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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. Good morning.

4           (Counsel greet the Court)

5                   THE COURT: Pretty much a full house this morning.

6                   We are here, of course, in the Aldrich Pump and Murray  
7 Boiler cases and the associated adversary proceedings. We've  
8 got an agenda. I guess, the one I'm looking at, is that the  
9 base case, is at 1590. It's filed, also, in the adversaries.  
10 So I won't repeat all that. That's just stated for the record.

11                   Let's go ahead and get appearances and we'll see where  
12 we are. All right.

13                   MR. HIRST: Good morning, your Honor. Morgan Hirst of  
14 Jones Day for the debtors. I'm joined by Michael Evert from  
15 Evert Weathersby; Rick Rayburn, Jack Miller from Rayburn  
16 Cooper; and Brad Erens from Jones Day is on the phone and is  
17 going to have a few comments to make on the mediation part of  
18 this.

19                   THE COURT: All right, very good.

20                   All right. How about for --

21                   MR. MASCITTI: Greg Mascitti, McCarter & English, on  
22 behalf of Trane Technologies Company LLC and Trane U.S. Inc.  
23 I'm joined by local counsel, Stacy Cordes and Brad Kutrow.

24                   THE COURT: All right.

25                   MS. RAMSEY: Good morning, your Honor. Natalie

1 Ramsey, Robinson & Cole, for the Asbestos Claimants' Committee,  
2 along with my partner, Davis Lee Wright; Jim Wehner from Caplin  
3 & Drysdale; and Rob Cox from Hamilton & Stephens.

4 THE COURT: Okay.

5 FCR?

6 MR. GUY: Good morning, your Honor. Jonathan Guy for  
7 the FCR and I'm joined by the FCR.

8 Thank you.

9 THE COURT: All right.

10 Others in the courtroom needing to announce?

11 MR. MARTIN: Good morning, your Honor. Lance Martin  
12 from Ward and Smith on behalf of the Asbestos Trusts and Tyler  
13 Burns of Ballard Spahr is on the phone as well.

14 THE COURT: Okay, very good.

15 MR. MARTIN: Thank you.

16 THE COURT: Mr. Oleynik.

17 MR. OLEYNIK: Jeff Oleynik, Brooks Pierce, here today  
18 for the Fiduciary Duty Defendants, together with my colleague,  
19 Agustin Martinez, who just finished clerking for Judge Robinson  
20 of Business Court, and like many lawyers in this room, another  
21 distinguished Wake grad.

22 THE COURT: Okay. Welcome.

23 MS. ABEL: Shelley Abel, Bankruptcy Administrator.

24 THE COURT: Okay.

25 Yes. Mr. Roten?

1 MR. ROTEN: Good morning, your Honor. Russell Roten  
2 from Duane Morris, representing Certain Insurers.

3 THE COURT: Anyone else?

4 Mr. Waldrep.

5 MR. WALDREP: Your Honor, Tom Waldrep of Waldrep Wall,  
6 here representing the Matching Claimants. And I'd like to  
7 introduce Dan Hogan from Delaware.

8 THE COURT: All right. Welcome. Glad to have you  
9 here.

10 MR. HOGAN: Thank you.

11 THE COURT: Yes, sir.

12 MR. GUERKE: Good morning, your Honor. Kevin Guerke  
13 from Young Conaway on behalf of third party, Delaware Claims  
14 Processing Facility. I'm here today with North Carolina  
15 counsel, Felton Parrish.

16 THE COURT: That got it in the courtroom?

17 (No response)

18 THE COURT: Other appearances telephonically? Anyone?

19 MR. MCGONIGLE: Your Honor, David McGonigle, David  
20 McGonigle, your Honor, from K&L Gates, special insurance  
21 counsel to the debtors.

22 THE COURT: Others?

23 MR. TAYLOR: Good morning, your Honor. Joshua Taylor  
24 from Steptoe & Johnson on behalf of the Travelers Insurers.

25 THE COURT: Others?



1 (No response)

2 THE COURT: Anyone else?

3 (No response)

4 THE COURT: Okay, good. Very good.

5 Well, it's -- we've got a calendar full of status  
6 hearings and a roomful of, courtroom full of people. So I  
7 think there must be some divergence there.

8 Why don't y'all bring me up to speed as to where the  
9 case is and we'll get initial comments and then take a look at  
10 the docket.

11 MR. HIRST: So, your Honor, I'm not sure we have  
12 initial comments today. I think most of them can be handled  
13 in --

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

16 MR. HIRST: -- the order that the agenda's in. I  
17 think we'll get everybody up to date then. I'm not sure if the  
18 ACC or the FCR --

19 THE COURT: Anyone else feel different?

20 (No response)

21 THE COURT: All right. Let's start at the top, then.

22 MR. HIRST: Okay.

23 So the first thing we have up on the agenda, your  
24 Honor, is the motion directing the parties to mandatory  
25 mediation. And Mr. Erens, I believe, is on the phone and was

1 going to provide the Court with an update as to where we're at  
2 on that.

3 THE COURT: Okay.

4 Mr. Erens?

5 Is it Star 6?

6 We're not hearing you if you're speaking, Mr. Erens.

7 MR. HIRST: Your Honor, we were, luckily, prepared for  
8 this possibility and so I'm going to hand it off to Mr. Evert  
9 to give the mediation status update.

10 MR. ERENS: No, I'm on, your Honor.

11 THE COURT: There we go.

12 MR. ERENS: I had to Star 6, as you indicated.

13 THE COURT: Is this the Patrick Mahomes move, that  
14 you're well enough to play?

15 MR. ERENS: Right.

16 THE COURT: Okay, Mr. Erens. Try again.

17 MR. ERENS: All right. Thank you, your Honor. Sorry  
18 about that.

19 Yeah. We're pleased to announce that -- I think the  
20 Court is generally aware -- that we have agreement among the  
21 mediation parties on mediation or mediators and, in this case,  
22 it's, the agreement is two co-mediators rather than one  
23 mediator. The two co-mediators that have been agreed to by the  
24 parties are Eric Green and Tim Gallagher, both very well-known  
25 mediators within the, the, the business and the industry, so to

1 speak.

2 We've been in the process for the last couple of weeks  
3 of working with the parties on the mediation procedures order.  
4 We're very close to done. We were hoping to have it before the  
5 hearing, but it just didn't happen. We assume that we'll be  
6 able to submit it fairly shortly, just finishing last-minute  
7 comments and parties and the like and we need to recirculate  
8 it, probably, one more time. The order does provide that the  
9 mediation, subject to the availability of the co-mediators,  
10 would begin no later than 90 days after entry of the order.

11 So our expectation is that the mediation will commence  
12 no later than approximately May 1 and we'll obviously start  
13 working with the parties soon on logistics in terms of  
14 scheduling meetings and the locations and the like.

15 So that's all in good shape and as I said, we, our  
16 intent is to submit the order shortly.

17 THE COURT: Anyone else want to weigh in with regard  
18 to the mediation? Anyone?

19 (No response)

20 THE COURT: All right, very good. We'll move along,  
21 then.

22 Thank you, Mr. Erens.

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

24 MR. HIRST: All right, your Honor. Morgan Hirst again  
25 for the debtors.

1 I think I'll take Docket Nos. 2 through 8 kind of  
2 together and maybe I'll just start with an overall status on  
3 third-party trust discovery.

4 THE COURT: Before you do that, let me make, mention  
5 to the clerk.

6 On that first matter, you do not need to continue it  
7 over. We'll just wait for the order.

8 THE COURTROOM DEPUTY: Okay.

9 THE COURT: Okay? All right.

10 Go ahead.

11 MR. HIRST: Okay.

12 So on, the ones that actually aren't on the agenda and  
13 are not, therefore, before, your Honor, I just want to give an  
14 update.

15 Paddock subpoena, your Honor, may be aware, is, I  
16 think, now close to completed. We had our last hearing in  
17 Delaware in front of Judge Silverstein on, I believe it was,  
18 January 6th where she overruled all further efforts to modify  
19 or, or limit the data we were going to receive. Paddock has  
20 produced the information, all the information in response to  
21 the subpoena. There's, I think, a dozen or so we're meeting  
22 and conferring with them about. So we expect that,  
23 essentially, to be wrapped.

24 On Manville, which is pending in the District of  
25 Columbia District Court, your Honor, there's still motions to

1 transfer that to your Honor pending. We have not heard back  
2 from the District Court there.

3 That takes us to the two that are now in front of your  
4 Honor, the DCPF subpoenas, which are, and the related trusts,  
5 and Matching Claimants, which are Nos. 2, 3, 4, yeah, 2, 3, and  
6 4 on the agenda. And then the Verus subpoenas, which are 6, 7,  
7 and 8, which were recently transferred over to your Honor.

8 On DCPF, we were last before your Honor on November  
9 30th.

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

12 MR. HIRST: At that time you denied the motions to  
13 quash, but ordered that there be sampling and you also denied  
14 the motion to proceed anonymously. On the motion to proceed  
15 anonymously, we actually need to get an order in front of your  
16 Honor on that. I think that may have slipped through the  
17 cracks. On the motion to quash, we're kind of waiting for the  
18 sampling discussion to take place so we could incorporate that  
19 in the order. We did make a proposal, the debtors did, to the  
20 ACC, the FCR, and DCPF on December 19th. We met and conferred  
21 with ACC, FCR, DCPF and the Verus parties as well 'cause by  
22 then they had been transferred. We met with them on January  
23 12th. We, since that time, exchanged some correspondence with  
24 Ms. Ramsey, answering some questions, and then this morning  
25 about an hour before court we got a proposal back from the ACC.

1 I understand that is the ACC's proposal only and not a  
2 proposal on behalf of the Trusts, which are subject to the  
3 subpoena. We have actually not heard from them other than in  
4 the meet and confer since that point. So we really don't know  
5 where they stand on our proposal, "they" being the DCPF Trusts  
6 and the, the Verus Trust. So we're still waiting to hear back  
7 from them.

8 And I think on DCPF, the only other update is we  
9 understand they've produced the information to the DBMP  
10 subpoena within the last week, that they have produced all of  
11 that data.

12 On Verus, it's now, largely, I think in lockstep with  
13 DCPF. It was transferred from the District Court in New Jersey  
14 to your Honor on the 4th. I know that has now hit the docket  
15 and was assigned to your Honor and it's up for status today,  
16 which is -- what did I say before this -- I think Items 5, 6,  
17 7.

18 The one thing in the transfer order is the parties  
19 agreed that the, any production that Verus and the Trusts did  
20 would be consistent with whatever orders are entered on the  
21 DCPF subpoena.

22 And other than that on third-party discovery, I think  
23 that is the status report.

24 MR. EVERT: Then we're on No. 8, Non-Matching  
25 Claimants' Motion to Proceed Anonymously.

1 MR. HIRST: Oh, yeah. There -- and then -- I  
2 should -- yeah. I apologize.

3 No. 8 on the docket is the Verus Matching Claimants'  
4 Motion to Proceed Anonymously.

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

7 MR. HIRST: I don't know how your Honor would like to  
8 handle that. We can set it for a date, I'm sure. You've heard  
9 those motions a lot in the past. I can tell you we, on behalf  
10 of the debtors, will be happy to have those ruled on the papers  
11 on the motions to proceed anonymously since we don't really  
12 want to argue them again, but we're happy to do so if, if  
13 that's what your Honor prefers.

14 THE COURT: Okay, very good.

15 ACC?

16 MS. RAMSEY: Thank you, your Honor.

17 So we, we believe that we are making some progress  
18 with respect to the discussion on sampling. As the debtor  
19 indicated, it sent its proposed sample on December 19th. We  
20 then had a meet and confer on January the 12th where we  
21 discussed questions that we had regarding the debtors' sample  
22 and on January the 17th the FCR proposed a different sample.  
23 We then engaged in further dialogue. I understood that the  
24 debtor did not accept --

25 THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MS. RAMSEY: -- the FCR's proposal and as Mr. Hirsh  
3 [sic] indicated, then turned to our expert to ask our expert to  
4 work with what the debtor had proposed to see if it could  
5 propose a compromise that might be acceptable to all parties.  
6 We shared that with the FCR last evening and with the debtor  
7 this morning. None of the other parties have seen that yet.  
8 We thought it was important to get buy-in first from the  
9 primary parties. Obviously, the parties are not in a position,  
10 the other parties, to react to it as yet, but I will represent  
11 to the Court that it is, largely, a simplified version of what  
12 the debtor had proposed, essentially reducing the number of  
13 strata by about half. We also have some agreement with the  
14 debtors that we've reached with respect to the time frame for  
15 the sample.

16 So I think that we're making very good progress and  
17 we're very likely to get there. There seems to be agreement,  
18 generally, on the number of claims to be sampled, on the time  
19 frame to be sampled, and now the question is just the strata to  
20 be applied. But even looking at those, we don't believe we're  
21 substantially far from reaching agreement.

22 THE COURT: Okay, good.

23 MS. RAMSEY: Thank you.

24 THE COURT: Mr. Guy.

25 MR. GUY: Your Honor, I'm not sure if we're up to No.



1 9 yet, but if we are, I don't want to --

2 THE COURT: Somewhere between 2 and 9.

3 MR. GUY: Maybe I'll wait till everybody's finished,  
4 then I can get to 9.

5 THE COURT: Okay.

6 Anyone else need to weigh in on, on where we are on  
7 the, on the various questions of, of the trust discovery and  
8 the subpoenas and the motions to quash and the like?

9 (No response)

10 THE COURT: Is there anyone wanting to be heard on the  
11 new matter we're -- we're -- the one that just got to us to be  
12 heard on the, with argument, or do we, can we resolve that on  
13 the papers filed?

14 MR. HIRST: Is the, the Verus --

15 MR. EVERT: No. 8.

16 MR. HIRST: Yep.

17 THE COURT: Right. Yeah, the one that --

18 MR. EVERT: The Match, the Matching Claimants' motion,  
19 your Honor.

20 THE COURT: What's our number? Let's see.

21 MR. EVERT: No. 8, I believe.

22 THE COURT: Yeah. Right.

23 How do we feel about that?

24 Folks are just with us, Verus Claims. Anyone feel the  
25 need to have a, a verbal hearing or file other pleadings or

1 other briefs?

2 (No response)

3 THE COURT: Doesn't sound like it. You want to just  
4 give me that under submission and I, I'll try to give you a  
5 decision at our next hearing date? I think that's the 14th.

6 MR. HIRST: That's right. That's fine.

7 THE COURT: Okay.

8 All right. That should take care of that.

9 MR. EVERT: Your Honor, just before we get to No. 9,  
10 Michael Evert on behalf of the debtors.

11 I, I am hopeful Ms. Ramsey's optimistic comments are  
12 accurate and I'm sure they are accurate. I'm sure she is  
13 optimistic and, and I hope we are, too. We haven't had a  
14 chance to look at it. She sent it this morning, so.

15 THE COURT: Sure.

16 MR. EVERT: Just -- I -- I -- I didn't -- but, but I  
17 hope she's right.

18 THE COURT: Well, how do y'all want to approach that,  
19 just kick it over to the 14th and hope that everyone's ready to  
20 go then?

21 MR. EVERT: I, I think that's probably right, your  
22 Honor. I mean, obviously, Mr. Guy, the FCR, has the sampling  
23 motion -- it is No. 9 -- that we're about to talk about. I  
24 don't know if that's going to create further discussion or not.

25 But I think for the purposes of, of the technical 2

1 through 7 --

2 THE COURT: Right.

3 MR. EVERT: -- I guess, then I think, yes. Our next  
4 hearing is actually in two, is really in two weeks.

5 THE COURT: Right.

6 MR. EVERT: It's the 14th.

7 THE COURT: Right.

8 MR. EVERT: So we're going to be here pretty quickly.

9 So that would be my suggestion, your Honor, is carry  
10 it over. We'll continue to meet and confer. And again,  
11 obviously, hopefully, Ms. Ramsey's right.

12 THE COURT: Everyone good with that?

13 MS. RAMSEY: That's acceptable to the Committee, your  
14 Honor, again subject to the FCR's --

15 THE COURT: Whatever happens later --

16 MS. RAMSEY: Yes.

17 THE COURT: -- in the morning, right.

18 MR. GUY: Yes, your Honor. I mean, I -- we can get to  
19 it when everybody's ready. I'm not sure.

20 Are we at that point?

21 MR. EVERT: I -- I -- your Honor, I think we are to  
22 No. 9 on the agenda.

23 THE COURT: Okay.

24 Mr. Guy.

25 MR. GUY: Reminds me of a Beatles' song. I guess

1 that's a reference I'm too old.

2 Your Honor, the reason we wanted to be here in person  
3 is to talk about sampling and as is always the case in these  
4 cases, things move very quickly and you think you have a  
5 disagreement and then suddenly when you sit down you're getting  
6 closer to one.

7 When I was writing my notes last night I said, "Well,  
8 I want an order, please, your Honor."

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

11 MR. GUY: Because when we were back with you in  
12 October I said "I'd like an order so that the parties would  
13 actually be required to talk" --

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

16 MR. GUY: -- "then we would get closure and then if we  
17 couldn't agree." I think the parties are working in good  
18 faith, but we're clearly not here yet.

19 What I'd like, your Honor, is for the parties to get  
20 there by the next hearing. And there's been exchanges and I  
21 think there's no reason why that can't happen other than just  
22 people carving the time and sitting down. We repeatedly make  
23 the offer, "We'll make our experts available." I think the  
24 experts should be talking, not the lawyers. And I'd like it to  
25 happen in the next two weeks.

1           The reason I raise it -- and I've said this before,  
2 your Honor. I apologize for being a bit of a broken record --  
3 but in 2019, your Honor, Aldrich had 1500 meso claims filed  
4 against it. Murray had 1100 meso claims filed against it. And  
5 Aldrich had 900 lung cancer and Murray, 800. I'm just making  
6 the numbers simple. Aldrich paid 66 percent of its claims.  
7 Murray paid 35 percent of its claims. Every meso claimant that  
8 was pending when this case was filed is dead now, or likely  
9 dead. Not every one of those claims that were filed were paid.  
10 Not every one was dismissed, but if we just assume a thousand a  
11 year, talking like three people a day. The people who are  
12 dying tomorrow were Mr. Grier's clients when this case started  
13 and as the Court knows, we have a deal on the table. We have a  
14 QSF on the table. There's been discussions with the debtors  
15 and the insurers and we're ready to move. We're ready to get  
16 this case confirmed and it's held up on all sorts of issues  
17 that the Court's familiar with that I'm not going to argue  
18 today.

19           But --

20           Joe, if you could pull up the fees?

21           Your Honor, this is, you've seen this chart before and  
22 I update it every time I'm before you.

23           THE COURT: If any of the other parties feel the need  
24 to move closer to a monitor, go, go right ahead.

25           All right.

1 MR. GUY: I think that is an old one, Joe. I think we  
2 need January.

3 Well, let, let me approach, your Honor. 'Cause I --

4 MR. HIRST: Here's, here's a current one.

5 MR. GUY: There you go.

6 Your Honor, and I have this, a hard copy if you'd like  
7 to receive it, but you probably have enough paper, already.  
8 But I'll bring it up.

9 THE COURT: All right. Thank you.

10 MR. GUY: May I approach, your Honor?

11 THE COURT: You may.

12 MR. GUY: And all the parties have --

13 THE COURT: Okay.

14 MR. GUY: We circulated these to the parties in  
15 advance of the hearing, your Honor.

16 (Document handed to the Court)

17 THE COURT: Very good.

18 MR. GUY: Is that the one that's up?

19 MR. GRIER: Yeah.

20 MR. GUY: No.

21 MR. GRIER: This is the one. It should be up.

22 MR. GUY: Okay.

23 Bestwall, \$227 million, your Honor. They're over five  
24 years in. That's longer than America was in the Second World  
25 War. Paddock, 33 million, but that number's not getting any

1 bigger. Our number's getting bigger. We're at 70 now. We're  
2 right up there with DBMP, even though they filed six months  
3 before.

4           It's not a shortage of manpower and I don't want to  
5 put up all the various professionals, but everybody has their  
6 claims experts, their financial consultants. There's, there's  
7 experts here who can do this and they can do it quickly with  
8 the encouragement from the Court. I don't think an order's  
9 necessary, your Honor, but strict encouragement so that when we  
10 get before the Court on the 14th we at least know exactly where  
11 we stand. We don't want to be in this situation like Bestwall.

12           Your Honor, I, I just want to talk generically about  
13 sampling because I think there's been a lot of confusion.

14           So in all of the other cases pre-Garlock, if you  
15 wanted to estimate what the debtor's asbestos liability was you  
16 looked at its settlement database and the parties' experts had  
17 access to that. It was kept confidential, but they had all  
18 that raw data. There was no need for a sample. They had it  
19 all and predictions were done off of that. Post-Garlock,  
20 Garlock makes the argument, the legal liability theory, and as  
21 you know, your Honor, we strongly resist that theory. We don't  
22 think it's correct, but point is is that's the debtor's theory  
23 in all these cases now. It's their theory that there was  
24 evidence suppression and that's the only reason we're talking  
25 about sampling, because of the privilege issue.

1           So in Garlock, we didn't get a chance because they had  
2 this database. It was the claims database. They didn't even  
3 meet and at trial we had two polar opposite theories.

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

6           MR. GUY: The ACC's view -- and we agree with it --  
7 is, "If you're going to say that there was evidence  
8 suppression, we want to see your files." No one wants to see  
9 15,000 files. That's the only reason we're talking sampling  
10 and I want to stress that, your Honor. It's got nothing to do  
11 with predicting the legal liability off settlements. It's to  
12 avoid privilege fights. Try to get the sample down to a  
13 reasonable number so that when you have those attendant fights,  
14 which you're going to have, it's not going to take the Court  
15 thousands of hours. You're not going to need a special referee  
16 to come in. It can be done. It can be done quickly.

17           The other thing that we're pushing for, your Honor, is  
18 we want to get to the point where even though the parties may  
19 not agree, well, we agree with your theory; we agree with their  
20 theory, at least they agree that the samples they have are  
21 random and that the protocol is acceptable to the experts from  
22 a statistical basis. They may not agree with what you're going  
23 to use it for, but they should at least agree that it's a  
24 random representative sample of what we've got. Because we  
25 want to avoid the situation we got to in Bestwall.



1 Your Honor, you remember when we were before you the  
2 argument was, "Well, we're working on this in Bestwall. We get  
3 a deal in Bestwall, well, we can take it over here." I kind of  
4 like, I guess I'm naïve a lot and I naïvely thought, "Well,  
5 yeah. That, that sounds like a good plan." Your Honor, we got  
6 to Bestwall. They had seven continuances.

7 If we could pull out the order, Joe.

8 A couple of days ago, the Bestwall order was entered.  
9 And this is the order that I was excitedly thinking would say,  
10 "Okay. Here are the details of the sampling protocol and we  
11 can all agree to that and we can use it here." 'Cause the, the  
12 same experts, same parties agree to it. All they've  
13 effectively agreed to, your Honor, is to fight about it later.  
14 That's the language:

15 "All rights of the Parties to challenge the Initial  
16 Discovery Claims, the Debtor's Sample, the Additional  
17 Claims, or the Claimant Sample ... for any purpose  
18 other than discovery are preserved."

19 So here's the specter that I want to avoid. We spent  
20 two years fighting over discovery. We get to estimation trial  
21 and either one of the sides puts up their hand and says,  
22 "That's not a valid sample," or, "It's not random. Throw it  
23 out. Let's start over." We don't want to be there. We want  
24 people to be paid. Bottom line, your Honor, is we don't want  
25 to be talking about this two years from now and \$200 million

1 in. That's like a third of what's on the table. That money  
2 goes out the door, it goes out the door. It's not coming back  
3 to pay claimants.

4 Your Honor, that was very clear from the last hearing  
5 before Bestwall. And I, what I've handed you up is a  
6 transcript. You don't need to read the whole transcript, but  
7 Ms. Ramsey talked about this exact problem, which is claimants  
8 aren't getting paid and the Judge's reaction to that was at  
9 Page 35, and you can see it. And basically, what she said was,  
10 "It is in the claimants' best interest to get an end to this."  
11 That's what she said.

12 "I'm very anxious to get all these discovery disputes,  
13 you know, the claim sample and other discovery  
14 disputes, wrapped up so we can get on with this, so we  
15 can get these claimants paid. The more quickly we do  
16 that, the better off for everybody."

17 That sums it up perfectly. That's exactly what we  
18 want. And we filed our sampling motion back in September and  
19 it's now nearly February. I urge the parties to do this in the  
20 next two weeks so when we get back before February 14th -- and,  
21 and your Honor, I solicit your assistance in urging the parties  
22 to do that, however you think best to do, the order, gentle  
23 encouragement, harsh encouragement, whatever it is. Because we  
24 need to get there and we can get there.

25 Thank you, your Honor.

1 THE COURT: Thank you.

2 Others?

3 Ms. Ramsey.

4 MS. RAMSEY: Thank you, your Honor.

5 I feel a little compelled to respond to some of the  
6 discussion about Bestwall. Bestwall is its own, followed its  
7 own path, your Honor, very, very different from this case and I  
8 think we have all learned as we've gone along about the need to  
9 address these issues of sampling earlier in the case and we've  
10 all learned a lot about sampling. I, I was saying to someone  
11 earlier this morning I think I've spent about 30 hours on the  
12 phone with statisticians under, trying to understand how they  
13 do their work and the importance of construction of the sample  
14 and the use of a sample. And the difficulty with sampling is  
15 that in order to agree that a sample is appropriate, you have  
16 to have concluded before precisely what it is you're sampling  
17 and how it's going to be used. And, and the difficulty in  
18 these cases is that until the results of the sample come in and  
19 you have expert reports before the Court that detail how the  
20 sample is being used, you can't agree upfront that a sample is  
21 necessarily appropriate for every potential use.

22 And so to some extent, the language that is quoted in  
23 the Bestwall order is, is a little different, but some of that  
24 labor is going to be necessary here as well. There is no way  
25 upfront -- or there is a way, but the parties are probably not

1 going to get there at this point -- to agree that a sample is  
2 appropriate for all potential uses. And so what we can do, I  
3 think, and achieve is I think that we can agree that the  
4 parties agree that the strata that has been selected is  
5 appropriate for estimation purposes. I think we can get there.  
6 I think we can agree on a mechanism or a protocol for  
7 determining the stratification and then selecting the files in  
8 the stratified random sample that is random. I think we can  
9 probably get to that point. And I think that we can agree to  
10 it for purposes of discovery.

11 Bestwall's a little different in that the origin of  
12 the disagreement was that the claimants did not agree with the,  
13 the strata and the mechanism that was used by the debtor to  
14 construct its sample and the debtor didn't agree with the  
15 strata and the mechanism used by the claimants. And so there,  
16 the reservation was broader. I think if we can agree to one  
17 sample here, we can get marginally closer, but I did want to  
18 make it clear so that there's no misunderstanding that there  
19 may still be disagreements at the time we get to estimation  
20 over the use of the sample and the propriety of the way that  
21 the sample was selected for the use to which it's being put.

22 So it's, it's a more complicated than it sounds  
23 circumstance to, to identify the strata, to select the  
24 stratification, and then to identify the different ways that  
25 statisticians put that information together to reach

1 conclusions and, and it can be completely clean or it can be  
2 subject to manipulation like a lot of math.

3 So, so I, I just wanted to make sure that the Court  
4 was aware that with respect to, to the sample we, we can make,  
5 I think, good headway. I think we can avoid some of the delays  
6 and the complications that came up when we were very first  
7 dealing with some of these issues in Bestwall, but there still  
8 will be some uncertainty and potential for disagreement at the  
9 end of the day.

10 The other point I just wanted to hit very quickly is  
11 Mr. Guy said the money's going out and it's not coming back.  
12 Obviously, from the claimant perspective we do not agree with  
13 that. We understand that the funding agreement does not permit  
14 that to be the case. And so I just wanted to respond to that  
15 as well.

16 Thank you, your Honor.

17 THE COURT: Very good.

18 Mr. Evert.

19 MR. EVERT: Thank you, your Honor.

20 I guess I, I want to cover a couple things. I fear  
21 that we're conflating two issues here today and I, and I want  
22 to make sure that at least, at least I try to give it a shot to  
23 try to explain what I mean.

24 The FCR's motion, as Mr. Guy described, deals with the  
25 sampling of claims files for -- to -- for a lot of reasons.

1 He, he highlighted the privilege issue, which is obviously one  
2 of the big reasons, but we're really talking about there a lot  
3 of, a massive number of documents, I mean, and this, of course,  
4 arises from the discovery requests to us that the ACC sent that  
5 said, "Give me all your claims files." And it's a massive  
6 amount of documents. Much of it is not electronic. So we're  
7 talking hard paper. We're talking big numbers and it is, and  
8 we're talking most, what, what we would anticipate to be a lot  
9 of privileged material.

10           So it is perfect for sampling as described in any  
11 literature you look at, whether it's the case law, whether it's  
12 the Manual for Complex Litigation, it -- it -- it fits all the  
13 benchmarks. We will definitely save considerable time and  
14 expense by coming up with a sample of the claims files. And,  
15 of course, that's what the order in Bestwall refers to.

16           What we were talking about earlier today were  
17 discussions with the ACC and the Trusts about the Court's order  
18 in regard to sampling of the trust discovery from DCPF.

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

21           MR. EVERT: And as the Court knows, you -- and we --  
22 we -- we -- we didn't hide it. I'm not good at hiding  
23 anything, anyway -- we, we were surprised by the Court's order  
24 and we disagree with it. We, we don't think that, that the  
25 trust discovery is appropriate for sampling. It's a dataset.

1 It's, it's all electronic. I can only imagine the uproar if we  
2 had showed up with our claims database and said to the other  
3 side, "You know, we're just going to give you a sample because  
4 that would be so," but we heard the Court and we reached out  
5 two weeks after the hearing and, and proposed a sampling  
6 protocol and as we said, the ACC got back to us this morning.  
7 We haven't heard from the Trusts yet.

8           But for, for all those reasons, we, we believe that  
9 that's inappropriate for sampling, but here we are and I have  
10 to say that, in an unusual position for this case, I agree with  
11 a lot of what Ms. Ramsey said. The sampling depends, or the  
12 quality of the sampling depends on the objective, I think is  
13 what she was essentially saying, and we have all spent far too  
14 much time with statisticians over this, over this issue and  
15 until you know the precise objective you can't really, and  
16 precisely what is trying to be extrapolated from that sample,  
17 it's extremely difficult to determine whether the sample is  
18 statistically appropriate.

19           So part of the flaw, I believe, in the FCR's motion is  
20 that the assumption that the Court could actually hear now  
21 before it hears estimation proof the issue of whether the  
22 sample is appropriately drawn. You could hear it. I'm, I'm  
23 not sure you'd have enough information to rule on it and you  
24 certainly would increase the idea of bias associated with a  
25 statistical sample. I mean, we all know that, again, you look

1 at any of the literature on sampling and it all says the  
2 sampled extrapolation is never going to be the same as  
3 investigation of the whole dataset. If it is, it's merely  
4 fortuitous, right?

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

7 MR. EVERT: The, the sample's going to differ in some  
8 form or fashion when you try to extrapolate the whole dataset.  
9 So that builds in for the Court an uncertainty, a complexity,  
10 that's not there, right, when you, when you look at the entire  
11 dataset. As a result, when you then layer on top of that the  
12 Court trying to reach a determination of whether a sample is  
13 appropriate before the Court knows exactly what's going to be  
14 extrapolated or exactly the goals, then you sort of double down  
15 on the, on the complexity and the uncertainty associated with  
16 sampling.

17 So we fully agree, and I, and it sounds like the ACC  
18 agrees. So, so I think, again, this has been, I think --

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

21 MR. EVERT: -- at the last hearing I said it's a bit  
22 of a kumbaya moment for this case because we, you know, we,  
23 we've fought over everything. It seems to be that all the  
24 parties agree. When it comes to the claims files, we need to  
25 sample because it's too voluminous and, and in our view, it's



1 difficult for the Court at this time to determine whether or  
2 not the sample is appropriate. Now if we can reach an  
3 agreement, all, all the better.

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

6 MR. EVERT: But for the Court to say, "Oh, this is  
7 statistically significant or not," or, "This is," it's, it's  
8 hard to do at this time. Again, looking at the Manual for  
9 Complex Litigation and some of the case law, they all say that  
10 when, when the court is looking at samples sometimes the court  
11 decides, even if there are uncertainties associated with the  
12 sample, to take in the evidence and just let it go to the  
13 weight or the appropriate value of the sample. And I think  
14 that's very often where you end up in these sort of situations.

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

17 MR. EVERT: So if we look at where they're going to be  
18 in Bestwall, as I understand it, they're both going to show up  
19 at estimation with their slightly different samples. 'Cause I  
20 think there, there are, is some similarity, as I understand it,  
21 between, between the stratified random samples that they're  
22 taking and they're both going to stand up and justify for the  
23 Court why their sample is either better or more appropriate or  
24 gives a better estimate, or whatever. What we're all trying to  
25 do is, of course, provide the Court with the best estimate we

1 can.

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

4 MR. EVERT: And so that's why, of course, for the  
5 trust discovery we wanted the entire dataset. That allows us  
6 to give the best estimate we can. That's why for the samples  
7 in Bestwall they decided, "Well, let us do ours and you do  
8 yours and then we'll get to the same spot."

9 So all that adds up to, I don't, I don't want to  
10 conflate the two issues. Mr. Guy's motion -- I'm sorry -- the  
11 FCR's motion --

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

14 MR. EVERT: -- originally sought for this issue to be  
15 heard when trust discovery was over, all right? So we're,  
16 we're not there yet. But also, was specifically targeted to  
17 claims files and it sounds like we're all in agreement. Claims  
18 files need to be sampled and it sounds like we're tending  
19 towards agreement that it needs to be a stratified random  
20 sample and that stratified random sample has some, at this  
21 point, has some similarities. That's all good. We'll continue  
22 to work on that. But I -- I -- I don't want the Court to hear,  
23 "Oh, that means that the, that the debtor agrees that the --  
24 that" --

25 THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MR. EVERT: -- "that the ruling on, on the, on trust  
3 discovery is appropriate." So I, I don't want those two  
4 conflated.

5 Lastly, but -- lastly, what, what we would say is that  
6 Ms. Ramsey in our meet, one of our meet and confers asked me if  
7 we would have the same sample, if we would propose the same  
8 sample for trust discovery and for claims file discovery and my  
9 answer to her at that time is the same answer I would give now,  
10 which is they can't be the same because the ACC wants  
11 dismissals to be included in the claims file discovery and  
12 dismissals are not included in the trust discovery because,  
13 because, of course, we were only seeking information on  
14 resolved claims. However, the methodology could be similar.

15 So I think that it sounds like the proposal that they  
16 have sent this morning has similar methodology to what's going  
17 on in Bestwall. And so the effort is -- oh, it doesn't.

18 MS. RAMSEY: Huh-uh (indicating a negative response).

19 MR. EVERT: I'm sorry. Okay. I misstated.

20 MS. RAMSEY: Huh-uh (indicating a negative response).

21 MR. EVERT: So it's similar to the methodology we  
22 proposed at least in this case. And so we're, we're trying to  
23 get somewhere to the middle.

24 But I -- I -- the -- to me, the samples are never  
25 going to be the same --

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

3 MR. EVERT: -- because of this dismissal issue.

4 So I'm glad to answer any questions, but it's -- it's  
5 -- it's a morass.

6 THE COURT: Okay.

7 Anyone else before I go back to Mr. Guy?

8 MS. RAMSEY: Can I -- shall I wait till Mr. Guy or --

9 THE COURT: Well --

10 MR. GUY: I don't care. Go --

11 MS. RAMSEY: I had one, one comment, your Honor, just  
12 with respect to, to the presentation by, by Mr. Evert.

13 With respect to best information or limited  
14 information, again --

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

17 MS. RAMSEY: -- that, that is one of the reasons that,  
18 that we sought discovery on all the files. Because no matter  
19 what, less information is less information. It's just the way  
20 it is. We, we understand that that is complicated and that it  
21 is going, would cause delay and we are prepared to, to limit  
22 our discovery with respect to, to a sample.

23 But, but I did want to highlight that we find  
24 ourselves in, in somewhat of a similar situation and that in a  
25 best possible world we would know everything that the debtor

1 knows. They would put it all --

2 THE COURT: Sure.

3 MS. RAMSEY: -- in some room, we would go through it,  
4 and we would all be on the same page. But that is a very  
5 difficult proposition, we understand.

6 THE COURT: Would that include the debtor having all  
7 the, the attorney file information from the plaintiffs'  
8 attorneys as well? I mean, if it were an open book, it would  
9 be some, one thing and --

10 MS. RAMSEY: Well, the, the problem with that, your  
11 Honor, I think -- the Court is obviously right that if we're,  
12 if we're trying to actually examine that book -- but this is,  
13 the difficulty here is the debtor has put this at issue. It is  
14 not our position. Our position is --

15 THE COURT: I, I don't want to argue about it --

16 MS. RAMSEY: -- a settlement's a settlement.

17 THE COURT: -- but my --

18 MS. RAMSEY: Yes.

19 THE COURT: -- my point is when we're talking about  
20 what we're looking at, whether we go with a sample or we go to  
21 totality to determine what people knew and what they asserted,  
22 it seems like if you're going to do what you were proposing, it  
23 would be everything. But, but let me ask the, the naïve  
24 question I've been asking all along in this case. I still  
25 don't understand it.

1           This is an estimation and at the end of the day the  
2 claimants have the block. You -- Judge Hodges gave a very low  
3 number as compared to where we ended up in Garlock. It was a  
4 tenth of what, what I think the claimants were asking for. So  
5 at the end of the day, you, you weren't willing to go forward  
6 with that and then negotiations break out.

7           I still don't quite understand why we need entire  
8 precision with regard to the estimation number to, to the point  
9 of why can't you just come in and have one hearing and, and  
10 tell me what your experts think and I pick a number and then  
11 you move on, so.

12           MS. RAMSEY: So your Honor, we, we actually -- the  
13 Court may recall -- and I, I, I think it was this case -- we,  
14 we filed a motion at one point suggesting that we do this in  
15 stages --

16           THE COURT: Right.

17           MS. RAMSEY: -- and have a --

18           THE COURT: Right.

19           MS. RAMSEY: -- a estimate based on the database --

20           THE COURT: It was in this one.

21           MS. RAMSEY: -- first and then, if that didn't result  
22 in anything --

23           THE COURT: Right.

24           MS. RAMSEY: -- go to the second step.

25           We, we tend to agree with the Court. The, the

1 difficulty from the claimant perspective --

2 THE COURT: Right.

3 MS. RAMSEY: -- and I, I want to be very transparent  
4 about this -- is that in addition to reaching a low number,  
5 Judge Hodges made some very critical determinations about the,  
6 the, the way that the plaintiffs and the tort lawyers behaved  
7 in the tort system.

8 THE COURT: Of course.

9 MS. RAMSEY: And that is a responsibility that we  
10 bear, is to not let that happen again on our watch. And so as  
11 we are looking ahead at what we, we anticipate the allegations  
12 to be and the evidence the debtor intends to put on to be, we  
13 have to be in a position --

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

16 MS. RAMSEY: -- to respond to that and, and that is,  
17 largely, the motivation behind --

18 THE COURT: Okay.

19 MS. RAMSEY: -- our desire --

20 THE COURT: I get it.

21 MS. RAMSEY: -- for the discovery.

22 THE COURT: Okay.

23 MS. RAMSEY: Thank you.

24 THE COURT: All right.

25 MR. EVERT: I, I just would also say, Judge, a couple

1 things.

2 One, recall that when we originally made the  
3 estimation motion in front of you we proposed that you just  
4 decide whether or not the 545 was sufficient --

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

7 MR. EVERT: -- the \$545 million agreement that we had  
8 with the --

9 THE COURT: Right.

10 MR. EVERT: -- with the FCR. And, and the Court said,  
11 "No, no, no. I think I've got to come up with a number."

12 THE COURT: Right.

13 MR. EVERT: So, so what we -- we were -- we were  
14 trying to streamline it. Maybe -- may -- maybe if, if the  
15 Court wants to revisit that, we're glad to revisit that, but  
16 that's one thing.

17 And then the, the second is is I think that, you know,  
18 from, from our perspective we're, we're trying to provide the  
19 Court with the best estimation --

20 THE COURT: Yeah.

21 MR. EVERT: -- that we can.

22 THE COURT: Sure.

23 MR. EVERT: And maybe the Court agrees with it, maybe  
24 the Court doesn't. But we, we want -- and I, I, I know, you  
25 know, we had, we had a disagreement about this -- we would like



1 to get to a deal and we would like to get a trust going and we  
2 would like to get the claimants paid fully, fairly, finally,  
3 all the, you know --

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

6 MR. EVERT: -- all --

7 THE COURT: All the stuff.

8 MR. EVERT: -- all the "F" words --

9 THE COURT: Right.

10 MR. EVERT: -- that you like to say, so.

11 THE COURT: I think you're missing a couple.

12 MR. EVERT: Oh, well. PG=19, or whatever it is.

13 THE COURT: Right.

14 MR. EVERT: So, so as a result, Judge, I mean, I think  
15 that's a couple comments on your question.

16 THE COURT: Okay.

17 Back to you, Mr. Guy.

18 MR. GUY: Thank you, your Honor.

19 THE COURT: Leave out the "F" words.

20 MR. GUY: I sometimes forget this is the FCR's motion,  
21 but --

22 Your Honor, I, I've never had a situation where  
23 everybody seems to be in agreement, but we can't get to yes --

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

1 MR. GUY: -- quickly. So let's just break it down,  
2 your Honor.

3 What I heard was there's acceptance to the idea of  
4 having one sample. Of course, right? The problem with  
5 Bestwall is the debtor started with what was criticized as a  
6 cherry-picked sample. So now we have two samples.

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

9 MR. GUY: And we're going to add a year to the  
10 litigation, which is the Court's response in Bestwall. It's  
11 like really, another year? Another year and no one's getting  
12 paid?

13 The experts haven't even sat down in this case once  
14 together to talk about an appropriate sample, or samples, or  
15 purposes, or what is random, what isn't. That's why I put the  
16 fee chart up. There's a lot of money being spent, but nothing  
17 much happening and we are -- I know the Court can see my  
18 frustration.

19 There is no reason -- and I'm excluding any "F" word  
20 in this -- why these parties with their experts, with their  
21 professionals who are all very, very smart -- there's JDs and  
22 Ph.D.s all over the place -- they can't agree to yes on whether  
23 there's one sample and the size of it would be really  
24 problematic. That's the first thing.

25 The second thing is is it random or not.

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

3 MR. GUY: Yes or no. Is it cherrypicked? Your Honor  
4 said, "I don't want a cherry-picked sample." Of course you  
5 don't. The experts have -- their statistician, if they can't  
6 come up with what is random and they agree this is random, that  
7 would be really problematic. This is not trying to get the,  
8 the moon. We're just trying to figure out one or two samples,  
9 the size of the sample, is it random or not.

10 I agree with what Mr. Evert said, Mr., Mr. Evert said  
11 and what Ms. Ramsey said about, well, the purpose is going to  
12 show up later, but let's not be coy about it. We know what the  
13 purpose is. The debtors want to say, "You suppressed  
14 evidence." The ACC want to say, "No, we didn't." And they're  
15 going to point to whatever they can find to, in that sample of  
16 files, to support that, either way. And this is where the  
17 experts say, "Well, 10 percent, is that enough? Five percent?  
18 One percent? Three percent?"

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

21 MR. GUY: We think 10 percent's enough. If it's  
22 there, it's there on both sides of that argument.

23 So this is all we're asking, is, please, in the next  
24 two weeks before the 14th have the experts sit down. Have them  
25 talk. I don't --- there's no point in me talking to Ms. Ramsey

1 about it.

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

4 MR. GUY: Or to Mr. Evert. We, we can talk about it  
5 all day long. It won't make a difference. 'Cause we're not  
6 going to be ones who, as the experts, are going to say, "Look,  
7 I don't agree with the purpose that you're using the sample,  
8 but I do agree that it was random."

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

11 MR. GUY: "And I do agree with the sampling protocol."  
12 So that is at least off the table so your Honor isn't facing  
13 the situation and the FCR isn't facing the situation two years  
14 from now where we have to do a total do-over.

15 So exactly what you said, your Honor. We're trying to  
16 get to an estimate. This is not perfection. It's never  
17 perfection in an asbestos case. Every estimate is always  
18 wrong.

19 So that's all I would urge, your Honor, is that the  
20 parties' experts please meet within the next two weeks and then  
21 we can come back to you on the 14th and we can say, with  
22 specificity, "Yeah, we've agreed to one sample. This is how  
23 big it is, 10 percent. We've agreed to, this is random. We  
24 haven't agreed to the purpose. We reserve all rights on that,"  
25 but at least we've taken those issues off the table. That

1 shouldn't be complicated.

2 Thank you, your Honor.

3 THE COURT: Let me ask for comments on that last  
4 suggestion at the, at the very least we have the experts talk  
5 before the next hearing and give us a report back. I don't  
6 know. I know Valentine's Day might promote a little bit of  
7 harmony, but, but I have a meeting at 6:00. So I'm not going  
8 to be at liberty to go all night on that date. We might, if we  
9 adopted Mr. Guy's suggestion, have them to have a little meet  
10 and confer as well and then give us a report on where the, the  
11 sticking points lie and then set it for further on, hearing on  
12 the merits, if we have to.

13 MR. EVERT: Yeah. So your Honor, a couple comments.

14 One, it is only a couple weeks. I don't know  
15 everybody's schedules. And so if we were going to do that, I  
16 probably would suggest we, we plan on it for March instead --

17 THE COURT: Right.

18 MR. EVERT: -- of February. So that, that'd be first.

19 Secondly, and, and maybe this was not well articulated  
20 in our description of our meet and confer so far, I think -- I  
21 don't want to speak for Ms. Ramsey -- but I think we have  
22 agreement with the ACC where sampling is appropriate, that it  
23 should be a stratified random sample. That was, that was the  
24 way we approached this, is to say, "Here's our first question.  
25 Do we agree that it should be a stratified random sample?" And

1 on our meet and confer Ms. Ramsey said, "I believe so," but  
2 wasn't ready and then I think in her proposal this morning, as  
3 I understand it, it is a stratified random sample.

4 So, so we've got agreement on that. The, the next  
5 question just becomes what are the strata and then what are  
6 the, what are the population within the strata. So we've got,  
7 we've got that to try to work through.

8 So it would be unfair to say that, you know, we're  
9 just at complete loggerheads about how to do this, you know.  
10 And again, without getting too deep into the weeds of  
11 statistics, you know, the, the, the stratified random -- here's  
12 -- if - if -- if -- if -- as you know in the asbestos  
13 litigation, most complaints have lots and lots of defendants in  
14 them, okay? If we, if we said, "We want to do a study to see  
15 whether we are more likely to get dismissed in cases that have  
16 less than 30 defendants named versus cases that have more than  
17 30 defendants," well, since there are very few cases with only  
18 30 defendants and we just did a random sample we might only get  
19 3 complaints that have less than 30 defendants. Well, that  
20 doesn't do us any good. So we've got to stratify --

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

23 MR. EVERT: -- a sample within each. So that --  
24 that's -- that's an ultra basic. And now, as, you know, as  
25 Mr. Guy and Ms. Ramsey say, I've now exceeded my knowledge of

1 stratification. I've gone just beyond the Peter Principle.

2 So --

3 THE COURT: Well, a nod's as good as a wink to a blind  
4 horse. My, my last class in statistics, well, the computers we  
5 were using were running on Basic when I took it, so.

6 MR. EVERT: There you go. Hadn't made it to Fortran  
7 yet. Not quite --

8 THE COURT: No.

9 MR. EVERT: -- yeah.

10 THE COURT: Had not.

11 MR. EVERT: I'm right there with you, Judge.

12 So, so in any event, we, we have agreed on stratified  
13 random sample as the appropriate methodology. Now it's just a  
14 question of trying to get to the details within that. So we're  
15 getting a little somewhere.

16 To -- but precisely to the Court, if we were going to  
17 try to say, "Okay. I want the experts to meet," or, "I want  
18 there to be" --

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

21 MR. EVERT: -- if the Court said, "I want you guys to,  
22 basically, try harder," then I think March would be the  
23 appropriate deadline.

24 THE COURT: Ms. Ramsey?

25 MS. RAMSEY: Thank you, your Honor.

1           Yeah. I, I agree with Mr. Evert. We're -- we're --  
2 it's a, it's a good day here in court for, for peace and  
3 goodwill. We are making, I think, good headway.

4           With respect to the strata --

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

7           MS. RAMSEY: -- the strata is identical in terms of,  
8 in terms of the focus here. There are not new strata proposed  
9 in what we have proposed today with the exception that  
10 Mr. Evert is correct, which is that we have added dismissals,  
11 but -- but we -- but -- but in the -- among the other types of  
12 strata that could be added would be things like age,  
13 jurisdiction, you know, those additional types of strata, we  
14 have not added.

15           So we've taken the debtors' sample. We have stayed  
16 with the general strata categories. We have proposed to limit  
17 those by having wider groups of claims included within certain  
18 strata.

19           And -- and I -- without, again, getting too in the  
20 weeds, it seems to me that what we're now talking about are  
21 whether our proposal is acceptable and, if not, then it might  
22 be appropriate for the experts to further weigh in. But we  
23 kind of know what we're talking about and, and I think we're  
24 kind of speaking the same language.

25           With respect to other agreements, we've also agreed



1 that, that the, the time period is going to be limited to cases  
2 that were filed after 2014. That, that's a, a significant  
3 agreement and I think moves us closer there.

4 With respect to the randomness, that's the easiest  
5 thing of all if we agree upfront on, on how, how the files  
6 within the strata are going to be selected.

7 So I think at this point we're not, we're talking  
8 about the size of, of the different strata. We're talking  
9 about how the strata, how to stratify those files, or how many  
10 from each of the categories. And frankly, I think based on the  
11 communications we've had so far we're going to be very close on  
12 that.

13 So I, I am optimistic, understanding that the debtor  
14 has not seen this yet and may disagree with what we've  
15 specifically proposed. I, I do think that we are so close  
16 we're going to get there without needing the experts to talk to  
17 each other. I think we're, we're within a limited pool of  
18 issues now that we are likely to be able to work out between  
19 ourselves, at least that's my hope, and we could certainly  
20 advise the Court before the 14th. If we find that is an  
21 impasse and we do need a meet and confer at that point, that  
22 might be appropriate, but I'm not sure the experts have a lot  
23 more to add at this point.

24 THE COURT: Okay.

25 Mr. Guy.

1 MR. GUY: That's great news because then we maybe  
2 don't need them to meet.

3 I don't want to put this off till March, your Honor.  
4 It doesn't need to be put off till March. It's not that  
5 complicated.

6 And I had a motion on file before the Court in  
7 September asking for the parties to talk for 90 days and if  
8 they couldn't agree, to get back. We ran through that,  
9 already.

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

12 MR. GUY: And that motion was put on hold under the  
13 representations, "We're talking. We're strenuously talking."  
14 And I am not criticizing anyone in this room. Everybody is  
15 very busy. I want this case to be put on the top, not on the  
16 bottom, and this can be done in the next two weeks.

17 Thank you, your Honor.

18 THE COURT: I'm inclined to encourage the parties  
19 with, with the greatest of sincerity to see if you can't pull  
20 off this agreement before the 14th and we'll talk about it then  
21 and where it should go.

22 I hear Mr. Guy loud and clear. I have the same  
23 frustrations about the case and I know some of you are since  
24 you're doing the work that, to a certain extent, we go around  
25 in circles on these things and without ever getting to the

1 point of being able to make a resolution that, that can be  
2 appealed and decided wherever, whichever level it is. And I  
3 would like to get us moving.

4 You have only reinforced my, my belief that ordering  
5 mediation at this point was a good idea.

6 And Ms. Abel, thank you for, for bringing that to the  
7 fore.

8 And I'm, I'm gratified to see you starting to reach  
9 some agreements. We do need to make this an affordable  
10 exercise. The last thing we want to do is spend more on a, on  
11 professional fees in these cases than, than what the amount in  
12 controversy would be, whatever that number is. But it would be  
13 really embarrassing, I think, for all of us to get to the end  
14 of the case and end up with a settlement that has a number that  
15 the amount paid to the claimants is less than what was paid to  
16 the professionals. I don't think that would do any of us in  
17 our professions any good by reputation and it, it is certainly  
18 not fair to the people who need the money. The whole idea of  
19 524 was that we need to be more efficient in the way we handle  
20 asbestos claims and that there is a mechanism that, that might  
21 avoid the necessity for litigation over, on a retail level.

22 So let's shoot for 2/14 and try to get agreement on,  
23 on this protocol that you're discussing and if not, then we'll,  
24 we'll plan on next steps. But at that juncture I would  
25 anticipate that by the March hearing I would want the

1 professionals, the statisticians, to, to get involved in  
2 interfacing with one another to try to come to an agreement,  
3 but I'll give you a little more time to work since there was a  
4 proposal made this morning that no one's had a chance to react  
5 to, okay?

6 Now where does that put us with the remainder of the  
7 calendar? Is that it?

8 MR. HIRST: No.

9 So your Honor, there's two last things that are --

10 THE COURT: Oh, the motions to seal?

11 MR. HIRST: Yeah. These are easy because we've talked  
12 to the ACC. It's the ACC's motions. We, but it's our and the  
13 non-debtor affiliates' confidentiality designations.

14 We're going to withdraw those designations. So I  
15 believe the ACC's withdrawing the motions. They're going to  
16 file those complaints unsealed.

17 MR. COX: Your Honor, Rob Cox on behalf of the ACC.

18 We'll, we'll withdraw the motions to, to seal. And  
19 the way we've done this in the past, your Honor, is just to  
20 file the fully unsealed, unredacted versions. And these are  
21 the two complaints that were filed --

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

24 MR. COX: -- the fraudulent transfer complaint and the  
25 fiduciary duty complaint. We'll file that under a notice in

1 each of those cases and that's the way we've handled it before.

2 THE COURT: Right, very good.

3 And for the clerk's benefit, the motions are  
4 withdrawn. The complaints that come in are not amended  
5 complaints or anything of that nature. They're just simply the  
6 unredacted complaints.

7 Okay. What else on those two motions?

8 MR. HIRST: That's all on those two motions and I  
9 think that's all on the agenda.

10 THE COURT: All right.

11 Anything else? Anyone got any, any other matters?

12 (No response)

13 THE COURT: Good. Well, you get early flights home.  
14 We'll see you again on Valentine's Day and I hope that everyone  
15 brings candy and flowers, so, for one another.

16 MR. EVERT: Thank you, your Honor.

17 MS. RAMSEY: Thank you, your Honor.

18 THE COURT: Just kidding. All right.

19 (Proceedings concluded at 10:30 a.m.)  
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CERTIFICATE

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

/s/ Janice Russell

January 30, 2023

Janice Russell, Transcriber

Date