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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