge Silverstein ultimately
24 denied the motions to quash in a, I think, a three-or-four page
25 opinion where she indicated that the confidentiality

1 restrictions your Honor put in place were appropriate and
2 ultimately denied all the motions to quash.

3 Since that time -- and that was September 22nd. Since
4 that time we've been working with Paddock to get Paddock in
5 position to produce the information in response. We're hopeful
6 that is done in the next month, although we're still working
7 with them.

8 The Owens-Illinois Trust has continued to raise, at
9 least informally, some objections on confidentiality to us.
10 We're happy to work with them. They are represented by Caplin
11 & Drysdale who, of course, is before --

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

14 MR. HIRST: -- your Honor here.

15 So we're hopeful Paddock is essentially wrapped up and
16 that your Honor, frankly, never has to deal with any issues in
17 Paddock at all. We're hoping that will be wrapped up before
18 year's end and hopefully before the holidays.

19 The second group, which unfortunately for your Honor I
20 can't promise won't be coming your way 'cause I know it will,
21 is Delaware Claims Processing Facility, who your Honor has
22 dealt with on a couple of occasions before, and you will get to
23 deal with them again on November 30th.

24 And there, motions to quash were filed by the trusts,
25 by DCPF, and by, actually, two -- actually, one -- I'm sorry --

1 two sets of matching claimants filed separate papers in DCPF.
2 That was all in the District of Delaware in front of Judge
3 Connolly, who your Honor will remember is the judge who
4 presided over the Bestwall subpoenas. We moved to transfer
5 that back to your Honor -- apologies for that -- but we moved
6 under Rule 45(f) to send these back here at the end of August.
7 Judge Connolly granted that order on September 26th. As your
8 Honor knows, we're going to be back here on November 30th.

9 And I'll just note. Your Honor's also going to be
10 dealing with that in DBMP.

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

13 MR. HIRST: DCPF and the trusts in DBMP have actually
14 withdrawn their objection. So in DBMP you're just dealing with
15 the objections of the matching claimants.

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

18 MR. HIRST: They have not withdrawn. All, all of
19 those parties are moving forward on their motions against us
20 and you'll hear those on the 30th.

21 Verus Claims Services. So Verus and the various
22 trusts moved to quash subpoenas in the District of New Jersey
23 in mid-August and we also had matching claimants there join
24 them with their own motions to quash and with motions to
25 proceed anonymously as well. We again moved to transfer on

1 September 9th. Those, all those motions are fully briefed in
2 New Jersey. We're just waiting to hear from the court as to
3 what the court wants to do next. We have a return date, which
4 is November 7th, in, in that case. We don't know exactly what
5 that return date will be, whether it'll be some sort of hearing
6 or order or something else, but we're, we're waiting to hear
7 from the court there.

8 And then last but not least is Manville. We served
9 the subpoenas on Manville on July 5th. In that case, the
10 Manville Trust has actually done, other than assert some
11 objections, have largely stood on the sidelines. We did
12 receive motions to quash and motions to proceed anonymously
13 from the matching claimants there. We actually think the same
14 lawyer has, I think, appeared before your Honor in DBMP after
15 their case was transferred. We again moved to transfer there.

16 One kind of wrinkle in the Manville case is this. Two
17 days after the motions to proceed anonymously are filed the,
18 the chief judge of the DC District Court actually granted it
19 *sua sponte* with no briefing and I, and then deferred and
20 specifically and explicitly said, "There'll be further ruling
21 on whatever judge is assigned to this to determine what to do
22 with this anonymity motion, but in the interim at least it's
23 been granted."

24 So that's -- that -- those motions are all fully
25 briefed. We're waiting to hear back from the DC District Court

1 as to what they're going to do next.

2 All of these, kind of in sum up, all of the motions
3 are fully briefed in all of these things, to the extent they
4 haven't already been ruled on. DCPF, which your Honor will
5 get, is fully briefed on all issues. The objections, you know,
6 I think I or people who have been working with me have written
7 15 briefs over the last three months on these issues. The
8 objections, you've seen these objections before, your Honor.
9 They're not dissimilar. There's little tweaks here and there
10 and little differences, but the objections are all the same in
11 the ones you've heard and you will get to hear at least some of
12 them again and we'll see if there's more for you to hear.

13 Absent any questions, though, your Honor, that's,
14 that's the status on the subpoenas.

15 THE COURT: Thank you.

16 MR. HIRST: Thank you.

17 THE COURT: Any other status by the debtors? Has that
18 got it?

19 (No response)

20 THE COURT: Anyone else want to weigh in?

21 All right. Yes, sir.

22 MR. LIESEMER: Jeffrey Liesemer on behalf of the
23 Committee, your Honor.

24 Just so it isn't overlooked, I'm sure your Honor is
25 aware that there are three adversary proceedings pending in

1 which the Committee is plaintiff. Over the past several weeks
2 the parties have been in discussion regarding case management
3 issues. So I anticipate that there will be at some point a
4 case management order proposed coming in your Honor's direction
5 in some form or another.

6 THE COURT: Does that suggest that it might be
7 consensual or does that just mean it's proposed?

8 MR. LIESEMER: One, one is always hopeful.

9 THE COURT: All right.

10 Anything, anyone else good of the order?

11 (No response)

12 THE COURT: Okay. Thank you.

13 All right. Let's turn to our, our agenda. I'll let
14 Mr. Erens take the, the rowing oar on, on where we go on the
15 continued matters.

16 As I understand, Clark Equipment is going over to
17 November 30th?

18 MR. ERENS: That's correct, your Honor.

19 THE COURT: Okay. With an extension of time -- wasn't
20 there an extension of time to respond yet? Yeah, October 31st.
21 Okay.

22 All right. Any --

23 MR. ERENS: I believe so, your Honor.

24 THE COURT: Anyone else got anything to say about the
25 first matter?

1 (No response)

2 THE COURT: All right. I'll see you back on November
3 30.

4 MR. ERENS: Your Honor, actually, as we're on a
5 November 30th date, I know there's some, been some back and
6 forth. There were some start time changes.

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

9 MR. ERENS: And we may have resolved all of it, but
10 maybe it's worth just mentioning to all parties.

11 THE COURT: Yeah. While we have everyone here and,
12 and paying attention, go ahead and tell me what you got in mind
13 on timing.

14 MR. ERENS: Well, I think originally the hearing was
15 going to start in the afternoon. I think --

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

18 MR. ERENS: We assume your Honor had something in the
19 morning, but I think that got changed, maybe. And so we're
20 back to the 9:30, but I thought we, just had a confirmed start
21 time for November.

22 THE COURT: We're trying to figure out. I, I know I
23 had a, a problem in the morning in DBMP on, on Monday's
24 hearing. I wasn't sure that we had one here. There was a
25 little bit of confusion there, but whatever.

1 On November the 30th, as far as I know, I'm wide open.

2 MR. HIRST: And, your Honor, actually, I wanted to
3 make sure you were alerted to something Mr. Miller and I have
4 been dealing with the last 24 hours.

5 The DCPF stuff is up that day. We got a call from the
6 trusts' lawyer who has some sort of conflict and they were
7 asking if they could appear either telephonically or remotely
8 to do their part of the argument and there was some question as
9 to whether they were going to ask for it to start at 11:00 or
10 9:30. We said, essentially, "We don't have an objection to you
11 appearing telephonically. We don't have an objection to a
12 different start time. Take it up with the Court and let us
13 know."

14 THE COURT: Right.

15 MR. HIRST: So you may get -- so you're aware of the
16 call we received. You may get some sort of notice from the
17 trusts' lawyer on, on trying to proceed somewhat differently on
18 that day for them.

19 THE COURT: Does anyone know? Do we have a full day's
20 worth of, of hearings there? I mean, can we start the rest of
21 the case at 9:30 and then pick them up later in the morning
22 whenever the conflict abates or do we just need to move
23 everything into that with the later start?

24 MR. ERENS: The answer to that may be subject to what
25 happens at this hearing. We don't have any motions --

1 THE COURT: Okay.

2 MR. ERENS: -- up for November. The one thing that's
3 up for November is, is the motion to quash that was transferred
4 back.

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

7 MR. ERENS: The two motions that are up today, you
8 know, there's been some discussion of are they going to be
9 ruled on today or are they going, you know, to be deferred till
10 the next hearing, but that would be it.

11 So the, regardless, the, the hearing should be
12 relatively short.

13 THE COURT: Okay.

14 MR. HIRST: And to be clear, your Honor, we did tell
15 the trusts' lawyer that 9:30 was the time we had just been
16 alerted to. They were checking to see if that was going to
17 work and were going to get back to us. And so just wanted --

18 THE COURT: Well, here -- here --

19 MR. HIRST: -- so you don't get surprised by getting a
20 note from them.

21 THE COURT: That is --

22 MR. HIRST: That's kind of where we're at.

23 THE COURT: Well, I'm not worried about being
24 surprised. I'm worried about being able to react to it with as
25 many people --

1 MR. HIRST: Yeah.

2 THE COURT: -- as are involved.

3 If y'all think we can do everything we need to do in
4 half a day, then we'll, we'll try to accommodate them. If we
5 have a day's worth of work, then, you know, let's do, use the
6 time.

7 But as far as I know, you've got the whole day.

8 MR. ERENS: Okay.

9 MR. HIRST: And based on the correspondence we got,
10 the last correspondence we got late last night, it sounded like
11 9:30 in the morning was going to be fine for everybody.

12 THE COURT: Okay.

13 MR. HIRST: So -- but, but we've held off on file, on
14 renoticing anything until we get that all squared away --

15 THE COURT: Okay.

16 MR. HIRST: -- so.

17 THE COURT: All right. Well, let's see where we go
18 this morning, then, and what, what we may have to deal with, in
19 addition to what you've already got scheduled.

20 But as far as I'm concerned, as far as I'm concerned,
21 starting late is fine --

22 MR. HIRST: Okay.

23 THE COURT: -- if you want to.

24 MR. ERENS: Okay.

25 THE COURT: If that is a big problem, then that's the

1 only matter, okay?

2 MR. ERENS: All right, good.

3 All right. So then that gets us to the matters going
4 forward in the base case. We've got two motions. The first
5 one is the mediation motion filed by the BA.

6 THE COURT: Ready to go, Ms. Abel?

7 MS. ABEL: Thank you, your Honor.

8 I'd just like the record to reflect that I don't like
9 doing it over here, but given how many people are at counsel
10 table, I will do it over here. So --

11 THE COURT: I'm just grateful we have these larger
12 courtrooms at all, but --

13 MS. ABEL: Me as well. And I, everybody was very
14 pleased with the, the new entrance. We got to show that off
15 today, too, so.

16 So I have injected myself into the fray a little bit
17 here by filing a motion to mediate. I think a lot of people
18 have sort of the question of, of why, which is the first thing
19 I wanted to start with.

20 I attended, along with everybody else here, the June
21 30th hearing and took to heart the message from the Bench that
22 if there's somebody out there that wants to file a motion to
23 mediate, that it should be filed. It was my hope and intention
24 that by my office filing it as opposed to putting that burden
25 on a party, that perhaps everybody could hear it differently.

1 I, I try to serve as a, as a neutral --

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

4 MS. ABEL: -- in these cases where I see a benefit can
5 be served. I'm not sure that it had the benefit that I hoped,
6 but that was the reason that I, I took the initiative of doing
7 so.

8 I believe in mediation. I have been a party both as
9 a, as an advocate in, in this office and in my prior private
10 practice where disputes that seemed totally unable to be
11 resolved have been resolved and I have been surprised at some
12 of the things that a mediator has been able to achieve just by
13 creating space and time and structure for conversation.
14 Because there is often lots of things that can be done other
15 than talk about the things that matter in a case. We're all
16 very busy and there is a lot of stuff that can and could be
17 done in this case, not all of which may go to the, to the gist
18 of why we're here.

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

21 MS. ABEL: And I will also just observe -- I don't
22 have documents available for the Court. I started an exhibit
23 and then decided that it's on the docket. You can go look for
24 it if you're not sure. -- but there's a lot of cases like this
25 case that have mediated. Paddock mediated. Imerys is

1 mediating still, just recently extended. LTL is mediating.
2 Bestwall mediated. It is unusual, really, in some ways to have
3 a case of this size and of this amount of money at stake where
4 mediation isn't on the table.

5 There's some -- people got burned and were frustrated
6 with the process in Bestwall. It's a completely different case
7 and I'm just bummed, is the technical term, that that shadow is
8 hanging over this case. It's a different case, has different
9 people involved, different claimants who, at the end of the
10 day, we're talking about people who are sick and dying and I
11 bet if we called any one of them individually and said, "Would
12 you like to get paid," they'd say, "Yes." And we have a debtor
13 who is asking for an opportunity to pay and I think if there is
14 an opportunity to discuss amount, it's worth having the
15 conversation.

16 I'm totally aware of the fact that the ACC thinks this
17 case should be dismissed. I, I understand that they're going
18 to continue to pursue that strategy, but as of today that's not
19 before the Court. And so the case continues to proceed. And I
20 checked last night. This is only the interim fee applications.
21 This is not the monthly applications that are filed by --

22 THE COURT: Right.

23 MS. ABEL: -- that are circulated by e-mail, but we
24 have exceeded \$60 million in professional fees in this case and
25 there is a great deal at stake and people are entitled to bring

1 the case that they want to bring. But it can't hurt, in my
2 view, to allow a mediation conversation to run in parallel with
3 what we all acknowledge and understand to be a substantial,
4 sort of giant litigation strategy that we have embarked upon
5 with the entry of the case management order.

6 It is going to -- it can be as big as everybody wants
7 it to be, but at the end of the day the issues are not really
8 unknown or unknowable. There is a database. There are experts
9 and they are, they have a track record of being able to run
10 those reports from the information that's available and I just
11 think that everybody ought to start talking about those things.

12 Based on the opposition filed by the ACC, it appears
13 that they are talking. I will say that there's some -- it's
14 unclear to me how official or how productive those
15 conversations are.

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

18 MS. ABEL: But if they are talking, my desire would be
19 to allow there to be a, a nonparty who provides an
20 accountability to that, to those conversations and gives it the
21 structure -- and again, the structure, the time, and the, and
22 the location -- to allow those conversations to, to happen in a
23 way that is more likely to be productive and/or move at a pace
24 that may keep us from being here for years from now.

25 My motion -- oh. And the, and the last thing I want

1 to say. Because of the timing of this case -- and really, all
2 of the cases that are pending in this court, the, all the
3 asbestos cases -- there is an unavoidable difficulty in
4 breaking an individual case from the pack. I fret for the
5 lawyers involved about how they decide whether and how to
6 pursue a particular strategy for an individual client in this
7 case because they are so similarly situated. I really feel
8 like it's fraught with difficulty in not taking a position in
9 one case that could damage a client in a different case.

10 Mediation, in my mind, is a, is an opportunity to
11 break this case out of a logjam and give -- no offense to your
12 Honor 'cause you've done an excellent job of keeping the cases
13 straight. Probably better than I have -- but if a mediator is
14 only mediating this case and not any other case, there may be
15 an opportunity to hear facts and force parties to take
16 positions and -- not force them to take positions -- force them
17 to commit to a path in that settlement conversation that is not
18 necessarily something that they can do in a public forum
19 because of the implications it could have on the other cases
20 that are pending.

21 I have told entirely too many people this theory, but,
22 you know, a normal bankruptcy case has a nice game theory box
23 that we learn about in high school and our game theory box for
24 these cases has gotten incredibly complex and it's, you know,
25 it -- it doesn't -- it's not just square here because of the

1 implications that each case has on the other cases and in my
2 view, an opportunity to mediate would give this case an
3 opportunity to be just this case and not all the cases that
4 have similar facts.

5 THE COURT: Okay.

6 MS. ABEL: My motion did not name a mediator. It was
7 my great hope that peace would break out and that we would be
8 here talking about who to, who would mediate. Given the lack
9 of peace that broke out, I decided just to wait on that issue.
10 I think if you ordered us to mediation today, or soon, that the
11 parties would probably appreciate the opportunity to talk about
12 who that would be. I have ideas. I've shared them with the
13 parties, but I don't know that I'm prepared to name a mediator
14 today unless you want to know. It is my hope and expectation
15 that I would really drive to have somebody who is not presently
16 mediating any other asbestos cases do it for the reason that I
17 would like this case to have the opportunity to be its own case
18 and not the sort of writ large asbestos issues and Texas two-
19 step burden that -- that is -- that exists in this case.

20 We received a response from some insurers that wanted
21 to be participants in the conversation. I will let the Court
22 know that in LTL there have been amendments to the mediation
23 order that added them as participants. What I would propose to
24 the Court is that the insurers be named as parties to the
25 mediation, but that we empower the mediator, if approved, if

1 and when approved, to decide how to do the mediation. I think
2 that there shouldn't be a requirement that all parties be at
3 every, every meeting with the mediator and that there are
4 discrete issues between particular parties that are, perhaps,
5 more difficult conversations to have.

6 And so I would like for the order to be very specific
7 that the mediator be empowered to decide who to, who to invite
8 to what sessions and when, but to allow the insurers to
9 participate as a party, to the extent that the mediator prefers
10 that they participate.

11 And then on timing, the debtors have suggested that
12 now is not the right time, that perhaps it will be later.
13 There's a lot of stuff happening in the world on these cases.
14 We've got, argument has been made to the Third Circuit in LTL.
15 People are waiting for that ruling. I personally am expecting
16 that may go all the way up to the Supreme Court and if we're
17 going to wait for rulings in other cases to talk about this
18 case, we could be here forever. I just don't know that there's
19 ever going to be a great time and for that reason I think
20 there's no time like the present and any, anything that we can
21 use, along with the litigation, to see if maybe the issues can
22 be narrowed I think would be of benefit to the case.

23 And it's for that reason I filed the motion and I
24 would ask that the Court approve it.

25 THE COURT: Thank you.

1 It might be useful to get those supporting the motion
2 first and then hear the objections and then we'll do rebuttal
3 across the way.

4 Mr. Guy.

5 MR. GUY: I think that's me, your Honor.

6 May I approach? I have some --

7 THE COURT: You may.

8 MR. GUY: -- documents.

9 (Document(s) handed to the Court)

10 THE COURT: Thank you. All right. We have more depth
11 to the bench than we did in the old building. I need longer
12 arms.

13 Whenever you're ready.

14 MR. GUY: I just got a copy for Mr. Mascitti, which I
15 had previously handed out the others, your Honor.

16 MR. MASCITTI: Thank you.

17 MR. GUY: You're missing one, but it's not important.

18 Your Honor, the exhibits that I've handed out, Exhibit
19 No. 1 relates to the sampling motion. So we'll, we'll get to
20 that later.

21 Your Honor, we support the Bankruptcy Administrator's
22 motion and the question presented by it is whether we're going
23 to take the opportunity to move this case forward for the
24 benefit of the classes of Aldrich and Murray claims. And those
25 claimants, if we don't, they're dying every day and they're not

1 getting any compensation in their lifetimes and their fates
2 right now are tied to what's happening in other cases that we
3 have no control over.

4 I'm going to talk about in more detail later, your
5 Honor, but I want to sort of put this in a, if you were to
6 think this is a regular chapter 11 case. You have a debtor-
7 parent there who's willing to pay \$545 million. They've
8 established the QSF. They put the money on the table. We have
9 an agreement between the debtors, the parent, and the largest
10 creditor constituency.

11 So if this is a regular chapter 11, we'd be already
12 done. And it's clear that Mr. Grier represents the largest
13 creditor constituency by many multiples. I don't want to say,
14 speak for the insurers and say they're onboard, but my
15 understanding is they're supportive.

16 And we have a plan on file, your Honor, that mirrors
17 the Garlock plan that this Court approved, that many of the
18 same players and parties in Garlock approved, too.

19 We also know -- and I'll explain why -- that the ACC's
20 claims experts, LAS, have either completed or nearly completed
21 their estimates of the debtors' asbestos liabilities. They've
22 been working on that since November and they've incurred fees
23 of over \$400,000. We know what liabilities we're talking about
24 here because much of the liabilities are identical to the
25 products that were at issue in Garlock, encapsulated gaskets

1 and packing and the like.

2 We also know, your Honor, the asbestos trusts are the
3 fairest, quickest, and most efficient way to get claimants paid
4 fairly.

5 And last, we know, your Honor, that Aldrich and Murray
6 claimants are dying every day with no compensation in their
7 lifetimes.

8 So if this were a regular bankruptcy case, you would
9 think everybody will be jumping up and down and saying, "Yes.
10 Let's mediate," but there's no urgency and I say this both on
11 the debtors' and the ACC. There is no urgency here. We think
12 there should be mediation and all that needs to happen for it
13 to be successful is the ACC to, out of the courtroom where no
14 one needs to be taking positions that may impact other cases,
15 no one needs to be arguing anything, it's all confidential,
16 they just need to put their number on the table. We don't know
17 what it is yet, but we do know this, your Honor. It's similar
18 products to what an issue were in Garlock except for the Murray
19 Boilers, which my understanding --

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

22 MR. GUY: -- is that production of those ended in the
23 late fifties. In the Garlock case, LAS, the same claims
24 experts, ten years ago, even longer, they estimated the
25 liabilities to be \$1.2 billion, ten years ago.

1 We just need to get agreement on a funding number.

2 THE COURT: Hang on one second.

3 We've got someone on the line who doesn't have their
4 receiver muted. I'd ask you to do so now. We'll let you
5 unmute with Star 6 if you need to speak.

6 Go ahead, Mr., Mr. Guy.

7 MR. GUY: Thank you, your Honor.

8 And I want to stress, your Honor, in Garlock and in
9 this case the experts can calculate the number by reference to
10 the debtors' settlement database that everybody has. It's
11 there. There's no secret how to do it. It's been done dozens
12 and dozens of times. It doesn't have to be hard.

13 I'm going to explain further, your Honor, but we are
14 asking you to break this logjam, separate this case from the
15 other cases. This is its own case. The FCR only represents
16 claimants in this case. That's who he has a fiduciary to, duty
17 to. Do what Judge Silverstein did in Paddock and do what Judge
18 Kaplan did in LTL. Hold the parties to mediate and see what
19 happens.

20 Let me explain our rationale for that, your Honor. We
21 represent the class of individuals who've been exposed to
22 asbestos fibers in the debtors' products and who are going to
23 get sick in the future. It could be asbestosis, lung cancer,
24 mesothelioma, a number of diseases. We know from the science
25 trial in Garlock who gets exposed, what circumstances they get

1 exposed to the encapsulated products. We're not acting here
2 for the Bestwall claimants, we're not acting here for DBMP, and
3 we're not acting here for LTL. They're no concern of ours. We
4 only have one concern, how to get money into the hands of
5 Aldrich and Murray claimants as quickly as possible. We can't
6 justify not taking action here because of something that might
7 happen in another case, that may affect our clients in another
8 case, which is what is happening here, your Honor. We're held
9 up because of what's happening in other cases and this has real
10 life consequences. Because people are suffering. They can't
11 pay their medical bills and they are dying. That is no
12 exaggeration.

13 This is what the Tort Committee said in LTL:

14 "Every member of Bestwall's tort claimants' committee
15 has now died without ever seeing their day in court or
16 receiving any form of compensation in their
17 lifetimes."

18 You know, I, when I heard that, when I read that, your
19 Honor, "any form of compensation in their lifetimes," that
20 really struck with me. Asbestos claimants are generally blue-
21 collar workers. They don't have a lot of money. And these
22 diseases are very, very unpleasant diseases and we all know
23 the, the situation with health care in the United States.
24 They're facing oppressive medical bills and they are all going
25 to be worried about how they can provide for their families

1 after they die. It is no solace to say to them, "Well, just
2 wait and see what happens in LTL. Let's see what we can do
3 with the Texas twostep there," or, "Don't worry because you
4 might get recoveries in other cases." As fiduciaries, we are
5 only acting for the claimants in this case. We can't justify
6 doing nothing because they may recover in other cases.

7 The best result for the classes of both current and
8 future claimants, your Honor, is the prompt creation of an
9 asbestos trust and compensation in their lifetimes, not after
10 they die. That's why, your Honor, we worked so hard, the
11 debtors' professionals and the FCR, to reach an agreement
12 quickly with the debtors in a matter of months after his
13 appointment and why we got funding for that. But that's just,
14 we're sitting here now. We're 2-1/2 years later with no
15 progress because the law firms want the debtors to exit to the
16 tort system. Not just here, Bestwall, LTL, DBMP. Is that good
17 for the claimants in this case? As the Bankruptcy
18 Administrator said, I'm sure if we got them here, asked people
19 and said, "Okay. You were a pipefitter. We know you worked
20 around gaskets. You're very ill. You have mesothelioma.
21 Would you like to get paid," I think I know what the answer
22 would be. I don't think it would be a intellectual debate
23 about whether the Texas twostep is proper or not.

24 And you can't reconcile an exit to the tort system
25 with the best interests of the class of claimants. And I want

1 to focus on that, your Honor, the class of claimants. That's
2 who we're representing here as fiduciaries. We're not
3 representing individuals. It's the class of claimants.
4 Because the exit to the tort system, that's delaying
5 compensation, unequal treatment for similarly situated
6 claimants.

7 Your Honor, there's not a lot of work to be done for
8 mediation. So if you refer to -- and I'm -- they're in a
9 different order -- but Exhibits 5 and 6, your Honor, just
10 example bills from LAS, which is the ACC's claims expert, the
11 equivalent of Bates White, your Honor -- and our expert is
12 Ankura -- and, you know, Dr. Peterson is the, the lead expert
13 there. And I just picked out a couple of their bills because
14 Exhibit 5, your Honor, this is their June bill. You know, the
15 entries talk about working on forecasts, which is exactly what
16 they do, and they've been working on them for a number of
17 months. There's an entry here from Mr. Dan O'Rourke
18 (phonetic), someone we know very well, and he said "6/21/22
19 finish Aldrich and Murray updated liability estimate." So
20 that's back in June. If you look at Item 7, your Honor, which
21 is a more recent bill from August, but it, it was sent out in
22 October, that again talks about "updated forecast to reflect
23 changes in inflation rates."

24 So I obviously don't know, your Honor, whether they
25 have finally completed their forecasts and whether there's

1 still worked to be done, but we know that they have spent
2 months and months working on them and that they've spent
3 400,000, \$403,000 preparing them. So they have to be close.

4 And I would note, your Honor, that LAS is using the
5 settlement database that the debtors have made available to us
6 and it reflects what the debtors paid prepetition. They only
7 had, as I understand it, one verdict, one. So to create this
8 report, this forecast, it's not complicated. You look at the
9 settlement database, you look at claims history, you look at
10 claim rates, you look at dismissal rates, you make assumptions
11 about discount rates and inflation rates, and you use various
12 disease incidence curves, the Nicholson curve. You will
13 remember the parties talking about that. This is done over and
14 over and over in every single asbestos case.

15 How do I, why do I believe, your Honor, that this case
16 can settle at mediation and why when the, both the debtors and
17 the ACC say, "No, no. We're not ready to go to mediation. We
18 don't want to do it"? Well, Paddock, your Honor. I know that
19 the ACC don't like me mentioning Paddock, but I just wanted you
20 to refer to Exhibit 4, your Honor, which is the similarities
21 between Bestwall, DBMP, Aldrich/Murray, and Paddock.
22 Obviously, your Honor, they're both asbestos products. The
23 difference is is that Paddock actually had the Kaylo brand. It
24 was the last of the "Big Dusties" and it was very toxic amosite
25 and chrysotile asbestos. Both had, they all had pre-petition

1 restructurings. They all had the purpose of resolving asbestos
2 liabilities. They all had funding agreements with solvent non-
3 debtor affiliates. They had market caps of greater than a
4 billion dollars and they have, in many cases, the same law
5 firms. We've highlighted those in black that are the law firms
6 on this case that also are acting for asbestos claimants on the
7 committee in the other cases. Same law firms, too.

8 There's actually a typo, your Honor. Mr. Evert
9 pointed out that Riley Safer on Paddock Enterprises is the
10 debtor's counsel. So we apologize for that.

11 And for the FCR, they all share the same claims
12 expert, Ankura.

13 So there's a lot of similarities in terms of
14 professionals, players, how they got there.

15 The confirmation order I've included, your Honor, this
16 is the Paddock confirmation order. This is 3, Exhibit 3 and
17 this is Judge Silverstein's order -- I didn't include the whole
18 thing, your Honor, 'cause it's quite lengthy. And obviously,
19 we can get it to you if you want to -- but if you would turn to
20 Page 9, your Honor, Paragraphs 27 and 28 talk about the debtor
21 being a successor by merger from a pre-petition restructuring,
22 just like what happened here, and then they talk about all the
23 various agreements that they had in place, the support
24 agreement, the service agreement, just like they have here.
25 It's the same thing. To the extent a pre-petition

1 restructuring is as bad as the Black Plague, apparently it was
2 okay in Delaware.

3 And the next, Page 11, your Honor, there's a
4 discussion about, you know, their claims and I want to focus on
5 Paragraph 32. Because the, the court there references what we
6 do know and what we said before, but their claims were
7 presented through administrative claims handling agreements.
8 What that means is unlike other cases, your Honor, where a
9 complaint is filed publicly and an allegation is made of
10 exposure to a debtor's asbestos product, in most cases in
11 Paddock they would just go straight to the company and they, an
12 agreement would be worked out between the plaintiffs' firms and
13 the company itself. You can see there, your Honor, that as of
14 2019 they resolved 400,000 asbestos claims and incurred \$5
15 billion in costs.

16 So -- then we get to Paragraph 35, your Honor. We
17 talked before about there being a mediation in Paddock.
18 Curiously, the ACC asked for it and the judge agreed. Here,
19 they're like, "No, no, no. We don't want to do it. We don't
20 want to do it." And they, they reached agreement in a matter
21 of months, \$610 million, in May and the confirmation order is
22 May 2022. They started that process in February '21, your
23 Honor, matter of months.

24 Tab 5, your Honor, is the fees that have been spent in
25 these four cases. Paddock is a posterchild for doing it right.

1 \$33 million. That's still an awful lot of money, but they
2 filed in 2020 and the plan went effective in July '22, this
3 year. Now look at Bestwall. They filed five years ago. The
4 legal fees are \$186 million. Our case, the Bankruptcy
5 Administrator is right. We have a total of \$64 million and
6 where are we? DBMP's the same. Paddock, they got it done
7 because there was a will to get it done.

8 Your Honor, there's an interesting section, Paragraph
9 37, and when I read it I must say it did cause me to smile a
10 little bit. I'm going, I'm going to read it out:

11 "The use of historical settlement and verdict data
12 that the debtors and its affiliates did not move for
13 an injunction or temporary restraining order staying
14 claims against its affiliates and that the debtor and
15 its affiliates did not engage in aggressive litigation
16 tactics were critical components that ultimately led
17 to a successful settlement among the plan proponents."

18 I think I know who the audience is for that, your
19 Honor. I'll note, your Honor, that there's no reference to a
20 declaration, nothing.

21 I'll also note, your Honor, that Judge Silverstein's
22 order asking for mediation, which we've attached as Tab 7 just
23 as an example, to the extent the Court thinks and agrees with
24 us that mediation is appropriate, you, you can see how she
25 structured it. Paragraph 4 in there is very clear about, you

1 know what? You're not going to talk about the mediation, what
2 happened, why, what was going on. Standard provisions, your
3 Honor, and then here, right here, there's this language saying
4 why it was successful. But regardless of whether it's, whether
5 it was appropriate or not, let's break it down.

6 So the first thing is it was successful because of
7 "the use of historical settlement and verdict data." We agree.
8 The debtors agree. We had discussions with the debtors. By
9 reference to their settlement and verdict data, that's the
10 database that everybody has access to. That's the settlement
11 and verdict database that the, LAS is using to calculate its
12 forecasts right now. So that's a nonissue.

13 The second one is, why it was successful was a
14 negative, "that the debtor and affiliates did not move for an
15 injunction or temporary restraining order against its
16 affiliates." They didn't need to because they weren't being
17 sued in the tort system and no one was trying to sue them in
18 the tort system. No one was putting their hand out and saying,
19 "Your Honor, Judge Silverstein, can you please relief from the
20 automatic stay so we can sue?" They didn't sue for the reasons
21 we just talked about. They had these administrative settlement
22 agreements. What evidence do we have of that, your Honor? No
23 one asked to lift the automatic stay.

24 And then the last one is "and the debtor and its
25 affiliates did not engage in aggressive litigation tactics."

1 I, I don't know what that means exactly. In the past, it's --
2 the ACC counsel have said, "Well, mean things are being said
3 about the way the plaintiffs' law firms double dipped." Your
4 Honor, that isn't the claimants. That's not the people who are
5 dying. That's the practices of the claimant law firms. I
6 think the Court knows whether the debtors have been aggressive
7 in their litigation here. I don't think so, but the ACC are
8 big boys, you know. They're not wilting violets. They're not
9 going to, you know, crawl into the corner because someone said
10 something in a pleading. They know. They understand.

11 So none of those things, your Honor, not one of them
12 is a justification for why we shouldn't have a mediation here,
13 not one.

14 One thing that's missing from that list, your Honor --
15 and it, and it's glaring -- because in DBMP, Bestwall, and this
16 case the ACC want an exit to the tort system because of the
17 pre-petition restructuring. They, they, they made very clear
18 that they are morally offended by it. They, they think it's a
19 fraud. It doesn't say here, "We weren't able to reach the
20 settlement because there was a pre-petition restructuring."
21 And obviously, they, they were, even though there was one.

22 So it can't be an obstacle here if it wasn't an
23 obstacle in Paddock.

24 Your Honor, I note that the settlement of \$610
25 million, that, when you consider the products at issue and the,

1 the scale of the, the, the liabilities, it's not a ridiculously
2 different number from what we have already reached agreement
3 with on the debtors. So I only say that in sort of like, you
4 said it before, your Honor. Well, what are the bookmarks? We
5 need to know what the bookmarks are. We can't be so far apart
6 that there isn't a possibility of bridging the difference. And
7 we know, your Honor, that the ACC's experts either have their
8 liability estimates ready or they're very close.

9 Your Honor, one of the things the ACC say in their
10 response is, "Well, we've been talking for several months with
11 the debtors to try to resolve these cases." I don't know where
12 they are on that. We haven't been invited to those discussions
13 or been privy to them, but if they're willing to talk to
14 resolve their cases why are they not willing to talk in the
15 context of a mediation where we can get a number on the table
16 and the debtors and the debtors' parents can decide, "Well,
17 that's way too rich," or they can decide, "Well, yeah. We will
18 -- we're -- we're going to try to reach agreement on a number"?

19 Your Honor, the last exhibit is the mediation order
20 entered by Judge Kaplan. It's from May 2022, but it follows an
21 initial mediation order from March 2022. The only reason I put
22 it in here, your Honor, again, is if you were looking for an
23 example to follow for a mediation order. We have that already
24 from Judge Kaplan. What's relevant, your Honor, is not only
25 were the parties eager to mediate in Paddock, many, many are

1 the same players, many, many are the same professionals,
2 similar issues, you know, pre-petition restructuring. I'm not
3 aware that anyone was saying that they were opposed to
4 mediating in LTL. And that mediation order was entered much
5 earlier in the case compared to this one. And, and it didn't
6 have any of the things we talked about, you know, funding on
7 the table, agreement with the largest creditor constituency,
8 and the like.

9 Your Honor, I've been involved personally in dozens of
10 mediations and in nearly every one of them everyone in advance
11 says, "No, we're never going to settle. No, no. It's not
12 going to happen," you know. "We're adamant. We're right.
13 We're going to win," but they've all been successful, dozens
14 and dozens. What the mediation does is it avoids the need for
15 arguments being made public in court and as the Bankruptcy
16 Administrator said, we are at the peril of these other cases.
17 People are reluctant to say things because it flows over to
18 them and has impact on those cases. That's not true in a
19 mediation. It will be confidential and we can just get to the
20 nub of the issue. The nub of the issue is are they, is the ACC
21 willing to put a number on the table? I would hope, yes. Are
22 they able to put a number on the table? Yes, we know that.
23 And is there a possibility of the parties reaching an agreement
24 on a consensual number? That's all we need to mediate.
25 Because once we've got an agreement on the number, the rest

1 flows.

2 Your Honor, I urge the Court to use its power and
3 discretion to mandate that the parties put their numbers on the
4 table and mediate, at least try to reach an agreement, try.
5 The downside is a small expenditure of time. Everybody here
6 knows these issues. There's very, very smart and very
7 competent counsel who are acting in good faith for the best
8 interests of their clients. And we've worked with all of them
9 before successfully to resolve issues and I see no reason why
10 it couldn't happen here. It's not -- it's not -- we're not
11 talking about a months and months exercise. We're talking
12 about, literally, with the right will, put your number on the
13 table. Let's talk about it. What is the support for it? What
14 are your parameters? What are your assumptions? Are they
15 reasonable? Can we reach agreement on a number that is
16 acceptable to everyone? The upside, your Honor, is that if
17 we're right, claimants will be paid this time next year. If
18 we're wrong, we will have spent some time and I will be the
19 first to say, well, I'm sorry. It didn't work, but we will
20 have at least tried, your Honor.

21 Thank you.

22 THE COURT: Thank you.

23 Any others? I'm not sure, Mr. Roten, whether your
24 client was willing or supporting the motion. So I'm trying to
25 get everyone who's advocating for this.

1 MR. ROTEN: Good morning, your Honor. Russell Roten
2 for London Market Insurers.

3 I'd like to start out by saying I appreciate the
4 comments from the Bankruptcy Administrator about the insurers'
5 involvement in this process. I think the majority of the
6 insurers would -- I think I can speak for the majority of the
7 insurers, maybe all of them. We didn't take a position, yea or
8 nay, on the mediation itself. We think that's the, the Court's
9 decision and we're happy to follow along with whatever the
10 Court decides.

11 But if there is mediation, then the insurers wish to
12 participate in it. We've been in many of these bankruptcy
13 asbestos mediations going back, in my personal experience,
14 decades now and the insurers have a lot of information, a lot
15 of experience, and we think our involvement in it, in the
16 mediation would be very productive for everybody, everybody
17 involved.

18 But if the Court does order mediation, your Honor,
19 then we, the insurers, wish to be treated as a full and equal
20 participant in the mediation from the beginning and that means
21 we would like to have a voice in who the mediator is, what the
22 ground rules are, what the general procedures are.

23 So we leave it, your Honor, to the wisdom of the Court
24 as to what, how the Court rules, but if the Court does go down
25 the mediation route, then we want to be involved and play an

1 active and I hope positive role in moving forward.

2 THE COURT: All right. Thank you.

3 MR. ROTEN: And I think Mr. Taylor is also here from
4 Travelers.

5 THE COURT: All right.

6 Mr. Taylor?

7 MR. ROTEN: You have two, two insurers physically
8 present in your courtroom today, your Honor.

9 THE COURT: Mr. Taylor?

10 MR. TAYLOR: Good morning, your Honor. Josh Taylor
11 from Steptoe & Johnson on behalf of the Travelers Insurance
12 Companies.

13 Again, Travelers does not take a position on whether
14 mediation should or shouldn't occur. However, to the extent
15 the Court does order mediation and as set forth in the insurer
16 response, Travelers is willing to participate in that mediation
17 if so ordered, but should have input into the mediation
18 procedures, including selection of the mediator. And as
19 Mr. Roten indicated, we also understand that the other insurers
20 take a similar position to this.

21 THE COURT: All right, very good.

22 Anyone else advocating in, in favor of mediation?

23 MR. MASCITTI: Good morning, your Honor. Greg
24 Mascitti again, on behalf of the non-debtor affiliates.

25 Your Honor, we do support mediation. We certainly

1 would like to see a consensual resolution to this case and I
2 just want to express our agreement with a number of the points
3 made by Mr. Guy and Ms. Abel. In particular, this is a
4 different case. It's not like the other cases and I liked, in
5 particular, Ms. Abel's comment that it should have an
6 opportunity to be its own case. We have different products
7 than some of the other cases. We have insurance assets,
8 hundreds of millions of dollars of them. We have a \$270
9 million QSF. And, and maybe most importantly, your Honor, we
10 have the support of the FCR representing 80 percent of the
11 claimants. That makes this case different and I, I fully
12 support this case having an opportunity through mediation to be
13 its own case.

14 Your Honor, I also would like to follow up on the
15 point about the dynamics. This is unusual and that there are
16 multiple other cases that have similar issues and we believe
17 that a mediation would give the parties an opportunity to,
18 perhaps, express positions, take positions that they may not
19 publicly take because of the ramifications it could have in
20 other cases.

21 Your Honor, and I would also follow up on Ms. Abel's
22 comment about the powers of mediation. I have had two
23 bulldogs, great bulldogs, and, and they were separately, you
24 know, the most wonderful, adorable dogs ever, but for some
25 reason they didn't like each other and, and there would be

1 moments where they would get into these fights and but for me
2 stepping in, those dogs would just continue to fight until one
3 of them died. And I've been one of those dogs in these cases
4 and I understand what it's like to get into the fight and
5 you're not going to stop until someone steps in and calls time
6 out and brings it to the table. And I have likewise been
7 surprised at what mediators have been able to do in cases like
8 that.

9 And for those reasons, your Honor, we support
10 mediation, but we defer to the parties as to, and the Court, as
11 to, you know, what the timing is for that mediation and when it
12 would be appropriate.

13 Thank you, your Honor.

14 THE COURT: Thank you.

15 Anyone else wanting to speak in, in support of the
16 motion?

17 (No response)

18 THE COURT: All right. Let's go to the other side of
19 the room, leading off with the ACC.

20 MR. LIESEMER: Good morning, your Honor.

21 THE COURT: I would like to say it is nice to see the
22 debtor and the ACC on the same side for a change.

23 MR. LIESEMER: It's -- miracles can happen sometimes.

24 THE COURT: Maybe we're making progress.

25 MR. LIESEMER: Jeffrey Liesemer on behalf of the

1 Committee.

2 Your Honor, the Committee filed an objection to the
3 Bankruptcy Administrator's motion at Docket No. 1371.

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

6 MR. LIESEMER: The unstated premise in that motion --
7 I emphasize "unstated" -- is that mediation is necessary for
8 the Committee and the debtors to begin talking, but we do not
9 need the assistance of a mediator to have discussions with the
10 debtor. As noted in our objection, the Committee and the
11 debtors have already engaged in confidential discussions
12 exploring whether a possible path to resolving these cases
13 exists.

14 So the motion's premise is not correct, which warrants
15 denial.

16 Like the debtors, the Committee does not believe that
17 now is the appropriate time for mediation. The Committee and
18 the debtors are the principal adversaries here supported by
19 professionals who are well versed in asbestos mass tort
20 bankruptcies. Unless the parties unanimously agree that
21 mediation will be of aid to resolving their disputes, it's
22 unlikely that mediation will do so. Here, the Committee and
23 the debtors do not favor mediation at this time.

24 So this Court should adhere to its approach of not
25 ordering the parties to mediation when not all parties are

1 onboard with it.

2 I'd just like to make a couple comments about what's
3 already been said. First of all, as we have repeatedly made
4 clear for reasons that are confidential and nonconfidential,
5 this is not the Paddock case. And so whatever course of action
6 was taken in Paddock will not necessarily translate into this
7 situation. Among other things, which is not mentioned in the
8 similarities chart presented by the FCR, there was no
9 preliminary injunction barring suits against non-debtor
10 affiliates. The FCR says, "Oh, well, that's because it wasn't
11 necessary." I'm not so sure that's true, but that's sort of an
12 important aspect here that wasn't in Paddock.

13 We've heard a lot about Garlock and how the case is
14 similar to Garlock regarding encapsulation and so forth. I
15 think encapsulation is an issue that the Court will need to
16 grapple with farther down the road. So I'm not going to
17 comment anymore on that.

18 But I think the similarities -- Garlock is not
19 analogous. Garlock, among other things, brought all of its
20 assets, its enterprise, its operations into the bankruptcy.
21 Here, we don't have that. What we've been saying all along is
22 that the cardinal principle of bankruptcy is for the bringer to
23 bring in all of its assets as well as its liabilities. And
24 here, that's the important distinction. That hasn't happened.

25 I think, you know, there's been a lot of talk about

1 delay and claimants not being compensated. I'm -- I -- I find
2 it troubling that we get a lot of comments when, about tort
3 victims saying that if we just call them up, they, and ask them
4 whether they wanted money today, they would say, "Yes," and
5 these statements are being made freely without those calls
6 actually being made and without their tort counsel present. So
7 I think it's a bit presumptuous.

8 And I think I should also point out that while this
9 bankruptcy sits, while a preliminary injunction is in place,
10 claimants are not only getting deprived of compensation today,
11 they're being deprived of punitive damages, they're being
12 deprived of pain and suffering damages, they're being deprived
13 of loss of consortium damages.

14 So, you know, both the Bankruptcy Administrator, who I
15 think is acting in good faith and trying to problem solve here,
16 as well as the FCR talk in terms of breaking the logjam,
17 settling as quickly as possible, any form of compensation.
18 It's almost as if that any deal is better than no deal and
19 that's not our perspective. We think there ought to be
20 accountability here and we're not interested in the deal that
21 the FCR has reached. We don't think that that represents the
22 full accountability of the mass torts that was created by those
23 debtors and, therefore, I think it's unfair to be saying that
24 the tort counsel, who are not present here, are not acting in
25 the best interests of their clients.

1 And for these reasons, I think the motion should be
2 denied, your Honor.

3 Thank you.

4 THE COURT: Thank you.

5 Debtor?

6 MR. ERENS: Thank you, your Honor. Again, Brad Erens
7 on behalf of the debtors.

8 Your Honor, I hate to spoil the party a little bit.
9 He sort of said we're on the same page as the ACC. We actually
10 don't quite see it that way. We don't view ourselves --

11 THE COURT: Okay. Tell me where you are.

12 MR. ERENS: -- as an objector. Our position is really
13 more of timing.

14 So, your Honor, we do support mediation. We indicated
15 as such at the June hearing, I think, when this came up. I
16 think we, we had two hearings maybe in June. This was the
17 earlier June hearing, if I recall correctly. We support
18 mediation because we support a resolution in the case. We're
19 action oriented. We want this case resolved. We want it
20 resolved as quickly as possible. We hope your Honor views the
21 case in that fashion and that our actions have been viewed in
22 that fashion.

23 So taking a step back, we go back to 2020, 2021. We
24 filed the bar date motion fairly soon after. The FCR was
25 appointed. It was a joint motion. We wanted to get claims

1 data up and PIQ data so we can negotiate a deal with the FCR.
2 The reality was your Honor felt it was best to push that off
3 after the preliminary injunction litigation concluded and
4 that's what occurred. And so we didn't put addressing a deal
5 to the side for a year. We decided to negotiate, nonetheless,
6 with the FCR in the absence of that information and we were
7 able to, through 2021, ending in August, to reach a deal. We
8 invited the ACC to those discussions. They declined, so be it.
9 We did the best we could and negotiated a deal with our largest
10 constituency.

11 And we continue to try to take actions to resolve the
12 case. Mediation certainly is one action that could potentially
13 resolve the case. However, mediation, we believe, is a
14 significant undertaking. If you look at Bestwall, they spent a
15 lot of time, I'm sure they spent a lot of money, and it was not
16 successful, for whatever reason, and though I don't know this,
17 I sort of get the sense that it was tried and it didn't work
18 and now it's kind of been put aside. And I'd hate for that to
19 happen in this case as well. I'd rather have mediation when we
20 think the timing is such that it's most likely to succeed.

21 Now I don't disagree with Ms. Abel that there's not
22 going to be a perfect time in this case, okay? We just think
23 this time right now is not, not the best time for a couple
24 different reasons. And I also agree with Mr. Guy that we
25 really, unfortunately, should not be influenced by the other

1 cases to the extent we can or to the extent we can avoid it, I
2 should say. But the reality is there's some things going on in
3 this case, and otherwise, that I think do affect timing.

4 So No. 1, the reality is a lot of people are waiting
5 for this Third Circuit LTL decision. It's just a fact of life.
6 It's had an effect on all the cases, we believe, and we
7 understand it from the plaintiffs' bar. I mean, their view is
8 if they can get a decision dismissing LTL, that changes their
9 position either in court or at the negotiating table.

10 So I think people are really waiting for that
11 decision. It's the first appellate decision on the divisional
12 merger issue. We don't --

13 THE COURT: Did the Third Circuit give any indication
14 of when a ruling might come out?

15 MR. ERENS: They did not, but, your Honor, the
16 expectation -- I was going to say this -- is not that long. We
17 had oral argument September 19th, I believe. So we're a little
18 bit more than a month after that. There are other arguments
19 that occurred the same day in the Third Circuit and the
20 decisions are already out, but those are non-precedential
21 decisions, not as complicated. And I don't know why, but our
22 expectation has always been it's not going to take an
23 inordinately long period for the Third Circuit to rule. And
24 that's just our expectation. I have no way of proving that
25 out.

1 So we don't think that's a long wait, meaning we don't
2 think it's coming out in eight months, for instance, but, you
3 know, the Third Circuit will have whatever process they have.

4 And I also don't disagree with Ms. Abel that, yeah, we
5 could see subsequent litigation. Parties can move for
6 rehearing from the Panel. Parties can move for rehearing *en*
7 *banc*. Petitions for *certiorari* to the Supreme Court could be
8 taken, but I don't think we would view that as something to
9 wait up on. We want to have the decision from the Third
10 Circuit.

11 So I think that's the reality, but I also don't think
12 that that's a long wait.

13 There are other things going on in this particular
14 case, also, that we think affect timing. So going back to the
15 bar date/PIQ, the, you may recall the deadline for the PIQ is
16 mid-December. I think it's December 16th. We'll finally get
17 that information. We think that could be highly informative in
18 this case in terms of negotiating a deal. We were going to use
19 that information originally to negotiate a deal with the FCR,
20 but we were able to do so otherwise.

21 And then the third-party discovery that Mr. Hirst
22 mentioned. I mean, given the blitzkrieg of litigation that
23 that's produced, the, the sort of, in our view, massive attempt
24 by the plaintiffs' bar to avoid the production of that
25 information, it could only make us think that that

1 information's going to be highly relevant in the case, if and
2 when we actually get it. And we're hopeful that that won't be
3 too long. As you heard from Mr. Hirst, the Paddock information
4 should be coming relatively promptly in the next weeks, months,
5 or whatever, we hope. And then your Honor has in November the
6 DCPF motion to quash. So that's not that far away, either.

7 So from our perspective, since mediation is a fairly
8 significant undertaking, we've got to agree on a mediation
9 order. We got to agree on the mediator or mediators. We got
10 to schedule sessions, you know, and we're talking about a
11 number of different parties. Not only the debtor, the FCR, and
12 the ACC, but you heard the insurers. You know, usually you
13 talk about principals as well. It's not just the outside
14 lawyers. You're going to schedule all this. It takes a lot of
15 time and a lot of effort. We sort of want to do this once and
16 we want, we don't want to do too early or late. It doesn't
17 quite work and then it kind of gets put aside.

18 So our view is we are in support of mediation because
19 we're in support of a resolution of the case, but we think it's
20 a little bit too early at this point. If we get down the road
21 a few more months, Third Circuit's ruled, we've got some trust
22 discovery or similar discovery, we've got the PIQs in, people
23 had a chance to look at it, that might be a much better time
24 for mediation. It just forms more of a, of a context in the
25 case to actually have a negotiation and discussion.

1 So that would be our view. Again, we want to be
2 clear. We do support mediation, but we think waiting a few
3 months, something like that, to revisit this issue makes much
4 more sense.

5 THE COURT: Okay.

6 MR. ERENS: Any questions?

7 THE COURT: No, sir, not at the moment.

8 MR. ERENS: Okay. Thank you.

9 THE COURT: Anyone else that has not been heard?

10 (No response)

11 THE COURT: Any rebuttal arguments?

12 Ms. Abel.

13 MS. ABEL: Just a couple of points, your Honor. Thank
14 you, your Honor.

15 You know, I have a little bit of the experience I've
16 had in trying to herd the cats before today's hearing and on
17 that point I want to first follow up on the, the timing
18 discussion.

19 Even if you ordered today that, yes, we're going to go
20 to mediate, there's still a lot of work to be done. We've got
21 a mediator selection, we've got a mediation protocol and form
22 of order to negotiate, and there's a lot of people who are
23 wishing to participate in that process and it's going to take a
24 lot of work. I think if you were to order that mediation
25 should go forward, we may, it still may take 90 days to get

1 ready to do it.

2 And so for that reason I would rather you not defer
3 ruling on this based on the debtors' submission that it's going
4 to, that the timing's not great. Again, I would like to push a
5 parallel path on all things and allow this process to begin
6 because there's a lot of work that will need to be done.

7 And then I also just wanted to follow up on
8 Mr. Liesemer's statement that any deal will do is certainly not
9 my suggestion that any deal will do. I expect everybody to
10 get, to negotiate for the outcome that they wish to see and
11 it's, I'm hoping --

12 THE COURT: Sure.

13 MS. ABEL: -- to find a context for them to get what,
14 what they could agree to.

15 So it's for that reason we'd ask for the Court to
16 order mediation.

17 Do you have any questions for me? Okay.

18 THE COURT: Not at the moment.

19 MS. ABEL: Thank you, your Honor.

20 THE COURT: Anyone else?

21 MR. GUY: Yes.

22 THE COURT: Mr. Guy.

23 MR. GUY: Thank you, your Honor.

24 Your Honor, I also want to respond to Mr. Liesemer.

25 We obviously -- if he wants to get more money, we would be

1 behind him cheering him on.

2 THE COURT: Okay.

3 MR. GUY: And, your Honor, what he said was they want
4 accountability and I'm not sure what that means exactly, but
5 accountability in the context of a mediation is for the ACC to
6 say what they believe the number is and then try to get that
7 number from the debtors. That's accountability.

8 The last thing, your Honor, is the order that I
9 attached, the LTL order, that did include the insurers. I'm
10 not suggesting that the insurers are supportive of that exact
11 language, but it's an example.

12 Thank you, your Honor.

13 THE COURT: All right.

14 Anyone else?

15 (No response)

16 THE COURT: That got it?

17 (No response)

18 THE COURT: All right. I've become concerned, been
19 concerned for a while in the two cases that I have that we were
20 trying to avoid some of the Bestwall experiences that you've,
21 you've put up with. That's why I didn't order mediation
22 earlier. Looked like that that case stalled right out of the
23 gate is the cause of the mediation attempt and that was not,
24 ultimately productive, or at least it wasn't in the short run.

25 I also have taken a different viewpoint as to what

1 should be done about litigation. Bestwall had a motion to
2 dismiss. I don't have motions to dismiss. I've got
3 adversaries on fraudulent conveyances and everything else and
4 that is starting to look to me like the, the litigation is
5 mushrooming, spreading out, and, and I'm concerned that we may
6 be going nowhere in these cases other than protracted disputes
7 over attorney-client privilege and I'm fearful that the way
8 we're doing things at the current level, we're going to be
9 here, or some of y'all are going to be here five years from
10 now. You may have to train up a new judge because I'll be over
11 65 by that point.

12 But the bottom line is I'm fearful that we're going to
13 just spin our wheels. I understand the core debate, is this an
14 appropriate use of bankruptcy? Is it okay to do a Texas
15 twostep, if that's what you want to call it, before you come
16 here? What do you have to bring into bankruptcy? Those are
17 all meritorious questions. The trouble that we've had and
18 frankly, one of the motivations for sending the LTL case to New
19 Jersey was that I couldn't figure out a way to get you to a
20 decision that, that was not interlocutory and it gave the
21 prospect that with another court looking at it there might be a
22 little more movement on that. That's proven provident. That's
23 not the primary reason I sent it, of course, but that was in
24 the back of my mind, that, that this might move in a different
25 court.

1 I'm trying not to stay wed to Bestwall. I don't
2 follow Bestwall except when y'all are telling me about things
3 that come out of Bestwall. Every case should be its own. And
4 one of the motivations to having an FCR that -- not a
5 motivation -- but one of the attributes of having an FCR that
6 is not as closely allied to the claimants in this case as
7 compared to DBMP is that you get different dynamics in the
8 case, as we have seen already.

9 I agree with the concept that this case may be
10 informed by things that are happening elsewhere. It may be
11 informed by what comes out of LTL. I understand there are
12 differences in the law. I understand that there may be *en banc*
13 motions. There may be a request for *certiorari*. But there, it
14 is likely that at least perceptions of, of where we are and
15 some information may be garnered by seeing what that court does
16 with it, even though our Circuit standards are, are different
17 on case dismissal.

18 I also believe that there are actions being sought in
19 Congress as well that affect all this. I'm not a big fan of
20 legislating by case. I believe at the end of the day we should
21 be concerned about money and getting the people who are owed
22 the money paid as much and as quickly as we possibly can. And
23 as I said, I'm concerned that we in this and the other case I
24 have, DBMP, that we are getting bogged down and I don't want to
25 see that repeated again. I don't know what kind of issues are

1 going to come up out of the discovery requests. I don't know
2 whether the PIQs are going to be fully adhered to and what
3 ancillary litigation that may come out of that.

4 But the bottom line is I think we've got to do some
5 things differently in this case or we're going to get the same
6 result as pertained in Bestwall and I don't want y'all to be
7 here five years from now or even more frustrated than you are
8 now.

9 So the bottom line is that I believe the BA's thought
10 is well taken, that we need to start at least putting together
11 the format of mediation. That tends to be the way these cases
12 work out. Nobody ever fully litigates them to, to a conclusion
13 in the asbestos area. You litigate effectively looking for
14 advantage and, and things that will help you, but at the end of
15 the day everyone comes to a resolution at some point.

16 So I think we ought to start putting the parameters
17 around that mediation, even though I agree with you that we
18 don't need to send you to mediation today and I don't want to
19 stop the case to do the mediation. It would run in parallel.
20 My inclination is to ask the parties, therefore, to give me
21 suggestions as to protocols and mediators and timing,
22 recognizing that I want to give you enough time so at least you
23 get, you're likely to get the Third Circuit decision.

24 Can somebody tell me in Bestwall? The motion to --
25 the -- I guess it was the motion to dismiss, has that gone from

1 Judge Conrad to the Circuit yet? Is it, or are we still
2 waiting on Judge Conrad to make a decision in that?

3 MR. WRIGHT: Your Honor, the motion -- Davis Wright
4 from Robinson & Cole.

5 Your Honor, the motion to dismiss is pending before
6 Judge Conrad.

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

9 MR. WRIGHT: The motion on the preliminary
10 injunction --

11 THE COURT: Is at the Circuit.

12 MR. WRIGHT: -- is at the Circuit and has been
13 calendared for December.

14 THE COURT: Oh, it has? Okay.

15 MR. WRIGHT: Yes, your Honor.

16 THE COURT: Good. Well, that, that will help, also.

17 What I think we ought to be looking at is trying to
18 spend the next three months trying to put together the
19 parameters of how we would mediate, but to order it at some
20 juncture with the idea that that would be done in the spring
21 sometime, March, April, thereabouts.

22 So what I would like to invite you to do is give me
23 parameters. I will grant the motion to the extent of saying
24 we're going to do it and invite the parties to help me put meat
25 on the bones of how this is to be done and who would do it.

1 I'm sorely tempted to suggest Judge Hodges, but that would only
2 be punitive. I don't think he would accept and, and some of
3 you may not view that as impartial at this juncture, given that
4 there were some feelings -- well, the swing was only, what,
5 between his number and the, and the top number suggested by the
6 claimants, it was only about a billion dollars of blue sky
7 between them. Okay.

8 So, well, anyway. That, that won't be the one. But
9 y'all know better than me who might be in a position to fairly
10 mediate this.

11 And so I'm granting the motion to that extent and
12 maybe y'all can give me some suggestions. I would urge you to
13 talk about this, of when we come back to start talking about
14 the parameters there. I don't want to just wait 90 days for
15 it. I want to keep a close track on this to get proposals,
16 talk about the proposals. If we can't agree on the proposals,
17 I'll do it for you.

18 MS. ABEL: Yes, your Honor. What I propose to do -- I
19 haven't really talked to anybody about this -- but I can put
20 together an order that puts sort of a, a timeline for people to
21 exchange information and then submit it to the Court if it
22 can't be agreed and then we'll maybe come back at the next
23 hearing or maybe the two hearings after that, depending on how
24 much time people think that will take, and let you rule if
25 we're not able to agree.

1 THE COURT: Okay.

2 Can we just leave this on for status at the next
3 hearing, the November 30th hearing?

4 MS. ABEL: Yes, your Honor. I -- that'll be my
5 preference.

6 THE COURT: And that way, I will just ask you to talk
7 amongst yourselves and see if you can come up with it.

8 But for the clerk's benefit, I am granting the first
9 part of the motion and carrying the rest over for further
10 consideration.

11 MS. ABEL: Thank you, your Honor.

12 THE COURT: But we'll -- I don't know if you want to
13 enter a, a summary order today saying that, yes, I agree that
14 mediation should occur and everything else is reserved for
15 negotiation. But that part of it, I'm definite on. I want to,
16 to try to do this.

17 What I would say for the ACC, I get it. I mean, you
18 know, the divisional merger, I understand your perspectives on
19 it. I have no idea whether it's appropriate or not. I thought
20 there was enough there to make it a, a putative fraudulent
21 conveyance. A lot of it depends on what, what is intended on
22 this side of the room. Do they really intend to pay or not?
23 But if I were sitting in your shoes, I think I would treat it
24 in terms of, "Okay. I'm going to exact a penalty for trying to
25 do this." I would negotiate with a higher number than I might

1 otherwise argue for punitive damages, or whatever.

2 But the point is I think you can do all the things
3 that still preserve and express your displeasure with what
4 happened in the negotiating process and, you know, some courts
5 somewhere or, or the Judiciary Committees are going to figure
6 it out eventually for us as to whether this is appropriate, but
7 I believe in these two cases we're going to be behind the curve
8 on that and we're not going to be the ones that establish the
9 law that, that this is or is not acceptable in the bankruptcy
10 context.

11 So for that reason, I think I would try to negotiate
12 to get to a number. I've said that before and you can factor
13 in whatever you want to as to the proprieties of this into the
14 negotiating numbers, but to me, I think another case is going
15 to be the one that decides that issue for us. But that's just
16 an off-the-cuff thought.

17 Why don't we take our morning recess, about ten
18 minutes, and then we'll come back and hear the other motion,
19 okay?

20 (Recess from 10:51 a.m., until 11:02 a.m.)

21 AFTER RECESS

22 (Call to Order of the Court)

23 THE COURT: Have a seat.

24 Everyone ready to go? Ready to pick up with the next
25 motion? I got to find my agenda here. It is subsumed under a

1 mass of paper.

2 Okay. We have, have the motion of the FCR for a
3 representative sample as well.

4 So ready to move into that?

5 MR. GUY: Yes, your Honor.

6 THE COURT: Okay.

7 MR. GUY: Jonathan Guy for the FCR.

8 Your Honor, the, we joined the BA in the mediation
9 motion for the claimants and we filed this motion for you, your
10 Honor. It was really in response to your comments in DBMP.

11 THE COURT: Hmm.

12 MR. GUY: So, your Honor, we are listening, both in
13 this case and the other cases. Plus, of course, your Honor, a
14 sample is imminently practical. It saves the parties a lot of
15 time and expense and most important, it saves the Court a great
16 deal of unnecessary pain.

17 Your Honor, we've proposed a very simple order.
18 Ninety days for the parties to meet and confer on a sample.
19 The ACC said in their response, "Well, the, the FCR didn't put
20 a sample forward." They're right. We didn't --

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

23 MR. GUY: -- but there's a reason for that. We all
24 have very, very competent experts. We have Ankura. They're in
25 all the cases for all the FCRs, the four cases we just talked

1 about. As we mentioned, the ACC has LAS, Dr. Peterson. We've
2 worked with him many times, a very smart guy, and he has a good
3 team. And you obviously know Bates White. I, I'm not going to
4 ask, I'm not going to tell anyone what the sample protocol
5 should be because when it came to statistics I was not the
6 greatest, but I know the various claims experts can figure that
7 out. If for any reason the parties are unsuccessful, then we
8 can come back to the Court within 30 days.

9 So we're sort of talking four months from now,
10 February 2023, if we're unsuccessful. Your Honor, the CMO, all
11 discovery must be completed by August 2023. So we're three
12 months in and we got nine months left.

13 The sampling gives the Court the opportunity to head
14 off a whole host of problems before they occur next year. The
15 response of the debtors and the ACC is, is interesting. They
16 both say, "Yeah. We think sampling is an excellent idea." I
17 mean, I don't want to, maybe I'm wrong in characterizing it
18 that way, but I think they're supportive of the sampling,
19 generally. But they resist the structure that will ensure we
20 get a sample on a timely basis and they say, "The order is
21 premature because the parties are talking. We're just sort of
22 three months into the discovery and we still have to work some
23 things out."

24 Well, I totally appreciate that, your Honor. That's
25 why we had a three-month window. All the order says is, "Go

1 talk," but it actually put some meat on it, your Honor, and the
2 requirement that the parties do it and nothing is more of an
3 incentive for litigants to do the right thing, is when the
4 Court orders them to do it. And if we can't agree, then we
5 have a firm deadline for resolution.

6 So I think that's what this sort of objection might
7 be, is the deadlines, and in this case, your Honor, it's hope
8 trampling over experience if we think we don't need deadlines.

9 So Bestwall, which is what prompted all of this in the
10 first place, it's prompted the Court's concern and prompted our
11 response to the --

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

14 MR. GUY: -- Court's concern, that was filed in 2017,
15 five years ago, almost to the day. They don't have an agreed
16 sample, as far as I know. And as the chart we put up earlier,
17 as of June 2022 \$183 million have been spent. And I know I go
18 on about the legal fees, but that's money that's gone out the
19 door and it's not coming back. So that's money that could go
20 to claimants.

21 So when you have, you know, a bid and ask on what the
22 funding should be of an asbestos trust and \$200 million has
23 gone out the door already, I'd rather that went into the
24 proposal for, you know, settling whatever the ACC believes is
25 the right number.

1 So I know you've been watching Bestwall from afar,
2 your Honor, and I know that's what prompted you, prompted you
3 to make the plea, which we heard it, for someone to ask for a
4 sample. So, your Honor, in the transcript -- and this goes to
5 the hope trampling over experience point. This is the Item No.
6 1 -- this is the transcript before Judge Beyer and it's
7 September 22, so quite recently. And this is one of many, many
8 hearings about samples that have taken place in Bestwall. In
9 '22 alone, there was one in June, then one in July, and then
10 one in September and my understanding is there's going to be a
11 hearing tomorrow where maybe there's an agreement being
12 announced as to sample or maybe not.

13 But the point is is I just -- if you look at Page 6,
14 your Honor, Judge Beyer references Ms. Ramsey. And I was
15 hoping she was going to be here today 'cause she could have
16 told us if there was an agreement on the sample. But she
17 quotes Ms. Beyer and she says, "We're trying to think ahead" --
18 I'm sorry. Judge Beyer quotes, quotes Ms. Ramsey and she says:

19 "We trying to think ahead and think in the last month,
20 in particular, tried to take a deep breath and try to
21 reset and think very hard about how we can really work
22 with the debtor, how we can narrow and focus our
23 discovery in a way that eliminates some of the
24 contentious disputes the Court has seen over the last
25 few weeks and months and try to move forward in a

1 streamlined, but logical way that will help get us
2 there."

3 So that was Judge Beyer basically saying, "Well, I'm
4 hoping this is happening."

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

7 MR. GUY: And she's referring back to Ms. Ramsey.

8 Then Mr. Gordon, who is debtor's counsel, or Jones
9 Day, he went into a long discussion of what's actually been
10 happening in Bestwall. And he says on Page 8:

11 "And I think your Honor has indicated correctly -- and
12 I think everyone agreed at the time that your views
13 were correct -- that you basically saw the claim
14 sample issue as a kind of threshold matter that could
15 affect the disposition of both the motion to compel
16 and the motion for a protective order and I think all
17 of us left the hearing with your guidance and with an
18 understanding that we needed in short order to either
19 agree on a new or revised sample or we needed to tee
20 up any sample dispute for the Court to decide. In
21 other words, I think there was a consensus among the
22 parties and with the Court that the next logical step
23 to push the estimation process forward was to resolve
24 this issue of the claim sample."

25 Your Honor, I would, I'll say again that the experts

1 in Bestwall are LAS, Ankura, and Bates White, the same ones we
2 have here.

3 Then on Page 29, your Honor, this is after Mr. Gordon
4 has updated the Court on all the efforts between the parties to
5 try to agree on a sample and he says, disappointedly:

6 "Just to sum up, your Honor, I would have liked to
7 have reported that we made material progress over the
8 last two months on the sample issue, but that's not
9 the case. The good news is that we are in agreement
10 that the issue needs to be brought to a head."

11 And then he references that they're going to try to report back
12 to the court at the hearing that's going to take place
13 tomorrow, I believe.

14 Your Honor, so why, why did I reference all of that?
15 It's because in Bestwall where they've been talking for months
16 with many of the same law firms and many of the same experts
17 and we still don't have a sample and as far as I'm aware, even
18 though the court has been urging them very strongly, Judge
19 Beyer's been urging them to get closure, they haven't got
20 there.

21 If there is an agreement, your Honor, the, the parties
22 have reached in Bestwall on a sample, we can assume that it
23 would be applicable here, too. Because --

24 THE COURT: Even though this is a different case.

25 MR. GUY: It is a different case, your Honor, but the

1 issues that are being teed up in litigation are very similar on
2 discovery.

3 THE COURT: Right.

4 MR. GUY: They want -- the ACC -- and I, I agree with
5 it --

6 THE COURT: I was being facetious.

7 MR. GUY: No. I -- your Honor, you're fully entitled
8 to be.

9 But yes, the, the issues will be the same for
10 discovery. They're trying to get the, the privileged claim
11 files. So that's what we're trying to avoid here, is 15,000
12 privileged claim files.

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

15 MR. GUY: So if there is an agreement, there's no
16 reason why that agreement couldn't be discussed between the
17 experts in this case, same experts, and applied to this case,
18 to the extent there were differences and nuances, and if there
19 isn't an agreement, then that makes our point perfectly.
20 Because we're months and months in, years and years in in
21 Bestwall, and we're still not there yet.

22 Your Honor, I think that if the Court grants the
23 motion, there's no prejudice to anyone. It just requires the
24 parties to talk. It puts a deadline on when they have to
25 complete those talks and when they have to come back to the

1 Court with their protocols if they can't agree. That's all
2 it's doing. It's not prejudicing anyone a'tall. Both the
3 debtor and the ACC say, "We're talking." Great. Let's just
4 keep on talking. The only difference between their position
5 when they both, everybody agrees that a sample is needed and
6 required and be, would be helpful is just the deadline and I
7 don't think that's prejudicial to anyone, your Honor, and in
8 light of where we're coming up in the close of discovery. I
9 don't want to be before you, your Honor, in February saying, "I
10 still don't have a sample, an agreed sample, and we now need to
11 look at 15,000 claim files."

12 Thank you, your Honor.

13 THE COURT: All right. Thank you.

14 Again, anyone supportive of the motion that wants to
15 speak?

16 (No response)

17 THE COURT: That got it?

18 (No response)

19 THE COURT: This one, we're just objecting.

20 All right. Does the debtor want to lead off on the
21 objections or --

22 MR. EVERT: Sure, your Honor. Michael Evert on behalf
23 of the debtors.

24 So, you know, this is a bit of a kumbaya hearing,
25 right? We're all, we're all sort of in violent agreement

1 about --

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

4 MR. EVERT: -- some basic concepts and we're just, to,
5 to some extent, "The devil's in the details."

6 THE COURT: Sure.

7 MR. EVERT: There's an old saying about Wall Street
8 analysts, you know. They're never wrong, but often early.

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

11 MR. EVERT: And so I, I sort of feel that way a little
12 bit here about this motion. We, we completely agree that
13 sampling in the context of large-scale discovery requests is
14 very often appropriate and if the ACC here intends to seek
15 discovery of thousands and thousands of claims files, then we
16 believe that sampling would be appropriate for that discovery
17 for all the reasons in the, in the Federal Rules and the
18 Comments in, in terms of sampling.

19 The ACC, I think, has, without putting words in their
20 mouth, has essentially agreed with us that, from their
21 experience in Bestwall, that they think it likely that a sample
22 would be useful here, but I think the exact quote that I used
23 just a minute ago that we got from them was "The devil is in
24 the details," and I think that's fair. So let's just back up a
25 little bit in terms of what happened in Bestwall and, and the,

1 the transcripts that Mr. Guy just put up, I think, illustrate
2 it.

3 So Ms. Ramsey was talking about "we're going to work
4 hard to narrow and focus our discovery" and Mr. Gordon was
5 talking about, you know, "We've got a motion for protective
6 order and a motion to compel out there that need to be resolved
7 and we agree that sampling is part of that process."

8 To me, this is very similar to, you may remember, we
9 made a motion before the Court for a categorical privilege log
10 and the Court said, "May be a good idea, may not, but to me,
11 the issue's not quite ripe yet. I need to sort of see where
12 things are." Our status is we received the discovery from the
13 ACC right around Labor Day. I think it was a Labor Day gift.
14 I think we got it on Friday afternoon, as I recall, before
15 Labor Day. They'll correct me, I'm sure, if that's wrong.

16 So our responses were due in early October. We, we
17 provided those responses on a timely basis. We got a short
18 extension on one of them and then we had a meet and confer this
19 week over those, over that discovery and the issue of sampling
20 was briefly discussed in that meet and confer.

21 The ACC has asked for, at least at this stage, a very,
22 they've given a very broad request for claims files. We've
23 objected on breadth and our assumption is is that we're going
24 to try to work through that. We, we believe, ultimately, that
25 sampling is going to be appropriate, but at this stage it's

1 difficult to really define exactly what we're talking about,
2 exactly what we're sampling, exactly what the parameters are,
3 exactly the breadth of what they want.

4 So we're talking about, essentially, a discovery
5 dispute that we think will be ripened through these discussions
6 and potential motions practice. If we can't agree on a sample,
7 I can assure you I think we will be in front of the Court and I
8 think we'll be in front of the Court in relatively short order
9 because we'll be able to ascertain, especially given what has
10 happened in Bestwall, we'll be able to ascertain whether or not
11 we have a dispute that we've got to have the Court resolve, but
12 I, we're just not quite there yet in terms of defining exactly
13 what the problem is.

14 So our view, your Honor, would be that you defer this
15 motion or you hold it in abeyance or you, as you did with our
16 categorical log motion, deny it without prejudice, whatever the
17 Court chooses to do. It will be back up in front of you, I
18 feel -- well, I shouldn't say that. Hope springs eternal,
19 right? We might, especially with the, with the benefit of
20 what's gone on in Bestwall -- and, and maybe there's a sample
21 agreed to in Bestwall and maybe that serves as a basis for us
22 to reach an agreement in this case, although as some have said,
23 they are different cases. So, you know, our view, your Honor,
24 is a little early. We agree with the basic premise.

25 So we'd suggest the Court either defer or deny without

1 prejudice.

2 THE COURT: Okay.

3 ACC? Mr. Wright.

4 MR. WRIGHT: Good morning, your Honor. Davis Wright
5 from Robinson & Cole on behalf of the ACC.

6 Your Honor, it sounds like we are at violent agreement
7 with the debtor. As we put in our motion, we are looking for
8 this to be deferred or to be denied without prejudice to
9 bringing this up.

10 I, I do have to provide a little bit of context, your
11 Honor, with respect to Bestwall because I understand you're
12 being facetious, but I sort of sit here hearing how the cases
13 are different on some hand and then the same thing on another.

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

16 MR. WRIGHT: But just to be clear, Bestwall has a
17 discovery sample. We did discovery on 2700 claim files in that
18 case. There was a, a request that the, that the Committee put
19 out there for the entirety of the claims files. That was borne
20 by certain issues that came up in the discovery itself. It's
21 not really worth getting into, but --

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

24 MR. WRIGHT: -- we have not completed or even sort of
25 pushed discovery on the larger 15,000 claim files. The motion

1 to compel is dealing with documents within the 2700 from the
2 debtor. There are a lot of reasons why that has come to a
3 head, but I, I do want to address that -- the -- sort of the, I
4 don't know, the panacea that I, that the FCR is attributing to
5 the development of a sample. I think we have to discuss that
6 and we have to be prepared to discuss that with your Honor's
7 instructions in mind.

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

10 MR. WRIGHT: But the point is we had a discovery
11 sample in Bestwall. We're still fighting over privilege and
12 other matters. It's not, it's not something that,
13 unfortunately, is just going to resolve everything. Now we
14 have been meeting and conferring. I think that process has
15 been going well from our standpoint. I think that, again,
16 we're waiting on the documents to be produced to us and the
17 positions that the debtor ultimately take, the debtors
18 ultimately take with regard to the documents that are produced
19 and the responses and objections that we have.

20 You know, I, I, I do hear a lot about the legal fees
21 attributed to Bestwall. That's not all related to estimation.
22 That's not all related to fights over an estimation sample or
23 even estimation discovery. You know, that case was in for
24 three years before that with a lot of other issues that went
25 on.

1 So I -- I --

2 THE COURT: Sure.

3 MR. WRIGHT: -- I hear it. Every case is different
4 and I don't, you know, the, the comparison about how much has
5 been spent here versus how much has been spent there I feel
6 doesn't always take into account the actual differences that
7 are in some of these cases.

8 Just a couple other quick points, your Honor.

9 THE COURT: All right.

10 MR. WRIGHT: I think the estimation CMO is, as
11 Mr. Evert said -- I agree with him -- I think the estimation
12 CMO covers this very issue and as we work through the responses
13 and objections, we will probably be before your Honor on, on a
14 sample, whether it's a joint motion, an agreed motion that
15 we're sort of putting towards you, or we have difference of
16 opinion that we'll ask your Honor to address. I think that's
17 covered by the estimation CMO and I don't think any of us are
18 really looking to have this be next June, July, August,
19 whatever --

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

22 MR. WRIGHT: -- you know, before we sit down and have
23 those conversations.

24 So, your Honor, I, I do think that the parties should
25 be entitled to continue the process that we're on with the meet

1 and confers, let us work through that process, and then, and
2 then address it if we need to, your Honor.

3 THE COURT: Okay.

4 Anyone else?

5 (No response)

6 THE COURT: All right. Rebuttal.

7 MR. GUY: Thank you, your Honor.

8 Your Honor, we have no objection to continuing this
9 until the next hearing in November because I think by then
10 we'll know if there was an agreement that had been reached in
11 Bestwall about how to address these sample questions and
12 problems. And -- and I -- Robinson Cole, Ms. Ramsey, who we
13 have the greatest respect for, Mr. Wright, they're in that
14 case. Same experts are in that case. Presumably, if they can
15 reach an agreement in that case, then it can flow through in
16 some respects to this case.

17 So maybe we wait to see and then if there is no
18 agreement, I think, then, we'll have a better sense of whether
19 we need to add a little oomph to the parties' discussions.

20 Thank you, your Honor.

21 THE COURT: Is anyone at liberty to say whether there
22 is a deal in Bestwall? I know some of you are participants.
23 I'm not asking for secret information.

24 MR. WRIGHT: No, your Honor. I'm, unfortunately, I'm
25 not at liberty to --

1 THE COURT: Okay. That's fine. If it wasn't a
2 secret, I thought it might be useful to know.

3 From my vantage point, given the numbers and
4 particularly the fact that there are repeated efforts by both
5 sides to want to have information, maybe not yet on the
6 debtors' side, files that involve defense firms and lawyer
7 files and all the things that trigger voluminous fights over,
8 over privilege, it would be much, much preferable if we can do
9 sampling for a variety of reasons. I'm not going to get off
10 into what I'm talking to DBMP about on Monday, but the reality
11 is there's a lot of overlap and you're going to see a lot of
12 the same things. And we have all the - these are hardly
13 simple matters when you start talking about whether something's
14 privileged or not in the context that we're talking about where
15 we have, effectively, a variety of things. What happened in
16 the settlement on both sides? Who was thinking what? Who knew
17 what? You know, you, you can get into some fairly complicated
18 and then if you get into the things that we're seeing in DBMP
19 about has something been put at issue, has -- is it a crime-
20 fraud based on what's being planned in the, in the corporate
21 restructuring, those type of things, those are not simple
22 privilege issues and it is very complicated for a ruling party,
23 a court or a mediator or whoever, to give overbroad answers
24 where, where they're applicable of everything. It becomes very
25 tedious and laborious to go through these.

1 So I think there are advantages here to sampling. I
2 know there have been some fights about what is an appropriate
3 sample, what is a representative sample. Bottom line is all I
4 can tell you at this juncture is cherry picking does me no good
5 at all. If, in my chair, if I get samples that, that look like
6 they are not really representative of the great set of, of
7 claims and claims files, then, you know, I can't really use
8 them. They may be advantageous if you're litigating, but from
9 the Court's perspective as the finder of fact they're not
10 really helpful.

11 I don't know to what extent we're going to get back
12 into the Garlock situation that Judge Hodges had and efforts
13 being made by the debtor to romp through the defense counsel's
14 files, but I will tell everyone that I'm going to look at this
15 the same way as to privilege and as to sampling and bottom line
16 is what's good for the gander, goose, is good for the gander as
17 well.

18 So that's not on, really on today. I'm just trying to
19 give you some viewpoints. I believe that, given the numbers,
20 that we need some form of sampling. I think it would be much
21 advantageous if you folks were to work your way through that
22 and not just brief it up and, and put it to the Court to figure
23 out. Y'all are the experts and you're the ones who know what
24 you need to use.

25 So bottom line is that I am happy to continue this off

1 docket. I'm happy to move it on. I'm not inclined to order
2 this at the moment 'cause I agree that you are early in your
3 discovery. I believe that through your meets and confers I
4 would encourage you to include this as a topic of discussion so
5 that we don't spend another \$60 million that could be used to
6 pay people scrapping around on, on very cerebral questions of
7 privilege and sample size and, and what you can and can't get
8 and, and spawn other ancillary appeals on things that, that
9 really aren't at the heart of what we're trying to do here,
10 which is to fund a, a trust.

11 So the answer for now is I'm just going to continue
12 this. I can put it on a date certain, but I want to give you
13 two or three months to get down the road in what you're doing
14 on discovery before we take it up again. But I think there's
15 merit to what is being suggested and I think everyone
16 recognizes it. The question is how do we, when do we broach
17 this topic, how do we broach the topic, and I think a little
18 more time would give you a better feel for what it is you're,
19 you think you need.

20 But all I can tell you other than that is I'm going to
21 try to be fairhanded on, on what we do when we start talking
22 about discovery endeavors. We're not going to sample on one
23 side and, and use a full-blown every claim on the other. It,
24 it's all going to be applicable to both sides, or however many
25 sides.

1 So for now, I think I'm --

2 Up to you, Mr. Guy. If you want to keep your matter
3 on, I'll set it on two or three months down the road at one of
4 the omnibus hearings.

5 MR. GUY: Thank you, your Honor. That's fine.

6 THE COURT: But I would like it to be a topic of
7 discussion in the meantime, okay?

8 Anyone feel the need to have that scheduled? I think
9 I've got a January calendar. I got December, but I don't think
10 that's going to quite get us where we need to be.

11 MR. ERENS: Your Honor, from the debtors' perspective,
12 January is fine. Your office submitted to the parties proposed
13 dates for 2023.

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

16 MR. ERENS: We've circled up and then asked the other
17 side, the FCR and the ACC, to get back to us by Friday if
18 there's any conflicts. But if people know there's no conflict
19 with the January day, we can set that now. We don't, we didn't
20 have any issue on our side for the January date as was
21 proposed.

22 THE COURT: Well, whatever good it does telling folks,
23 what we have been trying to do is keep the same batting order
24 that we've used, for the most part, in, in the three asbestos
25 cases. If Judge Beyer and I start setting those things

1 independently of one another, we'll have conflicts very
2 quickly. But we have historically gone with three weeks where
3 we try to go DBMP, Bestwall, then Aldrich on Thursdays have,
4 have been done.

5 Right now, we've got the 26th of January scheduled.
6 Does anyone know whether they have a problem there or not?

7 MR. GUY: That's not a problem for the FCR, your
8 Honor.

9 THE COURT: I can just simply say it'll be on the
10 January omnibus date --

11 MR. ERENS: Okay.

12 THE COURT: -- and assume that it'll be that date.
13 But if we move that date, it'll fall, okay?

14 All right. That's what we'll do, then.

15 Okay. There were a couple matters that were left. I
16 think they were to be continued, is that correct?

17 MR. ERENS: That's correct, your Honor. They're in
18 the adversaries. I actually have to admit I'm not sure I
19 remember what they really involve at this point.

20 THE COURT: I think they were just a couple of motions
21 under seal, No. 4 and 5.

22 MR. ERENS: Correct.

23 THE COURT: And those are all going over to November
24 30th at 9:30?

25 MR. ERENS: That's correct, your Honor.

1 THE COURT: Assuming they were at 9:30.

2 We've added a little bit to that calendar. We, to
3 circle back to the question of timing on November 30th, I don't
4 know if we can do everything we've talked about on, on an
5 afternoon.

6 MR. HIRST: Your Honor, I --

7 THE COURT: Y'all think that's possible we can, but --

8 MR. HIRST: I might be able to head it off.

9 I missed an e-mail that came in late last night.

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

12 MR. HIRST: The folks from the DCPF side were all good
13 with 9:30. So --

14 THE COURT: 9:30 it is.

15 MR. HIRST: -- 9:30 it is.

16 THE COURT: Okay, very good. That simplifies our life
17 and that gives you as much time as you need, then.

18 Other matters we need to address today?

19 MR. ERENS: That's it, your Honor, from the debtors'
20 perspective.

21 THE COURT: Anyone else?

22 (No response)

23 THE COURT: Okay, good.

24 We'll recess then.

25 MR. ERENS: Thank you.

1 THE COURT: Travel safely, folks.

2 MR. EVERT: Thank you, your Honor.

3 MR. GUY: Thank you, your Honor.

4 (Proceedings concluded at 11:30 a.m.)

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CERTIFICATE

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

14 /s/ Janice Russell

October 31, 2022

15 Janice Russell, Transcriber

Date

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