

1 APPEARANCES:

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

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

5

6

Jones Day
BY: BRAD B. ERENS, ESQ.
MORGAN R. HIRST, ESQ.
110 North Wacker Dr., Suite 4800
Chicago, IL 60606

7

8

9

Jones Day
BY: DAVID S. TORBERG, ESQ.
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

10

11

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

12

13

For Plaintiff, ACC:

14

Winston & Strawn LLP
BY: CARRIE HARDMAN, ESQ.
DAVID NEIER, ESQ.
200 Park Avenue
New York, NY 10166-4193

15

16

17

Caplin & Drysdale
BY: JEFFREY A. LIESEMER, ESQ.
One Thomas Circle, NW, Suite 1100
Washington, DC 20005

18

19

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

20

21

Hamilton Stephens
BY: GLENN THOMPSON, ESQ.
525 North Tryon St., Suite 1400
Charlotte, NC 28202

22

23

24

25

1 APPEARANCES (continued):

2

3 For the FCR:

Orrick Herrington
BY: JONATHAN P. GUY, ESQ.
1152 15th Street, NW
Washington, D.C. 20005-1706

5 For Defendants, Trane
6 Technologies Company LLC
and Trane U.S. Inc.:

McCarter & English, LLP
BY: GREGORY J. MASCITTI, ESQ.
825 Eighth Avenue, 31st Floor
New York, NY 10019

Cordes Law, PLLC
BY: STACY C. CORDES, ESQ.
1800 East Boulevard
Charlotte, NC 28203

McGuireWoods, LLP
BY: BRADLEY R. KUTROW, ESQ.
201 North Tryon St., Suite 3000
Charlotte, NC 28202

7 For Asbestos Trusts:

Ward and Smith, P.A.
BY: LANCE P. MARTIN, ESQ.
P. O. Box 2020
Asheville, NC 28802-2020

For DCPF:

Young Conaway
BY: KEVIN A. GUERKE, ESQ.
EDWIN HARRON, ESQ.
1000 North King Street
Wilmington, Delaware 19801

Alexander Ricks PLLC
BY: FELTON PARRISH, ESQ.
1420 E. 7th Street, Suite 100
Charlotte, NC 28204

For DBMP FCR:

Young Conaway
BY: SHARON ZIEG, ESQ.
1000 North King Street
Wilmington, Delaware 19801

Alexander Ricks PLLC
BY: MILLER CAPPS, ESQ.
1420 E. 7th Street, Suite 100
Charlotte, NC 28204

1 APPEARANCES (continued):

2 For Non-Party Matching
3 Claimants:

Waldrep Wall
BY: THOMAS W. WALDREP, JR., ESQ.
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103

4 For Fiduciary Duty
5 Defendants:

Brooks Pierce
BY: JIM W. PHILLIPS, JR., ESQ.
JEFFREY E. OLEYNIK, ESQ.
P. O. Box 26000
Greensboro, NC 27420

6
7
8 ALSO PRESENT:

ALLAN TANANBAUM, ESQ.
Chief Legal Counsel of Debtors

9
10 JOSEPH GRIER, FCR
521 E. Morehead St, Suite 440
Charlotte, NC 28202

11
12 SHELLEY ABEL
Bankruptcy Administrator
402 West Trade Street, Suite 200
13 Charlotte, NC 28202

14 APPEARANCES (via Teams):

15 For Asbestos Trusts:

Ballard Spahr
BY: BETH MOSKOW-SCHNOLL, ESQ.
919 North Market St., 11th Floor
17 Wilmington, DE 19801-3034

18 For Non-Party Matching
19 Claimants:

Hogan McDaniel
BY: DANIEL K. HOGAN, ESQ.
1311 Delaware Avenue
20 Wilmington, DE 19806

21 APPEARANCES (via telephone):

22 For DBMP LLC:

Jones Day
BY: JEFFREY B. ELLMAN, ESQ.
23 1221 Peachtree St., N.E., #400
24 Atlanta, GA 30361

25

1 APPEARANCES (via telephone continued):

2 For Travelers Insurance
3 Companies, et al.:

Steptoe & Johnson LLP
BY: JOSHUA R. TAYLOR, ESQ.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

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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.

