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

2                    (Call to Order of the Court)

3                    THE COURT: Have a seat, everyone. Okay. Good  
4 morning, all.

5                    Back in the Aldrich Pump and Murray Boiler cases.  
6 We've got an amended agenda on at Docket -- I'm looking at the  
7 version that's in the Miscellaneous Proceeding where it's filed  
8 at Docket 31, but it's been cross-filed as well. I think all  
9 of you have access to that.

10                    We're trying something a little different today.  
11 We're, had some folks who needed to be elsewhere so we allowed  
12 them to appear by video while we, the rest of us are here live  
13 and we'll see how that goes. I, I don't want to make a  
14 practice of it, but they had conflicts and we needed to make  
15 sure that we were there.

16                    Let's start with trying to get appearance of those who  
17 are in the courtroom and if lead counsel for the major  
18 constituencies could tell me who those folks are, we'll,  
19 that'll speed things up a bit.

20                    MR. ERENS: Thank you, your Honor. Brad Erens, E-R-E-  
21 N-S, of Jones Day --

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

24                    MR. ERENS: -- on behalf of the debtors. I have,  
25 also, Morgan Hirst with me from Jones Day, Michael Evert from

1 the Evert Weathersby firm, and Dave Torberg from Jones Day.  
2 Also, from the Rayburn Cooper firm, Rick Rayburn, Jack Miller,  
3 and Matt Tomsic. And then I have the Chief Legal Officer of  
4 Aldrich and Murray, Mr. Allan Tananbaum, in the courtroom as  
5 well.

6 THE COURT: All right, very good.

7 How about for the ACC?

8 MS. HARDMAN: Good morning, your Honor. Carrie  
9 Hardman from Winston & Strawn on behalf of the ACC. With me is  
10 David Neier, my colleague, from Winston & Strawn, Jeff Liesemer  
11 from Caplin & Drysdale, Davis Wright from Robinson & Cole, and  
12 Glenn Thompson from Hamilton Stephens Steele & Martin.

13 I believe there may be others on the phone, but I  
14 think for purposes of appearance today, that's --

15 THE COURT: All right. Let's just stop --

16 MS. HARDMAN: -- probably all you need.

17 THE COURT: -- there.

18 MS. HARDMAN: Thank you.

19 THE COURT: Okay, very good.

20 FCR?

21 MR. GUY: Good morning, your Honor. Jonathan Guy for  
22 the FCR. Mr. Grier is here. Just myself, your Honor.

23 THE COURT: All right.

24 MR. GUY: Thank you.

25 THE COURT: Okay. Other parties wishing to announce



1 that are in the courtroom?

2 MR. MASCITTI: Greg Mascitti, McCarter & English, on  
3 behalf of the non-debtor affiliates, and we're joined by local  
4 counsel, Jim Phillips and Jeff Oleynik, as well as Stacy  
5 Cordes.

6 THE COURT: Okay.

7 MR. MARTIN: Good morning, your Honor. Lance Martin  
8 from Ward and Smith. I'm here on behalf, as local counsel, for  
9 the Asbestos, the ten Asbestos Trusts in Miscellaneous  
10 Proceeding 22-00303. Would your Honor like me to read all ten  
11 Trusts into the record?

12 THE COURT: No. No, I don't need the Trusts' names.  
13 I think we all know who they are from the written submissions.

14 MR. MARTIN: Thank you, your Honor.

15 And lead counsel is appearing by video, Ms. Beth  
16 Moskow-Schnoll of Ballard Spahr.

17 THE COURT: Okay, very good.

18 Counsel?

19 MR. GUERKE: Good morning, your Honor.

20 MS. MOSKOW-SCHNOLL: Good morning, your Honor.

21 MR. GUERKE: Kevin Guerke from Young Conaway on behalf  
22 of Delaware Claim Processing Facility, LLC. I'm in the  
23 courtroom this morning with my partner, Ed Harron, and local  
24 counsel, Felton Parrish.

25 THE COURT: All right.

1 Anyone else in the courtroom announcing?

2 Mr. Waldrep.

3 MR. WALDREP: Your Honor, Tom Waldrep of Waldrep Wall  
4 Babcock & Bailey. I'm here, local counsel for the Non-Party  
5 Matching Claimants and our lead counsel, Mr. Hogan, is on the  
6 line.

7 THE COURT: Okay, very good.

8 Ms. Zieg.

9 MS. ZIEG: Good morning, your Honor. Sharon Zieg from  
10 Young Conaway Stargatt & Taylor on behalf of the DBMP Future  
11 Claimants' Representative. I'm here today with my local  
12 counsel, Miller Capps from Alexander Ricks.

13 THE COURT: Okay.

14 Anyone else announcing in the courtroom?

15 MS. ABEL: Shelley Abel, Bankruptcy Administrator.

16 THE COURT: Very good.

17 How about on the videoconference? Any others -- you  
18 don't need to tell me again if someone's already announced for  
19 you -- but anyone else on video that needs to announce an  
20 appearance?

21 (No response)

22 THE COURT: Very good.

23 If you would tell IT, I'm not getting a, a picture on  
24 my screen. I'm not sure if someone's turned it off or what,  
25 but --

1 Okay. How about telephonic appearances? Anyone else?

2 You may have to -- what is it -- star 6 --

3 MR. ELLMAN: Your Honor, this is --

4 THE COURT: Go ahead.

5 MR. ELLMAN: Thank you, your Honor. This is Jeffrey  
6 Ellman (distortion).

7 THE COURT: Whoever was speaking, you were breaking  
8 up. Would you try that again?

9 MR. ELLMAN: Yes. Can you hear me now, your Honor?

10 THE COURT: Yes, sir.

11 MR. ELLMAN: Hi. This is Jeffrey Ellman from Jones  
12 Day. I'm monitoring the hearing on behalf of DBMP.

13 Thank you.

14 THE COURT: Okay.

15 Anyone else needing to announce?

16 MR. MASCITTI: Your Honor, I'm embarrassed to have to  
17 make a correction.

18 THE COURT: Okay.

19 MR. MASCITTI: Our local counsel is Stacy Cordes and  
20 Brad Kutrow. And Jim Phillips and Jeff Oleynik are not  
21 appearing as our local counsel.

22 MR. PHILLIPS: But, but, your Honor, we, we are here  
23 for the Fiduciary Duty Defendants, so.

24 THE COURT: You, you can tell it's been a long  
25 weekend. We've all forgotten who we are over an overdose of

1 turkey, I guess, so.

2 Any other appearances?

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

6 THE COURT: Yes, sir.

7 Anyone else?

8 (No response)

9 THE COURT: Okay. I think that's got it.

10 Obviously, with the, having a, a hybrid telephonic-  
11 video live conference we're going to have some tech issues and  
12 then we've got some folks who have court appearances elsewhere.  
13 My suggestion -- I don't know if y'all thought about how we  
14 approach this calendar -- would be to try to get the people  
15 with the conflicts out of the way and to that end, perhaps not  
16 doing status reports and other matters until we got the motions  
17 to quash and the anonymization motions filed.

18 Does anyone have a, a better way of approaching this?  
19 I'm asking now. This is not arguing with the Judge. If, if  
20 there's a better way logically to do that, that's fine, but --

21 Ms. Hardman?

22 MS. HARDMAN: Your Honor, Carrie Hardman from the  
23 Committee, from Winston & Strawn on behalf of the Committee.

24 I, I am not conscious of the conflicts, perhaps, that  
25 may permeate the motions to quash. We're simply not involved

1 in those matters.

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

4 MS. HARDMAN: I only wanted to raise we are the very  
5 last item on the calendar and thought if we are weighing these  
6 issues, if there are pure conflicts, we understand. If there's  
7 a way for that item to go somewhat closer to the front, that  
8 would be great by us since there's a number of us who could  
9 then --

10 THE COURT: Right.

11 MS. HARDMAN: -- possibly leave and get out from  
12 underneath what seems to be a very big storm going through the,  
13 the country right now and causing, wreaking havoc with our  
14 flights as it is.

15 So if that's part --

16 THE COURT: Okay.

17 MS. HARDMAN: -- of the considerations, we just ask  
18 that we, we be contemplated as part of that.

19 Thank you, your Honor.

20 THE COURT: Does anyone have a feel? We're talking  
21 about the, the so-called letter, the status conference on the  
22 letters that have been written to the Court and -- and -- on  
23 No. 8.

24 MS. HARDMAN: Yes, your Honor. That's Item No. 8.

25 THE COURT: Anyone got a feel for the time needs of

1 that matter? Are we talking about an hour, two hours, or  
2 something else?

3 MR. MASCITTI: Your Honor, I would suspect at least an  
4 hourish.

5 THE COURT: Right.

6 MR. MASCITTI: And I -- and my belief is there are  
7 probably more attorneys involved in the other matter than that  
8 matter. So --

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

11 MR. MASCITTI: -- in terms of balancing which one  
12 should go first, I think going with the trust discovery issues  
13 would make the most sense.

14 THE COURT: Conversely, anyone got a feel for the  
15 trust discovery matters of what the time needs would be there?

16 MR. EVERT: From our perspective, your Honor, that,  
17 these are motions that have been argued before the Court,  
18 frankly, a number of times. So we, we don't anticipate taking  
19 very long unless, unless new issues are raised by the other  
20 side.

21 THE COURT: Okay.

22 Now I'm trying to remember who it was that had, I  
23 believe it was some of the Trusts that were, there were  
24 afternoon appearances in other courts. Can someone update me  
25 on those? What time do you need to be free?

1 MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-  
2 Schnoll on behalf of the Trusts. Can you hear me? I'm --

3 THE COURT: Yes, ma'am.

4 MS. MOSKOW-SCHNOLL: I'm -- there was a problem.  
5 Okay. Thank you.

6 THE COURT: All right.

7 MS. MOSKOW-SCHNOLL: I do not -- my other conflict is  
8 not until -- I have a hearing at 2:00 this afternoon.

9 THE COURT: Okay.

10 All right. Well, just based on what I know, let's  
11 hold off on just the general good-of-the-order type status of  
12 the case announcements. And my 'druthers would be to take up  
13 the issue with regard to the Case Management Order and the, and  
14 the letter that was written to the Court with regard to DBMP  
15 and do that first. 'Cause I will be just upfront. I'm not  
16 sure in Aldrich as opposed to DBMP that, based on what I've  
17 read, I'm not at all sure that we are ready to, to address the  
18 CMO in full and there's some resonance to the motion being  
19 unripe at the moment to me. I'll listen to the contrary, but I  
20 think that may be the -- for the folks who wrote the letter, it  
21 strikes me that both they and the ACC have, have accomplished  
22 their purpose already in, in telling me what they thought about  
23 the CMO that's being, that is to be decided in the DBMP case.  
24 And to that end, it's almost like an *amicus*.

25 My off-the-cuff impressions -- and I'm just talking

1 out loud. I'm not ruling now -- is that we may be in a  
2 position where (a) I, I try to treat this case independently of  
3 DBMP. As y'all are very adept at doing, you learn and, and  
4 amend as you go along in these cases and we get a slightly  
5 different look in each of the cases. We try to do that while  
6 maintaining consistency. So it is not at all assured that  
7 anything I do in DBMP is going to be done here. But at the  
8 same time, we want to make sure everyone has a straight shot at  
9 it.

10 So I'll listen at, at this juncture, but I would say  
11 that if all you were trying to do is to make sure your views  
12 were factored into the DBMP decision so you wouldn't be closed  
13 out as a practical matter, I think that's already accomplished  
14 in this.

15 But let's call No. 8 and we'll, we'll talk about where  
16 we are and what you want to say about it. I don't want to  
17 foreclose your arguments. I'm just trying to inform you as to  
18 my initial thoughts, okay?

19 All right. Who wants to lead off? I'm not sure  
20 exactly how we view this procedurally. So let's start with the  
21 folks who wrote the letter and then we'll hear from them and  
22 then we'll hear back from, from the Representatives in, in  
23 counter to that.

24 And by the way, for everyone's benefit, I saw the  
25 motion that has been filed by the Representatives that I think



1 was scheduled for January, sometime like that. So I'm up to  
2 date, to speed on what you filed so far.

3 MS. HARDMAN: Thank you, your Honor.

4 THE COURT: All right.

5 MS. HARDMAN: With respect to that motion, I'll bring  
6 up an issue when we get to it. But --

7 THE COURT: Okay.

8 MS. HARDMAN: -- thank you.

9 THE COURT: Very good.

10 Mr. Phillips.

11 MR. PHILLIPS: Good morning, your Honor. Jim Phillips  
12 from Brooks Pierce for, along with my partner, Jeff Oleynik, on  
13 behalf of the individual defendants in the fiduciary duty  
14 action.

15 Your Honor, there are three issues that we raised. I  
16 intend to address the first one. My colleague, Greg Mascitti,  
17 is prepared to address the other two, if that's okay.

18 As you correctly noted, our primary impetus for  
19 raising our hand at the point in time when we did at the last  
20 DBMP hearing was a concern that, practically, your ruling in  
21 DBMP would bind us. And so your statement with regard to  
22 understanding both what we say, had to say with regard to those  
23 issues and that the cases are different and could call for  
24 different resolutions will cause me to be briefer, but still a  
25 couple of things to share with you this morning, if that's

1 okay.

2 THE COURT: Please.

3 MR. PHILLIPS: So the issue that I would like to  
4 address is whether the discovery in the fiduciary duty action,  
5 all of the discovery will take place at the same time as the  
6 discovery in the subcon and the fraudulent transfer action or  
7 whether discovery in those actions and whatever is applicable  
8 to the fiduciary duty action will go forward, but issues unique  
9 to the fiduciary duty action will remain stayed and, for  
10 discovery at a later point in time if and when the fiduciary  
11 duty action goes forward.

12 This issue arose in the context of us negotiating the  
13 CMO with the Committee. We thought -- we understood that  
14 discovery would be stayed based on the DBMP CMO and then we  
15 came to find out based on their Joint Letter to the Court in  
16 DBMP that maybe we misunderstood. Our conversation, our meet  
17 and confer with the Committee confirmed for us that we had  
18 misunderstood. And I want to be clear. We address this in our  
19 papers, but the first thing I want to be absolutely and  
20 abundantly clear about is what we're not arguing.

21 The draft CMO in DBMP and, or the CMO in DBMP and the  
22 CMO, the draft in our case, states that, "Discovery taken in  
23 the subcon and fraudulent transfer proceedings shall be deemed  
24 to have occurred in the fiduciary duty proceeding." So we --  
25 we -- we're down with that. We're not arguing that. That's

1 what we expect.

2 But the Committee, it seems to us, wants far more than  
3 that and what they want, to do all the fiduciary duty discovery  
4 now, is inconsistent with the terms of the CMO that we've  
5 negotiated, is contrary to notions of judicial economy, and is  
6 just plain impractical. To say that we're going to do all the  
7 discovery in the fiduciary duty action now ignores the fact  
8 that the Fiduciary Duty Defendants haven't answered or made,  
9 asserted affirmative defenses. If and when we do that, your  
10 Honor, I guarantee you the Committee is going to want discovery  
11 on those affirmative defenses. There are going to be issues  
12 that we have to take discovery on later.

13 So their judicial economy argument rings hollow. It  
14 makes more sense to do the discovery in the subcon and  
15 fraudulent transfer actions now and leave issues that are  
16 unique to the fiduciary duty action until later if and when  
17 they're required.

18 Consistent with that, this Court has recognized -- and  
19 I'm referring to an April 7, 2022 hearing in DBMP where the  
20 Court discussed discovery with the parties and the Court noted  
21 that there might be what it called, or what you called "a  
22 second tier of litigation," which the Court went on to say  
23 would focus on whether the individual defendants breached their  
24 fiduciary duties. That's the time to do that discovery. If  
25 that day ever comes, issues related to those -- to these -- our

1 particular defendants and their actions will be the focus and  
2 should be the focus of that discovery then. In fact, the DBMP  
3 and our draft CMO provides, or recognizes and provides that  
4 these issues will be addressed later when it says that:

5 "The individual defendants will be bound by any final  
6 order in the subcon or fraudulent transfer cases  
7 except with respect to any findings of fact as to any  
8 individual Fiduciary Duty Defendants with respect to  
9 any action or inaction such individual defendants did  
10 or didn't take."

11 So we're not bound by the findings in the fraudulent  
12 transfer case with regard to those issues that are particular  
13 to individuals. They're unique to them. They should be carved  
14 out of discovery now.

15 Two final points, your Honor, that really go to  
16 fairness and equity. The CMO provides, the draft CMO, the CMO  
17 in DBMP provides that my clients can participate in discovery  
18 in the fraudulent transfer and subcon actions if they choose  
19 to. If all the discovery happens now, that's really a false  
20 choice. They have no choice, but to participate.

21 And finally, your Honor, the Committee shouldn't have  
22 its cake and eat it, too. They shouldn't be able to avoid  
23 dispositive motions, motions to dismiss, and go straight to  
24 discovery in the fiduciary duty case.

25 For those reasons, your Honor, we'd ask that at some

1 point the Court order that the fiduciary duty discovery that's  
2 unique there be stayed until the subcon and fraudulent transfer  
3 cases are decided.

4 THE COURT: Okay. Thank you --

5 MR. PHILLIPS: Thank you.

6 THE COURT: -- Mr. Phillips.

7 MR. MASCITTI: Your Honor, is your preference to  
8 address the issues separately or do them all at, on one side?  
9 I know in DBMP they were addressed separately.

10 THE COURT: I'm at the, the parties' preferences  
11 there. Is it easier to do it once?

12 MS. HARDMAN: I don't necessarily have a preference,  
13 your Honor. It seemed to flow well the last time we split it  
14 by issue. It --

15 THE COURT: Right.

16 MS. HARDMAN:: It's really your preference. I,  
17 whatever you prefer.

18 THE COURT: Why don't we take one issue at a time. It  
19 -- it --

20 How many parties are anticipating speaking in regard  
21 to the motion, just the two?

22 MS. HARDMAN: There is likely --

23 THE COURT: Three?

24 MS. HARDMAN: -- to be two on our side --

25 THE COURT: Okay.

1 MS. HARDMAN: -- I think, and perhaps --

2 THE COURT: Okay.

3 MS. HARDMAN: -- three.

4 THE COURT: Let's do it issue by issue, then.

5 MS. HARDMAN: Okay.

6 THE COURT: Let's start with No. 1.

7 MS. HARDMAN: Okay.

8 THE COURT: Ms. Hardman?

9 MS. HARDMAN: Sounds good, your Honor. Again, Carrie  
10 Hardman from Winston & Strawn on behalf of the Committee.

11 I think you noted earlier that we're in a bit of a  
12 strange posture in that the defendants are raising this this  
13 time instead of either a mutual filing or plaintiffs in their  
14 own adversaries, but I guess that's what we can expect when  
15 you receive a 7:55 p.m. Thanksgiving Eve letter that was 12  
16 single-spaced pages filled with a whole lot of turkey stuffing  
17 on our end related to these draft CMOs.

18 So while we don't want any more delay, we thought it  
19 practical originally to have this heard, once we received that  
20 letter, to have this heard and, and raise this before it was  
21 filed at the next December omnibus right before the DBMP  
22 hearing on the 15th.

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

25 MS. HARDMAN: But here we are. So we're going to

1 proceed. Happy to see you, your Honor.

2 On the procedural front, just want to get a couple  
3 things out of the way as well. I told you that we did file  
4 that motion. I just want to acknowledge that as well.

5 With respect to the motion, we were trying to get out  
6 of the morass here that we think has been presented by the  
7 letter in that there's an attached CMO that is the defendants'  
8 version.

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

11 MS. HARDMAN: To my mind, that's a motion that's, it's  
12 a letter framed as a motion --

13 THE COURT: Right.

14 MS. HARDMAN: -- I think. It seems to seek some sort  
15 of relief there and we think that that was, perhaps,  
16 procedurally improper. So we filed our motion to try and get  
17 something before your Honor that you can actually rule on at  
18 some point. We're not saying that's today. So I don't want  
19 anybody to be caught off guard on that respect. We did file it  
20 in accordance with the Rules under the base case CMO.

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

23 MS. HARDMAN: That requires us to file for the next  
24 available omnibus based on the timing. That would be January  
25 26th. Your Honor, I will bring this up later, but I wanted to

1 preview this for the sake of all parties. We might request  
2 today that you consider it for the 14th instead, given we are  
3 effectively arguing these issues before you today. We think  
4 those are the three issues that permeate the CMO from both  
5 sides and if there's nothing left to negotiate, perhaps we  
6 could just see what you think and then proceed on the 14th. We  
7 will come back to that. I just wanted to raise that from a  
8 procedural perspective.

9 THE COURT: Right.

10 MS. HARDMAN: So in accordance with that strange  
11 posture, I'm going to ask you to pretend that I'm wearing two  
12 hats today as well as Mr. Liesemer. I am standing here on  
13 behalf of both the Aldrich ACC, the Committee, as well as the  
14 DBMP Committee. So I am speaking on behalf of two entities  
15 today.

16 From a -- before we get to the specific points in the,  
17 on the stay of the fiduciary duty discovery, I just want to say  
18 that, from our perspective, these procedural postures are  
19 entirely different. I wanted to make one clarification that in  
20 DBMP we're talking about a discovery plan that has been  
21 negotiated after we had an entered CMO that I believe was in  
22 May --

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

25 MS. HARDMAN: -- way back in May. Those terms have



1 been on the docket since then. We then went in, had our  
2 discovery exchanged. We've discussed what's available. We've  
3 had our Rule 26(f) conference. We heavily negotiated a  
4 discovery plan in DBMP and came to you with a joint filing of  
5 what was left.

6 Here is a different posture. We are talking apples  
7 and oranges. We are still at the CMO stage. We haven't talked  
8 about what discovery's available and we'll get to that later,  
9 but just wanted to acknowledge that these are two different  
10 procedural postures and we think that's important for  
11 consideration today.

12 I'm trying to keep this short, your Honor. I'm  
13 cutting through pages.

14 So when it comes to the stay of the fiduciary duty  
15 discovery, I think we have a difference of opinion about the  
16 ripeness of this issue. I think you noted that, already. We  
17 actually don't think that this is an issue for today's CMO. We  
18 think this is an issue for participation in discovery going  
19 forward. Mr. Phillips did raise a number of provisions of the  
20 CMO as drafted that were there from the get-go and we've been  
21 in agreement all along.

22 One of those he mentioned was that they preserved  
23 their rights with respect to the individuals' actions or  
24 inactions, then we could proceed with discovery. They've got  
25 their rights preserved, from my perspective. That's what we

1 intended this CMO to represent. All rights are preserved. We  
2 are going to go forward with discovery in as much of a one-time  
3 and comprehensive basis as we could.

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

6 MS. HARDMAN: It seems that there's no dispute that  
7 the discovery that we are conducting in these actions would be  
8 binding on all parties subject to those certain reservations  
9 whether -- and they can choose to participate or not. Those  
10 provisions are laid out in the CMO. We're not sure entirely  
11 how we split this baby when we're talking about approach in  
12 staying certain kinds of discovery and not others. We can  
13 permit discovery to proceed. What discovery we intend to seek  
14 is intended to be comprehensive, as I said, and the discovery  
15 here arises from the same set of facts. I'm going to repeat  
16 myself a bit from the last hearing in DBMP.

17 We discussed instances with the defendants of where we  
18 could bifurcate that discovery --

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

21 MS. HARDMAN: -- and we came up with one example. And  
22 that is -- and we put that in our pleadings -- the financial  
23 wherewithal of an individual defendant. That, to me, is very  
24 specific to the fiduciary duty action. I don't think -- our  
25 Committee really isn't concerned with that with respect to

1 fraudulent transfer, but when you talk about the intent of  
2 those individuals who are either current or former officers and  
3 directors that's important for the fiduciary duty and the  
4 subcon actions.

5           So I think, you know, if we want to carve out one  
6 specific issue, that's fine. We started to talk about that and  
7 thought, well, maybe there's some room for us to, to narrow our  
8 issue here. So at the least, it's premature to be discussing  
9 this today. We could talk about that further among the parties  
10 before the hearing on the 14th, but when it comes to all the  
11 other issues I, I have to say unless we get those specific  
12 examples, we don't see how you bifurcate it.

13           As we've said to the Court before, the fiduciary duty  
14 action rises and falls with the fraudulent transfer and subcon  
15 complaints, presume, more so the fraudulent transfer action.  
16 But -- so the discovery we intend to seek is likely to permeate  
17 both actions from a practical perspective. I don't think the  
18 fiduciary duty defendants are suggesting their clients won't  
19 sit for third-party subpoenas if that's where we have to go  
20 here in the fraudulent transfer or subcon actions, but, if they  
21 want piecemeal discovery, it, we can do more than one  
22 deposition if that's, of the same defendant, if that's needed.  
23 We just thought it was inefficient.

24           So all that said, you know, we could argue the merits  
25 of this, but I think my general position here, your Honor, is

1 that this is premature at this stage. We're happy to discuss  
2 further trying to narrow what issues might be carved out, but  
3 otherwise think that the CMO as originally drafted and agreed  
4 by the parties until the 11th hour before a DBMP hearing should  
5 just proceed.

6 THE COURT: Okay. The -- your reference to doing  
7 something on, on December 14th, do you believe that the entire  
8 CMO will either be resolved or that we can tee up all of those  
9 issues at this, at that date?

10 MS. HARDMAN: We had originally proposed to the  
11 defendants that we tee all of this up for then.

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

14 MS. HARDMAN: I believe based on the circumstances at  
15 this moment we effectively have submitted materials on both  
16 sides sufficient to address what are the true outstanding  
17 issues. There are a number of very limited additional comments  
18 to the CMO that you will see in a blackline that we've attached  
19 to the motion. It's between the version filed by the  
20 defendants and our version that's filed with that motion.

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

23 MS. HARDMAN: It shows a couple of small issues. We  
24 believe that at our last meet and confer we actually narrowed  
25 those. We thought we had agreement on the language and it

1 might require just one conversation to sort that out. None of  
2 those are, from my perspective, substantive or are significant  
3 issues that can't be resolved. Giving us the opportunity to  
4 have that one more call before the 14th narrowing those issues,  
5 perhaps submitting another blackline to your Honor with the new  
6 version, could get us there. If the defendants feel that they  
7 have more to say beyond their 12-page letter, if they want to  
8 respond to our motion, we would not be opposed to that on a  
9 particular time schedule so we at least know when it's coming.

10 But other than that, we would be happy to proceed and  
11 think that based on what we're doing today it'll be submitted  
12 sufficiently before your Honor such that if maybe there's a  
13 little bit of argument on the 14th, that would be it.

14 THE COURT: Okay. Thank you.

15 Before we get into that, Mr. Phillips, I would like to  
16 talk about that general issue, is do you think you'll be in a  
17 position in the next month or even January to be able to talk  
18 about all of the CMO issues? I'd rather make one ruling and  
19 procedurally, that would be more proper if we could.

20 How, how do you feel about it from your side?

21 MR. PHILLIPS: Your Honor, without having much  
22 discussion other than what we've had previously, I think that  
23 we would be in a position by January. The 30, the 14th is a  
24 couple of weeks.

25 THE COURT: Right.

1 MR. PHILLIPS: And I will also admit that being late  
2 to this party that's been going on for a couple of years, I've  
3 got a conflict on the 14th that, 'cause I didn't have all the  
4 omnibus dates on my calendar at the beginning. And so  
5 personally, I'd like to avoid that and move it into January.

6 But I certainly think in January we would be in a  
7 position to do that.

8 THE COURT: Mr. Mascitti?

9 MR. MASCITTI: Your Honor, I don't want to short  
10 circuit the arguments today because I know everyone loves to  
11 argue.

12 We -- you know, your Honor may recall at the hearing  
13 in DBMP when you allowed us to appear we had proposed having  
14 this all heard on December 14th and the Committee opposed it at  
15 that time. So it is somewhat ironic now that the Committee  
16 would like it all heard on the 14th.

17 I agree with Mr. Phillips that January would be  
18 appropriate and, your Honor, I don't really want to argue these  
19 issues twice.

20 THE COURT: Right.

21 MR. MASCITTI: And so if you believe that, if your  
22 Honor believes that it would be more appropriate to hear  
23 everything at once in January, my suggestion would be we just  
24 defer argument on these issues until then.

25 THE COURT: Anybody else need to jump in on this?

1 Ms. Zieg?

2 MS. ZIEG: Your Honor, I would like to talk about the  
3 text messaging issue because, as you noted in your, your  
4 comments, it's almost like an *amicus* to the DBMP hearing and I  
5 think that as the FCR's representative in DBMP who addressed  
6 this issue I need to address the, the briefing they put in  
7 their letter that --

8 THE COURT: But for purposes --

9 MS. ZIEG: -- in our view --

10 THE COURT: -- of DBMP.

11 MS. ZIEG: -- mischaracterizes the cases and the issue  
12 in DBMP.

13 THE COURT: Yeah. This, this is pointing out to me  
14 why my trying to coordinate the two cases is, is probably a bad  
15 idea since procedurally what we're really talking about for the  
16 moment is, is doing something in DBMP without all the parties  
17 present, either. I know I've got most of the major  
18 constituencies, but not all of them.

19 MR. MASCITTI: Your Honor, if I could just --

20 THE COURT: Yeah.

21 MR. MASCITTI: -- add to my prior comment.

22 We weren't expecting your Honor to rule today on these  
23 issues.

24 THE COURT: Right.

25 MR. MASCITTI: What we did expect is that your Honor

1 might provide some guidance on those issues consistent with, I  
2 believe the way your Honor is leaning in DBMP, which might  
3 facilitate a consensual resolution of the CMO going forward in  
4 this case.

5 THE COURT: All right.

6 Here's what I think we ought to do. I don't like it  
7 procedurally. I'm not a, a stickler for civil procedure, but  
8 the higher courts do expect a little bit of form from us down  
9 here and recognizing they think all bankruptcy work is  
10 witchcraft, anyway, it's better to have it framed up in a more  
11 traditional form.

12 I'm planning to make a decision in the DBMP case in  
13 the December hearing. The reality of my schedule is I'm, I'm  
14 in court practically every day between here and there and I  
15 would like to give this all the time and whatever other  
16 disputes you might have that it warrants and since I'm going to  
17 make a ruling in DBMP at the December date, that would also  
18 give y'all an opportunity to triangulate based on, on what I  
19 say then and tell me why it's different here. And lest anyone  
20 be concerned that they'll be roped in by what I decide in DBMP,  
21 obviously there's some differences on, on the cases and these  
22 motions and the procedural posture, as Ms. Hardman has pointed  
23 out. But my view is that if we get that date, then we ought to  
24 hear this in January and give you a full run on all of the CMO-  
25 related issues and just get it knocked out one time and not



1 waste your time in the meantime.

2           So with, with all respect, I think I've got enough  
3 DBMP briefing on, on the text devices and the like. I just  
4 wanted to know what other parties thought about it, Ms. Zieg.  
5 So I -- I -- I think -- I hear you loud and clear there, so.

6           My thinking would be that we just ride on the motion  
7 that's been noticed out for the January date and use that as  
8 our vehicle. If you need to, to talk about supplemental  
9 briefing on these, these matters and others, I'm happy to  
10 discuss that or you can work it out between yourselves,  
11 whatever you want.

12           MS. ZIEG: That's acceptable, your Honor. My only  
13 issue is that the cases that they cited for the issue here, but  
14 really in DBMP, are completely different than the issues we  
15 were addressing at the DBMP hearing. I just wanted to make  
16 sure that your Honor, to the extent you read the cases -- and I  
17 am sure that you understand that they are completely inapposite  
18 of the issue there -- but I just wanted to make sure that we  
19 had an opportunity to be heard if any of that briefing was  
20 impacting your decision in DBMP.

21           THE COURT: Well, I can't give glimmers as to what I'm  
22 thinking, but, at this juncture, but we try to read all the  
23 cases that are pointed out to us, so. Okay?

24           So for now, my suggestion on this matter is that we  
25 incorporate it in the, into the motion the Committee has

1 already noticed out for the January date and continue it till  
2 that time.

3 If -- do y'all need to set any dates as to briefs and  
4 replies, or are you going to use the, the standard Rules?

5 MR. MASCITTI: Your Honor, I expect we'll file a  
6 cross-motion, then, for a competing CMO and, and we'll discuss  
7 with the Committee a briefing schedule.

8 THE COURT: Okay. If y'all can work all that out,  
9 that will help us.

10 Okay. Let's take about a five-minute recess.

11 Any of you who were only here for that matter are, are  
12 welcome to leave.

13 And those who are on by video or telephone, please  
14 keep the lines open, receivers muted.

15 And we'll pick up in -- let's see. It's five after --  
16 let's pick up at a quarter after the hour, okay?

17 MR. NEIER: Thank you, your Honor. We're going to be  
18 excused.

19 MS. HARDMAN: Thank you, your Honor.

20 THE COURT: Okay. Bye.

21 (Recess from 10:05 a.m., until 10:18 a.m.)

22 AFTER RECESS

23 (Call to Order of the Court)

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

25 All right. Are we ready to move on? I, I don't want

1 to forego the, the traditional good-of-the-order type  
2 announcements about the case, but we still in these motions to  
3 quash and the motion to anonymize also have some parties who  
4 wouldn't be here throughout.

5 So I would suggest that we hear those three motions  
6 and -- actually, it's more than that -- but the motions to  
7 quash and the anonymization motion and then if afterwards there  
8 are any status reports to be given, do that.

9 Anyone feel differently? Okay.

10 Mr. Guy.

11 MR. GUY: Your Honor, I don't feel differently, but I  
12 just wanted to announce that we don't have a direct horse in  
13 this race.

14 THE COURT: Right.

15 MR. GUY: And we want to stay because it's  
16 interesting, of course, and we are concerned about the result  
17 and we want to make sure things move forward. But if I may be  
18 excused if I get to my watch, to get my flight, I would  
19 appreciate that.

20 THE COURT: All right.

21 MR. GUY: Thank you, your Honor.

22 THE COURT: Okay. You may, of course, Mr. Guy, leave  
23 whenever you want to, but we'll try to do what we can.

24 MR. GUY: Everybody might surprise me and argue very  
25 quickly, your Honor.

1 THE COURT: All right.

2 Well, with that in mind, we were supposed to be doing  
3 a status hearing on, on the, the Committee's motion to compel  
4 mediation.

5 Was there going to be much put on today in that  
6 matter? It's on the calendar, but I'm not sure that we have a  
7 lot to talk about, or, I mean, the BA's motion to, to compel  
8 mediation.

9 MS. ABEL: Your Honor, I'm stealing thunder here, but  
10 we have a draft order that is very close to being finalized I  
11 think we should be able to submit today.

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

14 MS. ABEL: And that draft order sets all of this out  
15 for January. The parties are in discussions and we believe  
16 that they're going to make some progress on that front.

17 So I don't think we'll need the Court's time on that  
18 today.

19 THE COURT: Okay.

20 Everyone feel alike on that?

21 (No response)

22 THE COURT: Okay.

23 For the, the clerk's, clerk's benefit, No. 1 on the  
24 docket, the mandatory mediation, we'll just carry over to the  
25 January date, if we need it.

1 All right. That takes us -- and we can do it  
2 quickly -- we've continued the No. 2 and No. 3 to December  
3 14th, the motions to file confidential documents under seal.

4 Everyone agreed there?

5 MR. ERENS: Yeah. Can we, can we continue it one more  
6 time to January? We will have it -- we continued it enough  
7 times, your Honor, that we, we will get it done by the, the New  
8 Year, at the latest.

9 THE COURT: Anyone feel differently?

10 (No response)

11 THE COURT: Okay.

12 What is that January date? It is --

13 MR. ERENS: January 26, your Honor.

14 THE COURT: Okay. The 26th in each of those.

15 All right. That takes us to Nos. 4 through, I guess  
16 it is, 6 and also No. 7.

17 Do the parties have a feeling? They're related  
18 matters. I would assume the motions to quash should be heard  
19 together. Do we need to also throw in the anonymization or do  
20 you want to hear that separately or do y'all have another way  
21 of approaching these matters?

22 MR. EVERT: No need to hear them separately, from our  
23 perspective, your Honor.

24 MR. GUERKE: Your Honor, Kevin Guerke --

25 THE COURT: Yeah.

1 Mr. GUERKE: -- DCPF. I, I think they could be all  
2 heard together. And we've made some effort to coordinate with  
3 the motion to quash folks and the plan is to have Trust counsel  
4 go first, I'll go second, and then Mr. Hogan and the Matching  
5 Claimants third, your Honor.

6 THE COURT: Everyone in agreement?

7 (No response)

8 THE COURT: Okay.

9 Well, we will call Nos. 4 through 7, altogether.

10 That, for the clerk who's not potentially looking at  
11 the same docket I've got, the Third-Party Trusts' Motion to  
12 Quash or Modify. There were a variety of responses; No. 5,  
13 Delaware Claims Processing Facility's Motion to Quash or  
14 Modify; No. 6, the Non-Party Certain Matching Claimants' Motion  
15 to Quash or Modify; and the Non-Party Certain Matching  
16 Claimants' Motion to Proceed Anonymously, we're calling all of  
17 those at the same time.

18 All right. I'm ready to hear you.

19 Mr. Martin?

20 MR. MARTIN: Good morning, your Honor. Lance Martin  
21 from Ward and Smith on behalf of the Asbestos Trusts. Lead  
22 counsel on the video is going to be presenting the argument  
23 today, your Honor, but I do have one demonstrative exhibit.

24 May I approach?

25 THE COURT: You may.

1 MR. MARTIN: Thank you.

2 (Demonstrative exhibit handed to the Court)

3 THE COURT: Counsel, whenever you're ready.

4 MS. MOSKOW-SCHNOLL: Thank you, your Honor. This is  
5 Beth Moskow-Schnoll. Can you hear me okay?

6 THE COURT: Can we get a little more volume on? Okay.

7 All right.

8 MS. MOSKOW-SCHNOLL: Is that, is that any better? I'm  
9 trying to --

10 THE COURT: Much better, yes. Thank you.

11 MS. MOSKOW-SCHNOLL: Okay, great.

12 First of all, your Honor, what, what you just  
13 received, I sent a copy of those, those few slides to Jones Day  
14 earlier this morning before the hearing so, so that they had it  
15 a little bit before.

16 I, I just wanted to apologize again for not being in  
17 court in person. I would much prefer to be there, but at the  
18 time this was scheduled I already had a, a hearing before the  
19 district court in Delaware this afternoon scheduled and -- but  
20 I do apologize 'cause I would like to argue in person because  
21 this is definitely -- you know, I was going to make a, a joke  
22 about the fact that I don't want to look like I'm "phoning" in  
23 this argument because I'm not.

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

1 MS. MOSKOW-SCHNOLL: I mean, we have not argued before  
2 this Court before --

3 THE COURT: Right.

4 MS. MOSKOW-SCHNOLL: -- on this issue and, and even  
5 though the lawyers from Jones Day said, "Oh, this is something  
6 the Court's heard many times," the Court has not heard it in  
7 this case and we do have some different points that we want to  
8 stress.

9 THE COURT: All right.

10 MS. MOSKOW-SCHNOLL: This is governed by Rule 45,  
11 which is not, which is not the standard by which the subpoena  
12 or the order attached to the subpoena was issued.

13 So it is a different standard and that says that, "The  
14 court must quash or modify a subpoena that requires disclosure  
15 of privileged or other protected matter" -- that's 45(d)(3)(A)  
16 -- is unduly burdensome under 45(d)(3)(A)(iv), which Mr. Guerke  
17 will address, or seeks disclosure or confidential commercial  
18 information under Rule 45(d)(3)(B)(i).

19 So, you know, one of the issues is what do the  
20 subpoenas to the DCPF Trusts seek? They seek claimants' law  
21 firms, date claim filed, date claim paid, and then all  
22 exposure-related fields.

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

25 MS. MOSKOW-SCHNOLL: And Aldrich's argument is, like,



1 "We don't need a lot of protections here and, and we don't need  
2 sampling because this is not PII."

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

5 MS. MOSKOW-SCHNOLL: But while they don't expressly  
6 seek trust claimants' personal information, like Social  
7 Security numbers, names, addresses, that really makes little  
8 difference here because, as Mr. Guerke will discuss, the  
9 exposure-related fields that are requested may still contain  
10 personally identifiable information. But more importantly,  
11 because DCPF must match the Trust claimants' name and Social  
12 Securities, Social Security numbers to names and Social  
13 Security numbers provided by Aldrich thereby deanonymizing any  
14 kind of data prior to production, DCPF is releasing claimant  
15 identifying information and however Aldrich wants to refer to  
16 it, that's what it is. It's, it's personally identifiable  
17 information related to the claimants.

18 The next issue is because there is this type of  
19 information being released, we need to talk about  
20 proportionality. Aldrich's ask is not proportional to its  
21 needs and, and I, I want to turn to my slides at this point.

22 Your Honor --

23 THE COURT: Please.

24 MS. MOSKOW-SCHNOLL: -- is it okay if I share my  
25 screen to put them up?

1 THE COURT: Absolutely.

2 MS. MOSKOW-SCHNOLL: Thank you.

3 So first of all, there's a, we have a cast of common  
4 characters here. In all three of these related cases, in  
5 Bestwall, DBMP, and, and in Aldrich, the case we're with now,  
6 we have across the line Bates White acting as the expert. We  
7 have Jones Day and, and for these --

8 THE COURT: Hang on. Hang on one moment, Counsel.  
9 Were you sharing those documents on the screen? 'Cause we're  
10 not seeing them.

11 MS. MOSKOW-SCHNOLL: You're not seeing them?

12 THE COURT: No, ma'am.

13 MS. MOSKOW-SCHNOLL: Oh, okay. Interesting. Oh,  
14 yeah. It's not showing. Well, you all have a copy. I'll tell  
15 you what I'm thinking. I don't know why it's not showing.

16 THE COURT: Does, does anyone else feel the need to  
17 see printed copies? We can take a moment if those in the  
18 gallery need it.

19 Okay. Now we're there. Thank you. No. We were.

20 MS. MOSKOW-SCHNOLL: Guys, we were. Hold on.

21 (Pause)

22 MS. MOSKOW-SCHNOLL: Can you see it now?

23 THE COURT: We see "trust subpoenas compelled data of  
24 36,000 trust claims."

25 MS. MOSKOW-SCHNOLL: There we go.

1 THE COURT: Okay.

2 MS. MOSKOW-SCHNOLL: Which is the wrong slide. And  
3 now it's not -- okay.

4 THE COURT: There you are.

5 MS. MOSKOW-SCHNOLL: There we go. Thank you. Thanks  
6 for your patience.

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

9 MS. MOSKOW-SCHNOLL: So we have a list of common  
10 characters across these cases, these three cases. We have  
11 Bates White acting as the expert, we have Jones Day, and, and  
12 the red is, is the people that are, that are across all three  
13 of the cases.

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

16 MS. MOSKOW-SCHNOLL: And since Mr. Erens is in the  
17 courtroom today, well, actually, he, he's not in DBMP  
18 apparently, but still we have the same people at Jones Day that  
19 appear across all these. And then, we have the fact that these  
20 trust subpoenas are compelling an enormous amount of data.  
21 We've got, you know, Bestwall served their subpoena April 5,  
22 2021 seeking 15,000 trust claimants' data from 11 trusts, then  
23 there was DBMP, which was 9,000 trust claimants' data from 11  
24 trusts, and Aldrich is even bigger because it's 12,000 trust  
25 claimants' data, but it's from 19 trusts, plus Paddock, so

1 another debtor. And this amounts to 36,000 trust claimants'  
2 data from 19 different trusts, plus Paddock, and it's all going  
3 to Jones Day and Bates White.

4           So the Aldrich subpoena allows Bates White to  
5 aggregate all these trust claimants' data postproduction with  
6 data from Aldrich's database and other sources, including data  
7 from Manville, Verus, and Paddock, into a single, consolidated  
8 information clearinghouse while they hold a matching key that  
9 deanonymizes the data and we think that's an enormous risk and  
10 not only will the data be commingled into one searchable  
11 database, but it also allows Bates White to consolidate data  
12 from Aldrich's database or other sources into a single,  
13 consolidated trust claimant information clearinghouse.

14           So even if they only consolidate information from  
15 sources identified in the Aldrich subpoenas, they will be  
16 consolidating confidential, sensitive data collected from 20  
17 different sources into a single, consolidated database.

18           Now it gets, it gets even more dramatic when you look  
19 at what's going on now where there's inter-debtor and third-  
20 party debtor subpoenas which are seeking even more information.  
21 So what we have here is that Bestwall now has subpoenaed  
22 Aldrich Pump and Murray Boiler and DBMP who, by the way, are  
23 also represented by Jones Day. They did not file motions to  
24 quash, as far as we're aware. And so they have started  
25 subpoenaing these other debtors and asking for claims data

1 which is data contained in any claims database within DBMP's  
2 possession, custody, or control. They also subpoenaed Paddock  
3 for claims data and ballots using the same definition of what  
4 claims data is. And again, it's all flowing to Jones Day and  
5 Bates White. It's all going to the same place. And, and  
6 Aldrich has already indicated that it's going to follow suit  
7 and issue inter-debtor subpoenas as well.

8           And, and so there's a real risk that despite best  
9 practices that protected trust claimant data that's intended  
10 for use in only one database may find its way into another  
11 database or into another debtor's hands, even if it's done  
12 inadvertently, and no matter how well intentioned the effort is  
13 to avoid disclosure, we're still going to -- the scenario is  
14 ripe for extending the use of trust claimants' data beyond  
15 Aldrich's estimation proceeding and the permitted purposes.

16           So -- and, and besides that, because all the data is  
17 going to the same entities, not to even mention all the other  
18 experts that are allowed to have access to it, you know,  
19 there's a case that we cited, Virginia Department of  
20 Corrections v. Jordan, where, you know, the court there said:

21           "Even the most rigorous efforts of the recipient of  
22 sensitive information to preserve confidentiality in  
23 compliance with the provisions of such a protective  
24 order may not prevent inadvertent compromise. It is  
25 very difficult for the human mind to compartmentalize

1 and selectively suppress information once learned, no  
2 matter how well-intentioned the effort may be to do  
3 so."

4 I mean, and one of our concerns is, like, if we turn  
5 over this data, are we going to see a flurry of subpoenas  
6 directed to Aldrich, DBMP, or Bestwall that the trust data will  
7 get swept up in? It looks like that's going to happen and it's  
8 very, very concerning to us.

9 I'm going to see if I can stop sharing my screen now.

10 Okay. I think that worked, right? You can all see me  
11 again?

12 THE COURT: Yes, ma'am.

13 MS. MOSKOW-SCHNOLL: So in summary, we have here two  
14 entities, Jones Day and Bates White, holding almost 150,000  
15 claims files for 12,000 claimants from 20 different sources, 19  
16 trusts and Paddock, plus data for 24,000 claimants in Bestwall  
17 and DBMP, and holding the matching keys to deanonymize each  
18 dataset. The same counsel and lead experts are analyzing  
19 similar data across three bankruptcies, all for the same  
20 purpose, which leads to unprecedented aggregation and  
21 commingling of data into a single information clearinghouse and  
22 the matched and aggregated production is further accessible by  
23 a broad array of retained experts and authorized  
24 representatives for Aldrich and Murray, the ACC, the FCR, Trane  
25 Technologies Company, and Trane U.S.

1           So what are we proposing? I'm sure you know. It's  
2 sampling. Sampling really is the solution here. It's  
3 particularly appropriate where confidential data is sought. So  
4 -- excuse me.

5           THE COURT: Take a moment.

6           (Pause)

7           MS. MOSKOW-SCHNOLL: DCPF undertakes significant  
8 security measures to try to protect all this data, but once  
9 it's produced to Aldrich and Bates White those measures can no  
10 longer control or protect that trust claimants' data that they  
11 and the Trusts have a duty to protect. By limiting disclosure  
12 of the trust claimant data to no more than a 10 percent sample,  
13 the volume of data leaving DCPF's control and the Trusts'  
14 control is drastically reduced and, in turn, the risk of harm  
15 to trust claimants through inadvertent disclosure or misuse of  
16 the data is reduced significantly.

17           And, and the most important point here is that while  
18 the information may be relevant for the estimation proceedings,  
19 all of the information is not necessary for these proceedings.  
20 There -- there is -- they -- Aldrich has failed to show why  
21 they need unfettered access to claimants' sensitive  
22 information. Why a sample would not work -- they've never  
23 argued that a sample would not work for them and they've never  
24 explained how it couldn't work for them. And, you know,  
25 especially, there's no need for all of the information to go in

1 that, especially when you're balancing it against the need to  
2 protect the sensitive, confidential information of 12,000 sick,  
3 elderly people, some of them may even be dead. I don't know.  
4 And sampling won't modify the substance or quality of the data  
5 that Aldrich receives. It only decreases the volume, which is  
6 a really good thing. Aldrich will be able to discern the exact  
7 same patterns from a sample as they would from reviewing all  
8 the data and a random sample of no more than 10 percent of the  
9 trust claims at issue would, therefore, provide Aldrich with  
10 all the data it needs for its estimate, estimation proceedings  
11 and Aldrich has never argued otherwise.

12           But they really can't argue that sampling wouldn't get  
13 them what they need because Aldrich's counsel, as I've said, is  
14 the same counsel who represented the debtor in Bestwall. And  
15 in Bestwall when Judge Connolly in the District of Delaware  
16 ruled that a 10, that only a 10 percent sample would need to be  
17 produced, Bestwall issued a new subpoena and asked the court to  
18 approve their resolved claim sample and in that motion they  
19 admitted that using a 10 percent sample would -- and this is a  
20 quote -- "provide an efficient mechanism by which the parties  
21 and the bankruptcy court can address issues presented by the  
22 estimation proceeding" and they argued that "approving the 10  
23 percent sample offers a practicable and fair way to proceed and  
24 will save time and expense." And, your Honor, we totally  
25 agreed with Jones Day. It will save time and expense. In that



1 same motion Jones Day cited the Manual for Complex Litigation  
2 for the --

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

5 MS. MOSKOW-SCHNOLL: -- proposition that:

6 "Acceptable sampling techniques in lieu of discovery  
7 and presentation of voluminous data from the entire  
8 population can save substantial time and expense and  
9 in some cases provide the only practicable means to  
10 collect and present relevant data."

11 And Aldrich's only -- their, their own consultant,  
12 Bates White, further opined that a 10 percent sample was  
13 reliable for performing analyses related to liability  
14 estimation and this was despite them previously contending that  
15 using a sample would be unworkable. And your Honor has also  
16 stated that you favor sampling because it saves costs and  
17 controversy.

18 And finally, your Honor, if the Court orders  
19 production of a sample as opposed to the entire claimant  
20 population, my guess is that that will become the norm going  
21 forward for subpoenas like this in estimation proceedings and  
22 that would, hopefully, lead to less litigation going forward  
23 which would, again, be, be more efficient, less costly, and,  
24 and just make things move along. In conclusion, using a random  
25 sample mitigates risks, lessens the burden on the Trusts and

1 DCPF, and it would be a much more efficient method and it may  
2 result in less litigation going forward, your Honor.

3 So we respectfully ask the Court to grant our motion  
4 to quash and order that rather than produce all the claims data  
5 for the 12,000 claimants, that the DCPF Trusts produce a random  
6 10 percent sample of that data.

7 Thank you, your Honor.

8 THE COURT: Thank you very much.

9 Okay. Mr. Guerke.

10 MR. GUERKE: Good morning, your Honor. Kevin Guerke  
11 on behalf of Delaware Claim Processing Facility, LLC.

12 We join the Trusts' arguments, both made today and  
13 also in their written submissions. I appreciate that the Court  
14 has heard similar issues on other subpoenas before. So I'll  
15 streamline my comments today and will focus on the unique  
16 burden on DCPF. Otherwise, we'll rely on our papers, your  
17 Honor.

18 THE COURT: Thank you.

19 MR. GUERKE: DCPF has a duty to protect and maintain  
20 the security over the confidential and highly sensitive trust  
21 data that it stores for the Trusts. Protecting the security of  
22 sensitive claimant data is our highest priority.

23 Debtors' subpoena requested DCPF to produce seven  
24 categories of information from the Trusts. The process  
25 involved in responding to those seven categories will be a huge

1 burden. Whether it was the debtors' intent or not, the  
2 subpoena will capture sensitive, personal identifying  
3 information, including names and Social Security numbers. The  
4 primary problem is the debtors' Request G, Paragraph 10 of the  
5 subpoena, for all exposure-related fields. That's the seventh  
6 category, your Honor.

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

9 MR. GUERKE: This broad, all-exposure field includes  
10 five additional subcategories of requested information. Some  
11 of the data for the all-exposure field's request will contain  
12 Social Security numbers and names and other sensitive  
13 information. This is usually found in secondary exposure or  
14 occupational exposure situations where a claimant filled out a  
15 narrative response in the claim form describing their exposure  
16 and listing information that would be considered personal  
17 sensitive information. Here, the subpoena seeks information  
18 related to 12,000 claimants. Almost 150,000 claims match to  
19 those 12,000 claimants. There can be multiple exposure records  
20 associated with each claim that's submitted and each exposure  
21 record has up to four exposure fields which could contain  
22 personal identifying information.

23 So to comply with the subpoena, each field would have  
24 to be manually reviewed by a DCPF employee to respond to the  
25 subpoena and then redact and remove the sensitive information

1 like names and Social Security numbers. That means DCPF has to  
2 review and redact up to four exposure fields for each of the  
3 hundreds of thousands of exposure records associated with the  
4 nearly 150,000 claims. It's a very labor-intensive process and  
5 it's a very time-consuming process.

6 The process and data isn't easy to understand and I've  
7 had trouble visualizing it and conceptualizing it.

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

10 MR. GUERKE: Your Honor, I, I have a, a sample I'd  
11 like to hand up and hand to counsel to help describe the, the  
12 process.

13 May I approach?

14 THE COURT: Please.

15 (Printout handed to the Court and counsel)

16 THE COURT: Thank you. I can tell already you're  
17 optimistic about my eyesight.

18 MR. GUERKE: I'm sorry, your Honor. That -- this is a  
19 -- this would normally be provided in a spreadsheet form --

20 THE COURT: Right.

21 MR. GUERKE: -- and we had to print it out and --

22 THE COURT: You're fine.

23 MR. GUERKE: -- this is as, as good as we could get  
24 it.

25 THE COURT: Very good.

1 MR. GUERKE: What this is, your Honor, this three-page  
2 document, is an example of the end product that we produce in  
3 response to a subpoena like this. It's after the review and  
4 it's after the redaction.

5 So as I said before, there are 150, nearly 150,000  
6 claim forms in play here. When responding to the subpoena,  
7 DCPF will pull the data from, from the claim forms for the  
8 fields that were requested, the seven categories --

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

11 MR. GUERKE: -- in Paragraph 10 of the subpoena.  
12 There are multiple exposure records associated with each claim.  
13 After the information is collected, DCPF has to review each  
14 exposure field for names, Social Security numbers, and other  
15 personal identifying information and that ends up in the final  
16 form for production, which is the document I've handed up.

17 The first page, your Honor, includes claim-related  
18 form, claim-related information and it corresponds to Requests  
19 A through F in the subpoena for claimant pseudonym, information  
20 about the law firm, contact information, the date that the  
21 claim was received, the date that the claim was approved, the  
22 first payment, and the status. First page is claim-related  
23 information.

24 The second page, your Honor, is an example of  
25 information that would be pulled and provided in response to

1 Part G of the subpoena, all exposure-related fields. And  
2 you'll see here that this is injured party exposure and there  
3 is a column on the right side with, with four-or-five entries  
4 with text fields where this particular claimant has filled in  
5 narrative responses and, and as you will see, there's  
6 information that had to be redacted in, in the production  
7 process, names in two or three places for this, this injured  
8 claimant information.

9 The last page, your Honor, is, relates to secondary-  
10 exposure information that also would be captured by Part G of  
11 the subpoena. You'll see that this claimant had secondary or  
12 take-home exposure from her spouse. She provided her spouse's  
13 name and she provided her spouse's Social Security number in  
14 two places in the narrative text that she filled in and as you  
15 can see, it's, it's been redacted as part of the production  
16 process.

17 A DCPF employee has to review each of these exposure  
18 records and then make the redactions. The redacted information  
19 is then compiled into a spreadsheet in electronic form similar  
20 to the printout that I've handed up. That review has to be  
21 done of those exposure records hundreds of thousands of times  
22 and the data produced looks like what I've handed up, but to  
23 get to that end product the reviewer in this particular case  
24 had to review multiple separate exposure records. There's no  
25 easy way to do it. It cannot be automated. The review can't

1 be completed electronically. We must eyeball it by a human and  
2 then there is a second-level QC process that we have to go  
3 through.

4           The debtors argue there's minimal burden because they  
5 haven't requested personal identifying information  
6 specifically, but, but that's not correct. The, the sensitive  
7 information is contained within the narrative fields, as I  
8 have, as I have shown in this example, that will be produced in  
9 response to the all exposure-related fields request in the  
10 subpoena. Responding to this subpoena will require DCPF, not a  
11 party to this case, as a nonparty to dedicate a team of  
12 employees to do this review. Responding to this subpoena will  
13 take that team many, many weeks to complete. It's an  
14 undeniable, undeniably tedious manual process that could easily  
15 be reduced through sampling. The burden we've described, your  
16 Honor, is undisputed.

17           And the costs are not just hard-dollar costs and  
18 expense. The subpoena takes away from DCPF's core mission. It  
19 takes away from DCPF's business. It distracts and it impedes  
20 us from, from processing claims for injured claimants. It  
21 can't do its other work when it's doing this work, your Honor,  
22 and -- and -- and if there's a situation where DCPF releases  
23 sensitive information and there's a data breach, it loses  
24 credibility. It strains its business. It could lose business.  
25 It's a serious threat.

1 So we request, your Honor, respectfully, that the  
2 Court quash or modify the subpoena to eliminate the request for  
3 all-exposure fields, Part G of the subpoena, and order random  
4 sampling, as described by my colleagues and in our papers.  
5 That's the only way to reduce the extensive burden on non-party  
6 DCPF.

7 Thank you, your Honor.

8 THE COURT: Thank you.

9 Then we had the claimants as well who wanted to be  
10 heard?

11 MR. HOGAN: Yes, your Honor. Daniel Hogan --

12 THE COURT: Okay.

13 MR. HOGAN: -- on behalf of the Certain Matching  
14 Claimants. Can you hear me this morning, your Honor?

15 THE COURT: Yes, sir.

16 MR. HOGAN: Wonderful. Thank you. Daniel Hogan of  
17 Hogan McDaniel on behalf of the Certain Matching Claimants.  
18 Thank you, your Honor, for permitting me to appear via Teams or  
19 Zoom, or whatever we're on today. I had a scheduling conflict  
20 which prevented me from flying down to Charlotte. I would have  
21 loved to have done that and appeared before you personally.  
22 Mr. Waldrep is in the court. He admitted me *pro hac vice* for  
23 purposes of these proceedings.

24 THE COURT: Yes, sir.

25 MR. HOGAN: But I wanted to, to thank you for allowing



1 me to proceed, accordingly.

2           Your Honor, the Certain Matching Claimants are 10,474  
3 unique meso victims, mesothelioma victims of the debtors'  
4 products who have historic, historic claims submitted to the  
5 Asbestos Trusts. These individuals are not current claimants  
6 of the debtors. They have asserted over a hundred thousand  
7 unique claims. They're also not future claimants of, of the  
8 debtors. They're historical claimants who long ago resolved  
9 their meso claims against the debtors. Also important, your  
10 Honor, they have not appeared in these cases in any capacity  
11 before today. They are truly strangers to this litigation.

12           And so, your Honor, you know, we filed a motion to  
13 quash. We filed a motion to proceed anonymously. We joined in  
14 the motion to quash that were filed by both the Trusts and DCPF  
15 and, and we, we join those arguments. And so it's not my  
16 intention today, your Honor, to repeat anything that's been  
17 argued with the exception, potentially, of touching on the  
18 burden, your Honor, that, that affects the Matching Claimants.

19           Your Honor, let me just talk for a minute about the  
20 posture of these proceedings. As you, as you're well aware  
21 more than anyone, no one anticipated that we would be arguing  
22 these motions before your Honor when these subpoenas were  
23 issued and served upon DCPF and the Trusts in Delaware. The  
24 Matching Claimants were not served with the subpoenas. The  
25 July 1st order that you entered specifically provided that

1 DCPF, after utilizing the matching key, would notify not the  
2 Matching Claimants, but their counsel of record for the  
3 Matching Claimants. This is counsel of record not in these  
4 proceedings, your Honor. These are counsel of record in  
5 proceedings that have long ago been resolved and been resolved  
6 by settlement.

7           And so it's a, it's a unique construct. The Matching  
8 Claimants and their counsel were forced to interpret the  
9 meaning of the July 1st order as it applies to the Matching  
10 Claimants and, and the provided process to move to quash the  
11 subpoenas. If you read the July 1st order, which I know you  
12 have as you signed it, it's contemplated that only the Matching  
13 Claimants would be allowed, or, or at least specifically  
14 articulated that the Matching Claimants would be the ones who  
15 would be allowed to move to quash these subpoenas. And  
16 nevertheless, we're, we're, we're pleased that both the Trusts  
17 and DCPF have moved to quash the subpoenas as well and as I  
18 indicated, we joined in the arguments made by them.

19           Your Honor, I have been retained by at least 52 law  
20 firms who, who retained us to help protect this historic data  
21 which were -- and these firms and their claimants were  
22 identified through the process that unfolds in that, in that  
23 order. Each of the firms received from DCPF a separate list of  
24 Matching Claimants for each of the ten Delaware Trusts. We  
25 worked long and hard to coalesce these lists to aggregate the

1 precise number of claimants and the unique number of claims  
2 asserted against the Trusts by the Matching Claimants. The  
3 takeaway from this endeavor is, is just an astronomical number,  
4 from our perspective, of both claimants and claims. And so we  
5 echo the arguments about anonymization and about sampling  
6 because we believe that that could really cut down on the  
7 burden.

8           Your Honor, if I could, I'd like to turn now to the  
9 anonymization issue because that -- it's an -- that is an issue  
10 that is, of course, unique to the Matching Claimants. It  
11 hasn't been argued by either DCPF or the Trusts.

12           Your Honor, the motion to proceed anonymously is, is  
13 precipitated by the need of having the, the claimants be named  
14 in the public record and from our perspective -- and again,  
15 pursuant to the provisions of your July 1, 2021 order -- we  
16 believe that the order specifically prohibited us pursuant to  
17 Paragraph 13(e) that we should not put their names on the  
18 public record. As I indicated during the DBMP hearing, your  
19 Honor, I'm not interested in a contempt ruling from you with  
20 regard to the form of order and I realize that, you know, when,  
21 when this motion to quash was filed I didn't anticipate that  
22 I'd be arguing this motion --

23           THE COURT: Right.

24           MR. HOGAN: -- in front of you, your Honor, the very  
25 Judge who issued the order. But nevertheless, I, I'm not

1 interested in, in a contempt order, as I read Paragraph 13(e)  
2 applying to me as counsel to the Matching Claimants, and  
3 perceived the prohibition as preventing me from pleading the  
4 names of the Matching Claimants.

5           And so from that perspective, your Honor, just so you  
6 have an understanding of why it is that we, you know, we, we  
7 believe it's important to proceed anonymously, in terms of the,  
8 the balancing test that's required to evaluate whether or not  
9 it's appropriate to proceed anonymously, we believe that the  
10 fear of harm caused by the disclosure of the identity of these  
11 litigants in pursuing a motion to quash is against their, is  
12 against the public interest. We -- we weigh -- we believe that  
13 the balance weighs in favor where these claimants are not  
14 litigants pursuing current claims, but are proceeding solely to  
15 protect their identities and their personal information.  
16 Protecting settlement information is a routine feature of  
17 litigation because it fosters settlements and protects all  
18 involved parties and we believe that Aldrich has not provided  
19 an adequate justification for allowing a wholesale release of,  
20 of over 10,000 Matching Claimants. And so from our  
21 perspective, we've got both the form of the language of your  
22 order as well as the balancing of the -- of -- of the need.

23           Secondarily, your Honor, and I believe importantly, if  
24 you read the -- the -- Aldrich's objection to our motion to  
25 quash and our motion to proceed anonymously, they recite to a

1 subset of mesothelioma claimants that were filed by individual  
2 law firms and they, in fact, attached to their motion and to  
3 the declaration excerpts of each of those complaints. And what  
4 we did there, your Honor, is we went back to -- because I have  
5 a list of each of the -- of the -- of the Matching Claimants  
6 for each of these specific law firms as identified by DCPF --  
7 and we went back and reviewed and, in fact, upon a review of  
8 those eight complaints two of the complaints which purportedly  
9 evidence the public dissemination of Matching Claimants and  
10 identities in reality name individuals who do not appear on the  
11 matching key list provided to us by DCPF.

12           So from our perspective, assuming a comparable rate of  
13 error, at least 25 percent of the potential Matching Claimants  
14 are, arguably, inaccurate and at that rate there's a real  
15 potential here, your Honor, that over 2600 individuals, if, if  
16 I extrapolate that 25 percent error rate, could have their  
17 identities and PII, or personally identifying information,  
18 improperly and unnecessarily disclosed to Aldrich. And so from  
19 our perspective, your Honor, we believe that we should be  
20 allowed to proceed anonymously.

21           And also, your Honor, I just, so the record's clear,  
22 you know, we are, of course, relying on our papers, but I also  
23 ask that, to the extent that the Court rules against the  
24 Matching Claimants on the motion to proceed anonymously, that  
25 they be afforded the same 30-day stay to allow for an appeal as

1 you allowed in the DBMP case so that we can proceed with an  
2 appeal. And I believe that order was just entered yesterday,  
3 if I'm not mistaken, in the DBMP proceeding and we would just  
4 ask for that same protection, assuming that you don't agree  
5 with our arguments on the motion to proceed anonymously.

6 Your Honor, again, turning to the motion to quash, I  
7 don't intend to repeat any of the arguments that were made by  
8 counsel for both the Trusts and DCPF, but I just wanted to  
9 touch upon, your Honor, a couple points that are specific to  
10 the Matching Claimants.

11 From our perspective, your Honor, Aldrich relies upon  
12 the Third Circuit's recently reversed decision in, in Bestwall  
13 and they argue that the DCPF and the Trusts have been ordered  
14 to comply with the Bestwall subpoenas that are more expansive  
15 than the subpoenas that are issued here. However, the issue  
16 preclusion arguments presented in Bestwall are inapplicable in  
17 this instance as neither the Trusts nor DCPF have appeared in  
18 the Aldrich bankruptcy proceedings until today to argue against  
19 the subpoena motions. And so the privity requirements really  
20 don't, are inapplicable in this instance.

21 Regarding the, the, the statutory basis for the  
22 extensive discovery sought, as my, as counsel for the Trusts  
23 and DCPF have argued, there really isn't a statutory basis.  
24 And so I'll just rely upon those arguments, your Honor. But  
25 arguably, we're concerned about the reverse engineering of the

1 individual, identities of these individual Matching Claimants  
2 and we are significantly concerned about the, the  
3 identification of personal identifying information for these  
4 individuals.

5 And so from our perspective, your Honor -- I don't  
6 want to belabor the point -- I think you called it an "echo  
7 chamber" as it relates to the arguments made in, in DBMP and I  
8 don't care to belabor the record. So we will rely upon our,  
9 our filings and arguments made hereto and join in the arguments  
10 made previously and ask that the Court quash the subpoenas  
11 and/or allow us to proceed anonymously.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 Did the Kazan firm intend to speak? I saw there was a  
15 motion to quash that shows on the docket. Maybe that was long  
16 ago in Delaware, but --

17 (No response)

18 THE COURT: All right, very good.

19 Are we ready to hear, then, from the debtors' side?  
20 Anyone else that wanted to be speaking in opposition?

21 (No response)

22 THE COURT: Go ahead, Mr. Hirst.

23 MR. HIRST: Good morning, your Honor, and thank you.  
24 Morgan Hirst of Jones Day on behalf of the debtors. I'll speak  
25 briefly on the motions to quash. Mr. Evert will speak on the

1 motions to proceed anonymously.

2 Mr. Hogan stole my line, stealing your line about the  
3 "echo chambers." By my count, this is your fifth go-around  
4 between this case and DBMP on these subpoenas and while I  
5 certainly would like to show you that I will give the best  
6 argument of any of them, recognizing that I'm not the smartest  
7 of the various lawyers who've argued before you, I'm going to  
8 go the path less traveled and try and be one of the briefer  
9 arguments that you've heard --

10 THE COURT: Okay.

11 MR. HIRST: -- on these motions. And, and part of  
12 that -- and I'm -- I'm -- I'm vested, or I have the ability to  
13 do that because the arguments you heard today are no different  
14 than the arguments you've heard before in some cases from DCPF  
15 in the DBMP case last October when they appeared before you; in  
16 some cases, as Mr. Hogan acknowledged, from him a month ago in  
17 DBMP; in some cases, from other litigants in our case as well.  
18 Nothing has changed and nothing is any different and we trust  
19 your Honor's rulings won't be any different.

20 As the movants, they have a very heavy burden in order  
21 to quash these subpoenas, none of which, we think, they have  
22 met. The relevance and -- and your Honor, I think, spoke on  
23 the relevance and necessity of this information multiple times  
24 and I didn't hear any credible argument that the information  
25 here is not relevant and necessary to our case. The subpoenas



1 here -- and your Honor has found this -- do not seek any PII  
2 and I feel like in the DCPF part of the argument we were  
3 penalized for that. We were, we were accused of creating  
4 greater burden because we aren't seeking PII. Of course, we  
5 aren't seeking PII because they objected when the Bestwall  
6 debtor did just that. And so we aren't seeking any PII. We've  
7 made that clear. We don't believe any of the information we're  
8 frankly seeking is confidential at all, but, if it is, your  
9 Honor, your order that we crafted and your Honor granted when  
10 you granted these, the ability to issue these subpoenas is best  
11 described as a protective order on steroids. It is as robust a  
12 set of confidentiality protections as I've ever seen. Many of  
13 the fears that Trusts' counsel raised in her motion just simply  
14 are not permitted under the terms of your order. We cannot do  
15 some of those things. There are wide, robust protections for  
16 this data. And, and so in light of that, I think the  
17 confidentiality issues have been addressed multiple times.

18           Sampling issue we heard today and your Honor has now  
19 heard, I know, at least three times, including from DCPF last  
20 October in the DBMP case. And your Honor has, has dispatched  
21 with that repeatedly. And as a reminder, we are not seeking  
22 the entirety of the DCPF database. We are seeking the 12,000  
23 Matching Claimants that relate to our case. We are seeking  
24 very limited fields of information. While we saw the overlay  
25 from DCPF counsel, we're certainly well aware that their

1 database almost certainly contains many, many, many more  
2 fields. We are not seeking those. We are seeking a limited  
3 amount of information. And so there's simply no benefit to the  
4 sample that they're asking for here and there's no reason to do  
5 it.

6 On burden, as your Honor knows and as your Honor has  
7 ordered, we will be paying --

8 THE COURT: Well, let's stop there --

9 MR. HIRST: Yeah.

10 THE COURT: -- and go back to the, to the point.

11 What about the contention that they're making that  
12 you're going to pick up a bunch of personal information out of  
13 the narratives? What do you say there?

14 MR. HIRST: Well, No. 1, maybe this gets me to the  
15 practical point on all of this --

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

18 MR. HIRST: -- your Honor, which is your Honor's  
19 ordered as of yesterday this information to be produced in the  
20 DBMP case.

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

23 MR. HIRST: And it's, we think it's a substantially  
24 similar set of Matching Claimants. So the, that is happening.  
25 The burden that was discussed is going to be taken on.

1           No. 2, maybe more fundamentally, in Bestwall my  
2 understanding is that DCPF is about to comply with the subpoena  
3 that they were previously ordered to this week, as soon as this  
4 week. And keep in mind, that subpoena they are responding to  
5 in Bestwall, your Honor, is a far more invasive, I guess would  
6 be the word they might use, subpoena that does seek PII. And  
7 so all of that information, as I understand it -- and again,  
8 I'm not in the Bestwall case. In fact, I was dismayed when I  
9 looked at the cast of characters to not see my name anywhere,  
10 but --

11           THE COURT: That's not a lost billing opportunity.

12           MR. HIRST: I, I, I know, your Honor. I got to, I'll  
13 have to figure out a way to earn it, but --

14           THE COURT: Bankruptcy work is kind of slow these days  
15 for most attorneys, Mr. Hirst.

16           MR. HIRST: I might have to go back to actually  
17 regular litigation, your Honor.

18           But -- so all of this -- the PII they spoke about is  
19 all being produced, as I understand it, to Bestwall, anyway.  
20 And so to the point that they are going to have to do this  
21 laborious redactions they've talked about, No. 1, that's a  
22 product of their own making. They demanded, essentially, that  
23 we do that by objecting when Bestwall made it easy for them,  
24 let's say, and asked for the PII, which wouldn't have required  
25 the redactions. They objected and they convinced Judge

1 Connolly until he was later reversed to substantiate that. We  
2 did not seek the PII specifically 'cause we didn't, we wanted  
3 to avoid that objection.

4 And so, No. 1 -- we're kind of damned if we do, damned  
5 if we don't, from our perspective -- is to try to narrow this  
6 as much as possible, trying to seek as narrow a category of  
7 some information as possible while still getting us the  
8 relevant information, but, No. 2, there is no additional burden  
9 here because it's being done already in DBMP. It's being done  
10 already in Bestwall. And so there's no, there's no reason it  
11 should be any different here. And I guess third and finally on  
12 your question, your Honor, we have the PII. Remember, the  
13 claimants at issue here are folks who had sued and resolved  
14 claims against us. And so we already have their PII, which is  
15 part of the reason we certainly don't want it, but -- so to the  
16 extent, God forbid, it was exposed to us again, we have it,  
17 already.

18 And so the harm in that, I see, is very minimal when  
19 you consider and when you're weighing the balance of the  
20 benefit versus the burden on it.

21 THE COURT: What do you say about the contention about  
22 cross-pollination between the cases? Is all this data going to  
23 go into the other two cases and --

24 MR. HIRST: Well, your Honor, I intend to follow the  
25 order you issued in this case and even though, again, I'm not

1 on the list here, I think everybody else does, too. And that's  
2 not permitted by your Honor's order. We aren't, we aren't  
3 permitted to aggregate. We aren't permitted to see what  
4 they're going to see in the other things. So --

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

7 MR. HIRST: -- I trust that we're going to follow your  
8 order and I trust that if we don't, we're probably going to be  
9 hearing from you.

10 THE COURT: You're not anticipating a further motion,  
11 though, to make those -- those --

12 MR. HIRST: I'm not anticipating such a motion. And  
13 keep in mind, my understanding of when we have sought the  
14 database, or when the databases have been sought, that's the  
15 individual database for when Bestwall, I think it was, sought  
16 our database. That's our individual database.

17 THE COURT: Right.

18 MR. HIRST: Has nothing to do with what is being  
19 obtained from the Trusts. And so, yes, to answer your  
20 question, no, we do not intend to seek that from the other  
21 parties.

22 So with that, your Honor, again, the practical point,  
23 'cause you've heard this all before, is all of this information  
24 is going to be produced in DBMP in response to, basically, an  
25 identical subpoena for what we think is an overlapping set of

1 claimants. All this information is going to be produced to  
2 Bestwall on a far more expansive subpoena on what we think is  
3 an over, a substantially similar set of Matching Claimants.  
4 There's simply no reason for -- it can be done and there's  
5 simply no reason for it to not occur here as well, your Honor.

6 And so absent any other questions, I will cede the  
7 table to Mr. Evert on the anonymization motion.

8 THE COURT: Mr. Evert?

9 MR. EVERT: Thank you, your Honor.

10 Again, we don't want to belabor it. We want to make  
11 sure the Court has everything it has. Our papers are pretty  
12 extensive. I know the Court's reviewed them. I heard one of  
13 the other lawyers say this morning, "Everything's already been  
14 said, but not everyone said it." So I'll, I'll try not to add  
15 to that list.

16 So on the anonymization motion, your Honor, frankly, I  
17 think you said it best when you summarized your ruling in the  
18 DBMP case on this motion. You, you said that the, that the  
19 James v. Jacobson factors had not been met, which we agree  
20 with. You said that there was no evidence in the case that  
21 they've been met and even if there was such evidence of what  
22 had been alleged, they hadn't been met. You said that your  
23 previous order, which we agree with, certainly did not intend  
24 to prohibit the Matching Claimants from putting their names in  
25 the public record. That order was designed to stop information

1 derived from the subpoenas from going into the public record.  
2 Clearly, the, the claimants knew their names before the  
3 subpoenas were ever issued. You said that there's an  
4 independent duty of the Court to ensure open proceedings and a  
5 strong preference in the Rules and the case law for parties to  
6 be named. And again, even if, even if there was evidence and  
7 even if there was some indication that would have been alleged  
8 in regard to the Jacobson factors was present, you said it  
9 didn't amount to much more than "we just don't want to have  
10 that information out there." And that's certainly the way we  
11 feel about it.

12 Now, now the only thing new that's been raised today  
13 is this issue of the purported inaccuracies in the matching  
14 key. It's kind of interesting in a way. So what this derives  
15 from, your Honor, is in our reply to the anonymization motion  
16 we attached eight complaints that tried to illustrate for  
17 whoever the decider of fact was going to be of exactly the kind  
18 of information that is out there in the public forum, already,  
19 for all of these claimants who already filed lawsuits for their  
20 asbestos-related claims. And ironically, the other side has  
21 said, "Well, two of the eight aren't on the matching key."  
22 Well, we, we would dispute that, your Honor. We've, we've  
23 looked at the matching key and, and all eight are on the  
24 matching key. However, we have no way to verify that 'cause we  
25 don't know the names of the claimants 'cause they've asked to

1 proceed anonymously.

2           So there's a particular irony in that, in that  
3 argument, but the bottom line is, your Honor, notwithstanding  
4 whether or not the matching key that somehow is underinclusive,  
5 which is what they're alleging which I think would be good for  
6 them, the, the fact is all of this information has been in  
7 public fora throughout the country when lawsuits have been  
8 filed related to the mesotheliomas.

9           So as a result, your Honor, the idea now that there is  
10 some private interest that needs to be protected that has not  
11 been protected over the long term just, to us, is -- is --  
12 it's, it's apparent that that's, doesn't meet the factors and  
13 there's no, no severe harm as required by the case law.

14           So with that, your Honor, I'll stop, unless the Court  
15 has questions, and, and, and cede, cede the table.

16           THE COURT: All right. Thank you.

17           MR. EVERT: Thank you, your Honor.

18           THE COURT: Anyone else?

19           (No response)

20           THE COURT: Rejoinder arguments?

21           MS. MOSKOW-SCHNOLL: Yes, your Honor. Beth Moskow-  
22 Schnoll.

23           First of all, Mr., Mr. Hirst, I'm very sorry. If you  
24 want, I can add your name to the slide and recirculate them in  
25 case I offended you. I didn't mean to.



1 MR. HIRST: As long as you send it to me, I'll be  
2 happy.

3 MS. MOSKOW-SCHNOLL: So, you know, one thing that  
4 struck me was that Mr. Hirst said that he didn't hear any  
5 credible argument as to why information sought isn't relevant  
6 or necessary, but one of the highlights of my argument was that  
7 all the information is not necessary. By their own words, they  
8 acknowledge that sampling is just fine. And, and I think they  
9 underscored my point about the fact that they're overasking in  
10 that, you know, they said, "We already have the claimants' PII.  
11 We don't need that." And yet in Bestwall, they asked for it,  
12 even though they have it and they don't need it. And in  
13 Bestwall when they were told by Judge Connolly that they would,  
14 could only ask for a 10 percent sample, they came back and  
15 said, "Ten percent sample's great. We can work with that.  
16 It's efficient. It works great."

17 So -- and what's -- what is, really stood out to me  
18 based on their argument is that, again, they never addressed  
19 the sampling, the sampling argument we made. They never said  
20 why sampling wouldn't work. They never said that they couldn't  
21 make do with a 10 percent sample, that it wouldn't provide them  
22 with all the information they need, and the reason, your Honor,  
23 they didn't do that is because they can't make that argument.  
24 They've never made that argument and, and that's what, that's  
25 what's really sticking in our craw right now, is that the

1 information for the 12,000 claimants is not necessary. They  
2 can make do and, and proceed with estimation with only a 10  
3 percent sample. It will not harm them. Their -- it can --  
4 their own words come back to haunt them on that fact,  
5 efficient, reliable, accurate.

6 A sample would work just fine, your Honor, and that's  
7 what we're asking for.

8 Thank you.

9 THE COURT: All right.

10 Mr. Guerke?

11 MR. GUERKE: Thank you, your Honor. Kevin Guerke  
12 again for DCPF.

13 There was an argument made that the same arguments  
14 have been made before and they're being made today and the  
15 Court should just rule as it has in the past. But the  
16 information presented today, that DCPF presented today, the  
17 sample I provided, the explanation I provided, has not  
18 previously been presented. We submitted an affidavit from  
19 DCPF's COO, Richard Winner. It's part of the record.

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

22 MR. GUERKE: That has not been disputed in any way.

23 So the burden that we've described in great detail is,  
24 is undenied, unchallenged, and it's a fact, your Honor.  
25 Everything we've presented is, is a fact. And it's our job to

1 object. No matter how many times that they try to do this,  
2 it's our job to object. It's our job to protect the data of  
3 trust claimants and it's, under Rule 45, it's the Court's role  
4 to protect nonparties like DCPF when we're, when we're  
5 protecting our very valuable data.

6 So the debtors can't and haven't disputed that there  
7 are 12,000 claimants in play. The, the debtors can't and  
8 haven't disputed that there are nearly 150,000 claims involved  
9 here and that there's a narrative element to the claim forms  
10 that will include personal identifying information. That's a  
11 fact. And the fact that we have to manually review all the  
12 claim records is undisputed and unchallenged.

13 Your Honor today is wearing a different hat as the  
14 compliance court, not the issuing court, with a different role,  
15 different obligations, and a different standard focusing on the  
16 non-party burden, not the debtors' need and not the relevancy  
17 of the, of the data requested. And we've met our burden today,  
18 your Honor, and we ask that you quash or modify the, the  
19 subpoena as we've requested.

20 THE COURT: All right.

21 Anything from you, Mr. Hogan?

22 MR. HOGAN: No, your Honor. I'll rely upon arguments  
23 previously made and our submissions.

24 Thank you for your time, your Honor.

25 THE COURT: Okay.

1 Has that got it? Are we done? All right.

2 On the anonymization, I'm, I'm inclined to rule the  
3 same as I have previously. I believe that the burden hadn't  
4 been met to show that there would be harm by the disclosures  
5 and I think the public interest outweighs it.

6 So that ruling is, should be consistent with the  
7 earlier ruling in DBMP on that topic.

8 On the, the motions to quash, two changes, I guess.  
9 First of all, as pointed out, we didn't have a party that might  
10 be subject to collateral estoppel appearing in this case. So  
11 that is not the, the basis of my ruling here.

12 The second change is, perhaps I am hidebound or -- my  
13 wife would say so, anyway -- but you, you have gotten through  
14 to me on the sampling issue. I agree that's a new argument  
15 today as to what exactly might be disclosed and I'm sensitive  
16 to the disclosure of these non-parties' information.

17 So I'm adopting the 10 percent sampling. Frankly, the  
18 first time I got this issue my assumption was that, is Judge  
19 Connolly had done it previously and we were not going to be the  
20 compliance court, that that would likely be implemented,  
21 anyway. The time that I most recently discussed this with  
22 counsel, I guess in the DBMP case, it sounded like that it was  
23 going to be six of one or half dozen of another as to whether  
24 you took a sample or whether you took all of it, and there  
25 might be, actually, more problems in agreeing on a random

1 sample than there would be in just taking all the data.  
2 Recognizing now that we're going to see some of this  
3 information in narrative form and that you might have  
4 information that is, in fact, PII, I want to reduce the harm  
5 there as much as possible. So I'll leave it to y'all to talk  
6 about how you formulate that random sample, but my inclination  
7 is to limit that.

8           So the motion to quash is, motions to quash are  
9 granted, to that extent, and otherwise denied, all right? Got  
10 it? Everybody understand?

11           (No response)

12           THE COURT: I understand the debtor would like to have  
13 as much information as possible, but we are -- I'm a little  
14 concerned about all of this is ballooning up and we're getting  
15 more and more demands for a great deal of data and I want to  
16 make sure that we are mindful of costs in these cases and of  
17 the privacy concerns and that we're not getting any more than  
18 we need. So you'll see that in a lot of area.

19           Mr. Hirst?

20           MR. HIRST: Your Honor, just some questions on that so  
21 we have some guidance moving forward 'cause I do worry -- and,  
22 your Honor, luckily not in this case yet, but I've seen it in  
23 the others -- that agreeing on a sample is easier said than  
24 done.

25           THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. HIRST: Would your Honor like us -- the concern I  
3 heard raised was a field, not the number of claimants, but --

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

6 MR. HIRST: -- a field that had the PII in it. Would  
7 you like us to work with them to narrow down that field in some  
8 manner? Is that where you would like us to, to pick the sample  
9 and -- 'cause I didn't hear any claim that the amount of  
10 claimants impacted anything. I heard it was that field of  
11 exposure-related evidence. And so we're just trying to get  
12 some guidance so we're not back --

13 THE COURT: I heard something different this morning  
14 from the other side. Maybe -- what I would suggest is this:  
15 Let's take the ruling as it is. And, and, of course, the 30  
16 days that was, stay is, would be in effect as well in these  
17 cases. Why don't we -- we've got a December 14th hearing date.  
18 Why don't y'all work on the, the sample size and whether there  
19 are any fields that can be reduced and we can touch base about  
20 those again at the next hearing before a written order is  
21 entered.

22 MR. HIRST: Okay.

23 THE COURT: That will give you a little bit of an  
24 opportunity to get to the technical fine points that I might  
25 not have gotten. But as -- obviously, when Judge Connolly was

1 ordering a 10 percent sample, someone was contemplating the  
2 mechanisms of how to get a truly random sample there, so.

3 MR. ERENS: Right. Your Honor, could we have one  
4 second, please?

5 THE COURT: You want to take about a ten-minute  
6 recess? Maybe this would be a good time.

7 MR. ERENS: Okay.

8 THE COURT: Everyone feel that? We'll take our mid-  
9 morning break, then, right now and pick up again, oh, as close  
10 to 30 minutes after the hour as we can.

11 (Recess from 11:22 a.m., until 11:34 a.m.)

12 AFTER RECESS

13 (Call to Order of the Court)

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

15 Recognizing that that was a, a alteration of what we  
16 have done previously, did anyone have anything else we need to  
17 talk about regarding that?

18 Mr. Hirst?

19 MR. HIRST: Just mainly some questions and maybe one  
20 comment, your Honor.

21 So in light of your ruling, which I will admit we were  
22 slightly surprised by, we do need to talk to our experts as  
23 well. And so I don't think December 14th is necessarily time.  
24 'Cause we're in a situation now where Bates White's going to  
25 get, in Bestwall, everything, plus PII --

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

3 MR. HIRST: -- from DCPF. In DBMP, they're going to  
4 get everything without PII and here, we're going to get some 10  
5 percent amount. And so I want to talk to Bates White as we  
6 work with --

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

9 MR. HIRST: -- the, the movants here to, to figure out  
10 the, the right thing. And so I would suggest -- and I don't  
11 think we have anything else necessarily up at the December  
12 hearing, anyway -- I wouldn't mind till, till the January  
13 hearing to decide on that. So that's Thing 1.

14 Thing 2 was the arguments we heard today on the number  
15 was all, as I understood it, based on burden. In other words,  
16 to do what they have to do with redactions for 12,000 claims --

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

19 MR. HIRST: -- takes too much. And so your Honor  
20 mentioned the number 10 percent. We want to work with our  
21 experts and consider this, but we think maybe the easiest  
22 thing, to avoid six months of litigation since this is all  
23 about burden, is to allow us to pick the 10 percent since we're  
24 the ones seeking the discovery and since the argument is all  
25 about burden. And so I know, your Honor, you know, we've just



1 been thinking --

2 THE COURT: I thought it was all about estimation,  
3 though, and if --

4 MR. HIRST: Well, it is -- well, but to --

5 THE COURT: -- if you cherry pick 10 percent, what's  
6 that going to be useful for at, at an estimation hearing?

7 MR. HIRST: We don't know yet 'cause we just, we've  
8 just considered today. Obviously, the estimation sample's  
9 going to be the estimation sample. That's a different issue,  
10 but we're talking here -- this is a discovery issue now and the  
11 objection was based entirely, that I heard, on burden. And so  
12 if, you know, we, we need to find out what we think is the most  
13 relevant information to get.

14 And, and so, anyway, your Honor, it's something we'll  
15 talk to movants about. I just wanted to tee that up for,  
16 potentially --

17 THE COURT: Okay.

18 MR. HIRST: -- a January hearing, if that'll work for  
19 your Honor.

20 THE COURT: Any -- Mr. Guerke, is that, that  
21 satisfactory?

22 MR. GUERKE: The process of having a discussion with  
23 the debtors, certainly, your Honor. The, the cherry picking  
24 the sample, absolutely not. We, we will oppose that. And we  
25 asked for random sampling and, and that's --

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

3 MR. GUERKE: -- what we would like, your Honor.

4 MR. HIRST: And again, on, on the burden point --

5 THE COURT: Ms. Moskow --

6 MR. HIRST: -- your Honor, we just don't know why  
7 random matters from their burden objection perspective. But  
8 we'll, we'll deal with that and we can come back to your Honor  
9 and talk more about that if we need to.

10 THE COURT: How about the folks on by video?

11 MS. MOSKOW-SCHNOLL: Your Honor, I was, I was just  
12 going to say that it's, it's not just the burden argument.  
13 It's the fact that if they, it's not necessary for them to have  
14 a hundred percent of the claimants' data. I think that was the  
15 other point. Only -- 10 percent will get them everything they  
16 need and it should be a random sample --

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

19 MS. MOSKOW-SCHNOLL: -- for the reasons the Court --

20 THE COURT: Mr. --

21 MS. MOSKOW-SCHNOLL: -- has already stated.

22 THE COURT: Mr. Hogan, you got anything?

23 MR. HOGAN: No, your Honor. I just confer [sic] with  
24 the comments made.

25 THE COURT: Any opposition to us touching base about

1 this at the January hearing?

2 MR. HOGAN: No, sir.

3 THE COURT: Hopefully, that'll give you a chance to  
4 talk about your needs and, and in any event, if, if you -- I  
5 was thinking not only burden, but also of needless exposure of  
6 the possibility of a hack and, and having a lot of people's  
7 data affected. So --

8 MR. HIRST: But the number is ultimately --

9 THE COURT: -- both matter.

10 MR. HIRST: The number is ultimately 1200, though,  
11 right, your Honor?

12 THE COURT: Right.

13 MR. HIRST: That's, I guess that's the point we're  
14 raising.

15 THE COURT: Right. But as to how you select them, the  
16 thing that I will want to hear next in January is if it's not  
17 random, what is the usefulness --

18 MR. HIRST: Yep.

19 THE COURT: -- of it at estimation, okay?

20 MR. HIRST: And we'll -- and to the extent that's the  
21 direction we, after five minutes of thinking about it, continue  
22 to go, we'll obviously provide an explanation for that for your  
23 Honor.

24 THE COURT: All right, very good.

25 We'll talk about it, then, on that January date,

1 which, again, is the 26th.

2           You can note that we'll have a status hearing on this  
3 particular motion, but, but I granted in part and denied in  
4 part the motions to quash and denied the anonymization motion,  
5 all right?

6           What else do we need to discuss? Did we have  
7 generalized case affairs, status reports, other good-of-the-  
8 order type announcements?

9           MR. ERENS: Your Honor, just very briefly, just a  
10 couple things going on.

11           So we, we've had discussion, as Ms. Abel indicated, on  
12 mediation.

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

15           MR. ERENS: There's two orders to be submitted to your  
16 Honor. One is the order approving mediation and the other will  
17 be the mediation protocol and, potentially, the, the selection  
18 of the mediator. So the parties are, as Ms. Abel indicated,  
19 close on the first item. We intend to work with the parties on  
20 the second item and we all agreed, I think, based on the first  
21 order you'll see to have those additional items also put on the  
22 January hearing.

23           So January will be, I think, as follows: We have the  
24 DCPF matter we just did; the CMO matter we just did, or I guess  
25 we didn't just do it, but --

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

3 MR. ERENS: -- did this morning; the FCR's sampling  
4 motion will be back up for January. That's on the claims file.  
5 And I believe that is it, in addition to mediation I just  
6 mentioned. So we'll have a, a pretty full day.

7 THE COURT: That -- before we move off of that, does  
8 everyone feel like we can accomplish all that in one day? I'm  
9 hearing cases in a divisional office the next day. So I'm not  
10 available at the moment unless I move something and, and if so,  
11 I need to get started now.

12 MR. ERENS: Let us get back to Chambers on that. We  
13 think so. For, for mediation, we may not actually need a  
14 hearing. It's being targeted as a hearing if the parties can't  
15 agree, but we may just be submitting an order either then or in  
16 advance.

17 THE COURT: Okay.

18 MR. ERENS: So that may not actually be an item.

19 Sampling on the claim files is something that the  
20 parties are discussing now that also may be resolved or can be  
21 continued.

22 So I think we should be fine, but your Honor does have  
23 all day --

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

1 MR. ERENS: -- on the 26th? Okay.

2 THE COURT: I do, yes.

3 MR. ERENS: So I think we should be fine on that.

4 That's, that's really it, your Honor.

5 MR. EVERT: December hearing.

6 MR. ERENS: The December 14th hearing, as a result,

7 nothing's up and we can release that hearing date if --

8 THE COURT: All right.

9 MR. ERENS: -- if you need it.

10 THE COURT: That'll be fine with me. I could use the

11 time.

12 MR. ERENS: Okay.

13 THE COURT: Anyone else? The ACC or FCR, any of the

14 other parties wish --

15 Mr. Davis -- Mr. Wright?

16 MR. WRIGHT: Davis Wright from Robinson & Cole.

17 Nothing additional from the Committee, your Honor.

18 THE COURT: Okay.

19 Mr. Grier, it looks like Mr. Guy has left. You don't

20 have anything on your behalf, do --

21 MR. GRIER: I've been abandoned, your Honor.

22 THE COURT: Okay, very good.

23 If there's nothing else, then we will release all of

24 you and try to get you on your way. I hope the travel is not

25 too bad, but we will stand in recess and get you moving on.

