

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

<p>In re</p> <p>ALDRICH PUMP LLC, <i>et al.</i>¹</p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 20-30608 (JCW)</p>
<p>ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST <i>et al.</i></p> <p>Plaintiffs,</p> <p>v.</p> <p>ALDRICH PUMP LLC, <i>et al.</i></p> <p>Defendants.</p>	<p>Miscellaneous Proceeding</p> <p>No. 22-00303 (JCW)</p> <p>(Transferred from District of Delaware)</p>

DECLARATION OF KEVIN A. GUERKE IN SUPPORT OF DELAWARE CLAIMS PROCESSING FACILITY, LLC’S (I) RESPONSE TO DEBTORS’ MOTION FOR REHEARING CONCERNING THE ISSUE OF SAMPLING ON DCPF’S SUBPOENA-RELATED MOTIONS AND (II) JOINDER

I, Kevin A. Guerke, declare:

1. I am a partner in the law firm of Young Conaway Stargatt & Taylor, LLP (“Young Conaway”). I am a member in good standing of the Bar of the State of Delaware. I submit this declaration in connection with the Delaware Claims Processing Facility, LLC’s (the “DCPF”) (i) response to the motion filed by the above-captioned Debtors² seeking reversal of the Court’s

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors’ address is 800-E Beaty Street, Davidson, North Carolina 28036.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the DCPF’s *Delaware Claims Processing Facility, LLC’s (I) Motion To Quash Or Modify Subpoena And (II) Joinder* [D.I. 4-2] (the “Motion to Quash”).



ruling on the issue of sampling [Docket No. 54] and (ii) joinder to *Third-Party Asbestos Trusts' Opposition to Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* filed contemporaneously herewith.

2. Attached hereto as Tab 1 is a true and correct copy of the November 30, 2022 Hearing Transcript.

3. Attached hereto as Tab 2 is a true and correct copy of the hearing demonstrative used by DCPF during the November 30, 2023 Hearing.

4. Attached hereto as Tab 3 is a true and correct copy of the December 19, 2022 email from Morgan R. Hirst re: In re Aldrich Pump LLC et al (Case No. 20-30608).

5. Attached hereto as Tab 4 is a true and correct copy of the February 9, 2023 Hearing Transcript.

6. Attached hereto as Tab 5 is a true and correct copy of the February 10, 2023 email from Morgan R. Hirst re: In re Aldrich Pump LLC et al (Case No. 20-30608).

7. Attached hereto as Tab 6 is a true and correct copy of the January 26, 2023 Hearing Transcript.

8. Attached hereto as Tab 7 is a true and correct copy of the Delaware Claims Processing Facility, Invoice 12, Nov. 2, 2022 and Delaware Claims Processing Facility, Invoice 13, Jan. 18, 2023.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: March 23, 2022

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kevin A. Guerke

Kevin A. Guerke (No. 4096) (admitted *pro hac vice*)

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Attorney for Delaware Claims Processing Facility, LLC

TAB 1

1 OFFICIAL COMMITTEE OF : AP 22-03029 (JCW)
 ASBESTOS PERSONAL INJURY
 2 CLAIMANTS, on behalf of the :
 estates of Aldrich Pump LLC
 3 and Murray Boiler LLC, :

4 Plaintiff, :

5 v. :

6 TRANE TECHNOLOGIES PLC, :
 et al., :

7 Defendants, :

8 :

9 :

10 ARMSTRONG WORLD INDUSTRIES, : Miscellaneous Pleading
 INC. ASBESTOS PERSONAL INJURY No. 22-00303 (JCW)
 11 SETTLEMENT TRUST, et al., : (Transferred from District
 of Delaware)

12 Plaintiffs, :

13 v. :

14 ALDRICH PUMP LLC, et al.,

15 Defendants. :

16 :

17
 18 TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE J. CRAIG WHITLEY,
 19 UNITED STATES BANKRUPTCY JUDGE

20 Audio Operator: COURT PERSONNEL

21 Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
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25 Proceedings recorded by electronic sound recording; transcript
 produced by transcription service.

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Chief Legal Counsel of Debtors

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21 APPEARANCES (via telephone):

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

2 (Call to Order of the Court)

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

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

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

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

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

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

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

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

6 THE COURT: All right, very good.

7 How about for the ACC?

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

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

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

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

17 THE COURT: -- there.

18 MS. HARDMAN: Thank you.

19 THE COURT: Okay, very good.

20 FCR?

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

23 THE COURT: All right.

24 MR. GUY: Thank you.

25 THE COURT: Okay. Other parties wishing to announce

1 that are in the courtroom?

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

6 THE COURT: Okay.

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

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

14 MR. MARTIN: Thank you, your Honor.

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

17 THE COURT: Okay, very good.

18 Counsel?

19 MR. GUERKE: Good morning, your Honor.

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

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

25 THE COURT: All right.

1 Anyone else in the courtroom announcing?

2 Mr. Waldrep.

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

7 THE COURT: Okay, very good.

8 Ms. Zieg.

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

13 THE COURT: Okay.

14 Anyone else announcing in the courtroom?

15 MS. ABEL: Shelley Abel, Bankruptcy Administrator.

16 THE COURT: Very good.

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

21 (No response)

22 THE COURT: Very good.

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

1 Okay. How about telephonic appearances? Anyone else?

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

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

4 THE COURT: Go ahead.

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

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

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

10 THE COURT: Yes, sir.

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

13 Thank you.

14 THE COURT: Okay.

15 Anyone else needing to announce?

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

18 THE COURT: Okay.

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

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

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

1 turkey, I guess, so.

2 Any other appearances?

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

6 THE COURT: Yes, sir.

7 Anyone else?

8 (No response)

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

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

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

21 Ms. Hardman?

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

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

1 in those matters.

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

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

10 THE COURT: Right.

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

15 So if that's part --

16 THE COURT: Okay.

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

19 Thank you, your Honor.

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

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

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

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

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

5 THE COURT: Right.

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

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

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

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

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

21 THE COURT: Okay.

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

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

3 THE COURT: Yes, ma'am.

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

6 THE COURT: All right.

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

9 THE COURT: Okay.

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

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

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

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

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

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

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

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

3 MS. HARDMAN: Thank you, your Honor.

4 THE COURT: All right.

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

7 THE COURT: Okay.

8 MS. HARDMAN: -- thank you.

9 THE COURT: Very good.

10 Mr. Phillips.

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

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

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

1 okay.

2 THE COURT: Please.

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

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

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

1 what we expect.

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

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

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

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

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

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

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

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

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

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

4 THE COURT: Okay. Thank you --

5 MR. PHILLIPS: Thank you.

6 THE COURT: -- Mr. Phillips.

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

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

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

15 THE COURT: Right.

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

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

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

22 MS. HARDMAN: There is likely --

23 THE COURT: Three?

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

25 THE COURT: Okay.

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

2 THE COURT: Okay.

3 MS. HARDMAN: -- three.

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

5 MS. HARDMAN: Okay.

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

7 MS. HARDMAN: Okay.

8 THE COURT: Ms. Hardman?

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

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

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

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

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

1 proceed. Happy to see you, your Honor.

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

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

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

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

13 THE COURT: Right.

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

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

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

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

9 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 THE COURT: Okay. Thank you.

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

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

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

25 THE COURT: Right.

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

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

8 THE COURT: Mr. Mascitti?

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

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

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

20 THE COURT: Right.

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

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

1 Ms. Zieg?

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

8 THE COURT: But for purposes --

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

10 THE COURT: -- of DBMP.

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

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

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

20 THE COURT: Yeah.

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

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

24 THE COURT: Right.

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

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

5 THE COURT: All right.

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

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

1 waste your time in the meantime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MS. HARDMAN: Thank you, your Honor.

20 THE COURT: Okay. Bye.

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

22 AFTER RECESS

23 (Call to Order of the Court)

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

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

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

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

9 Anyone feel differently? Okay.

10 Mr. Guy.

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

14 THE COURT: Right.

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

20 THE COURT: All right.

21 MR. GUY: Thank you, your Honor.

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

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

1 THE COURT: All right.

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

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

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

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

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

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

19 THE COURT: Okay.

20 Everyone feel alike on that?

21 (No response)

22 THE COURT: Okay.

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

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

4 Everyone agreed there?

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

9 THE COURT: Anyone feel differently?

10 (No response)

11 THE COURT: Okay.

12 What is that January date? It is --

13 MR. ERENS: January 26, your Honor.

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

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

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

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

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

25 THE COURT: Yeah.

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

6 THE COURT: Everyone in agreement?

7 (No response)

8 THE COURT: Okay.

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

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

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

19 Mr. Martin?

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

24 May I approach?

25 THE COURT: You may.

1 MR. MARTIN: Thank you.

2 (Demonstrative exhibit handed to the Court)

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

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

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

7 All right.

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

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

11 MS. MOSKOW-SCHNOLL: Okay, great.

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

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

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

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

3 THE COURT: Right.

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

9 THE COURT: All right.

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

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

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

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

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

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

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

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

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

22 Your Honor --

23 THE COURT: Please.

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

1 THE COURT: Absolutely.

2 MS. MOSKOW-SCHNOLL: Thank you.

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

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

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

12 THE COURT: No, ma'am.

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

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

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

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

21 (Pause)

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

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

25 MS. MOSKOW-SCHNOLL: There we go.

1 THE COURT: Okay.

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

4 THE COURT: There you are.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 I'm going to see if I can stop sharing my screen now.
10 Okay. I think that worked, right? You can all see me
11 again?

12 THE COURT: Yes, ma'am.

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

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

5 THE COURT: Take a moment.

6 (Pause)

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

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

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

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

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

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

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

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

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

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

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

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

7 Thank you, your Honor.

8 THE COURT: Thank you very much.

9 Okay. Mr. Guerke.

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

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

18 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

13 May I approach?

14 THE COURT: Please.

15 (Printout handed to the Court and counsel)

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

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

20 THE COURT: Right.

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

22 THE COURT: You're fine.

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

25 THE COURT: Very good.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Thank you, your Honor.

8 THE COURT: Thank you.

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

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

12 THE COURT: Okay.

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

15 THE COURT: Yes, sir.

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

24 THE COURT: Yes, sir.

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

1 me to proceed, accordingly.

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

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

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

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

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

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

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

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

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

23 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Thank you, your Honor.

13 THE COURT: Thank you.

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

17 (No response)

18 THE COURT: All right, very good.

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

21 (No response)

22 THE COURT: Go ahead, Mr. Hirst.

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

1 motions to proceed anonymously.

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

10 THE COURT: Okay.

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

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

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

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

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

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

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

9 MR. HIRST: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Right.

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

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

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

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

8 THE COURT: Mr. Evert?

9 MR. EVERT: Thank you, your Honor.

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

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

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

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

1 proceed anonymously.

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

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

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

16 THE COURT: All right. Thank you.

17 MR. EVERT: Thank you, your Honor.

18 THE COURT: Anyone else?

19 (No response)

20 THE COURT: Rejoinder arguments?

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

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

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

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

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

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

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

8 Thank you.

9 THE COURT: All right.

10 Mr. Guerke?

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

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

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

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

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

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

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

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

20 THE COURT: All right.

21 Anything from you, Mr. Hogan?

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

24 Thank you for your time, your Honor.

25 THE COURT: Okay.

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

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

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

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

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

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

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

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

11 (No response)

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

19 Mr. Hirst?

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

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

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

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

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

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

22 MR. HIRST: Okay.

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

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

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

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

7 MR. ERENS: Okay.

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

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

12 AFTER RECESS

13 (Call to Order of the Court)

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

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

18 Mr. Hirst?

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

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

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

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

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

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

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

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

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

1 been thinking --

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

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

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

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

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

17 THE COURT: Okay.

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

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

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

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

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

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

5 THE COURT: Ms. Moskow --

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

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

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

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

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

20 THE COURT: Mr. --

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

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

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

25 THE COURT: Any opposition to us touching base about

1 this at the January hearing?

2 MR. HOGAN: No, sir.

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

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

9 THE COURT: -- both matter.

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

12 THE COURT: Right.

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

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

18 MR. HIRST: Yep.

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

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

24 THE COURT: All right, very good.

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

1 which, again, is the 26th.

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Okay.

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

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

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

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

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

2 THE COURT: I do, yes.

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

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

5 MR. EVERT: December hearing.

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

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

8 THE COURT: All right.

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

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

11 time.

12 MR. ERENS: Okay.

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

14 other parties wish --

15 Mr. Davis -- Mr. Wright?

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

17 Nothing additional from the Committee, your Honor.

18 THE COURT: Okay.

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

20 have anything on your behalf, do --

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

22 THE COURT: Okay, very good.

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

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

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

1 Mr. Waldrep, you need to see me?

2 MR. WALDREP: Yes.

3 THE COURT: All right.

4 (Proceedings concluded at 11:41 a.m.)

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10 CERTIFICATE

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

15 /s/ Janice Russell December 5, 2022

16 Janice Russell, Transcriber Date

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TAB 2

Claimant Pseudonym	Employer	Occupation	Industry Description	Industry Other	SiteName	SiteCity	SiteState	Handled	Fabricated	Altered Repaired	Employed	Date First	Date Last	Circumstances None	CircumstancesDescription	ApprovedSiteCode	AlternateApprovedSiteCode	Site Country	Bystander FirstName	Bystander Middle Initial	Bystander LastName	Product
		Brick Layer	Chemical					False	False	False	False	1/1/1960	12/31/1962	True	XXXXXXXXXXXXXXXX (EOEP) altered, repaired, or otherwise worked with and/or around B&W boilers, such that he was exposed on a regular basis to asbestos fibers at Allied Chemical. The claimant, XXXXXXXXXXXXXXXXXXXX wife, was in turn exposed to these asbestos fibers that XXXXXXXXXXXXXXXXXXXX brought home on his clothes.	33016894 GENERAL CHEMICAL COMPANY FRONT ROYAL, VA	33016894 GENERAL CHEMICAL COMPANY FRONT ROYAL, VA					
		Brickmason	Construction		Wedgewood Garden Apartments	Annandale	VA	False	False	False	True	12/31/1963	12/30/1972	False	The claimant was exposed to asbestos fibers that her husband, XXXXXXXXXXXXXXXXXXXX, brought home on his clothes. XXXXXXXXXXXXXXXXXXXX was employed in an industry and occupation such that the he worked on a regular basis with and/or around B&W boilers and other asbestos-containing products, thereby exposing himself and his wife to asbestos fibers and dust.							
		Carpenter	Construction		Eclectic Corporation	Falls Church	VA				True	1/1/1972	12/31/1975		Claimant was the general contractor of his building company. He visited sites daily where homes were being built and walked among the tradesmen while they were working. The constant repairing and building included the handling, sawing, mixing and installation of asbestos products.							
		Office Worker	Construction					False	False	True	True	1/1/1963	1/1/1972	False	As an office worker, she worked in office most of time. Sometimes she would have to go into the plant to talk to a worker regarding their pay or work as a machine operator. When she walked through the plant or worked as a machine operator, she worked beneath boiler steam pipes covered in asbestos insulation. These pipes were blown down regularly causing asbestos fibers to fall in the work area, onto her, the machinery, and the floor. Maintenance workers replaced and repaired asbestos insulation products in her work area on a regular basis.	10015878 PENTAGON BUILDING NORTH PARKING LAN AUXILIARY POWER SPLY ARLINGTON, VA						
		Office Worker	Other	Pentagon Building				False	False	False	False	12/31/1962	12/31/1971	True	The claimant worked in a building where asbestos-containing OCF products were used in construction and maintenance.	10015878 PENTAGON BUILDING NORTH PARKING LAN AUXILIARY POWER SPLY ARLINGTON, VA						

Claimant Pseudonym	ExposedToOEP	OtherRelationship	ExposureStartDate	ExposureEndDate	ExposureDesc
	True	Spouse	1/1/1960	12/31/1962	Claimant was exposed to and inhaled the asbestos dust on EOEP s (XXXXXXXXXXXX, SSN XXXXXXXXXX) clothing and personal belonging when she shook out his clothes, when she did his laundry and when they hugged.
	True	Spouse	1/1/1966	12/31/1968	Claimant was exposed to and inhaled the asbestos dust on EOEP s (XXXXXXXXXXXX, SSN XXXXXXXXXX) clothing and personal belonging when she shook out his clothes, when she did his laundry and when they hugged.
	True	Spouse	1/1/1972	12/31/1975	Claimant was married to the EOEP. She was exposed to and inhaled the visible asbestos dust on the EOEP s clothes and personal belongings when she shook out his clothes, when she did his laundry and when they hugged.

TAB 3

From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Monday, December 19, 2022 5:48 PM
To: moskowschnollb@ballardspahr.com; 'Burns, Tyler'; Guerke, Kevin A.;
dkhogan@dkhogan.com; bsullivan@sha-llc.com; Harron, Edwin; Ramsey, Natalie D.;
Wright, Davis L.; Kevin C. Maclay; Todd Phillips; Glenn C. Thompson; Robert A. Cox, Jr.;
Guy, Jonathan P.; Felder, Debra L.
Cc: Erens, Brad B.; Cahow, Caitlin K.; Michael Evert (CMEvert@ewhlaw.com); Clare M.
Maisano; C. Richard Rayburn, Jr.; Jack Miller
Subject: In re Aldrich Pump LLC et al (Case No. 20-30608)
Attachments: Aldrich Murray Proposed Sampling Strata.pdf

Counsel:

In response to Judge Whitley's November 30 sampling ruling in regard to the Debtors' subpoena served on DCPF, we wanted to begin a dialogue with you to see if we can agree to a sampling methodology. After discussing the issue with Bates White, we suggest that we confer on the structure of the sample first so that we can better ascertain where we differ, if at all.

As we understand Judge Whitley's ruling, the goal is to draw a representative random sample of ten percent of the Aldrich Pump and Murray Boiler ("Aldrich Murray") mesothelioma claims resolved through settlement or verdict between January 1, 2005 and Aldrich Murray's bankruptcy petition date of June 18, 2020 (the "Aldrich Murray Random Sample").^[1] The purpose of the Aldrich Murray Random Sample is to govern the claims for which data is produced by DCPF in response to Aldrich's subpoena.

For the Aldrich Murray Random Sample to best aid in the estimation of Aldrich Murray's asbestos liability, reorganization plan formulation, and/or plan confirmation, the sampling methodology should be a straightforward application of stratified random sampling techniques. The stratification is important to ensure that events that could have a disproportionate impact on the analysis of the Debtors' settlement history, such as claims resolved through high-value settlement, are included in the sample in an efficient manner. Stratification increases the probability that low-frequency events are included, while properly weighting those events and keeping the total sample size similar to that ordered by Judge Whitley. This will allow the Aldrich Murray Random Sample to be a representative and efficient sample that can provide a reliable cross-section of Aldrich Murray's mesothelioma claims' settlement history.

In light of the above, the first question posed is whether you agree that the sample for this purpose should be a stratified random sample?

Assuming you are in agreement, the second question posed concerns the appropriate "categories" with which to stratify. We propose the following:

The data for the Aldrich Murray Random Sample are first restricted to the following population:

- Mesothelioma claims resolved through verdict or settlement (with a resolution amount greater than \$0)
- Resolved between January 1, 2005 and June 18, 2020

These data are then stratified using the following categories:

- Debtor
 - Aldrich
 - Murray
- Resolution type
 - Verdict

- Settlement
- Resolution period
 - Prior to 2014
 - 2014 and later
- Group deal status
 - Group Deal (whether on or off-complaint)
 - Individual Resolution
- Resolution amount category:
 - > \$0, < \$10,000
 - ≥ \$10,000, < \$50,000
 - ≥ \$50,000, < \$100,000
 - ≥ \$100,000, < \$150,000
 - ≥ \$150,000, < \$200,000
 - ≥ \$200,000, < \$250,000
 - ≥ \$250,000, < \$500,00
 - ≥ \$500,000

Finally, to simplify the trusts' matching procedures to their internal databases, the DCPF sample would be limited to only include claimants who have a full SSN available.

For your further information, attached please find a spreadsheet outlining the approximate (based on current data) population of claims included in each of the suggested stratifications for the roughly 12,000 claimants about which information was requested from DCPF. Of course, because some claimants made claims against both Debtors, the total number of claims is greater than 12,000.

Please let us know at your earliest convenience if the above sample structure is acceptable to you. If so, we can then move to the next step of attempting to reach agreement on the selection of the sample within this construct.

¹ The original matching key sent to DCPF was already limited to a subset of claimants. While there are about 28,000 claimants with resolved mesothelioma claims in the Debtors' data, the original matching key was restricted to approximately 12,000 claimants—or about 40% of resolved mesothelioma claimants—by limiting to mesothelioma claims resolved through settlement or verdict, since 2005, and with a full SSN available. Therefore, a limitation to 10% of the 12,000 claimants originally sent to DCPF would actually correspond to a sample of only 4% of overall mesothelioma claimants.

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[1] The original matching key sent to DCPF was already limited to a subset of claimants. While there are about 28,000 claimants with resolved mesothelioma claims in the Debtors' data, the original matching key was restricted to approximately 12,000

claimants—or about 40% of resolved mesothelioma claimants—by limiting to mesothelioma claims resolved through settlement or verdict, since 2005, and with a full SSN available. Therefore, a limitation to 10% of the 12,000 claimants originally sent to DCPF would actually correspond to a sample of only 4% of overall mesothelioma claimants.

TAB 4

1	THE ARMSTRONG WORLD	:	Case No. 22-00302 (JCW)
	INDUSTRIES, INC. ASBESTOS		
2	PERSONAL INJURY SETTLEMENT	:	(Transferred from the
	TRUST, et al.,		District of Delaware)
3		:	
	Plaintiffs,		
4		:	
	v.		
5		:	
	DBMP LLC,		
6		:	
	Defendant.		
7		:	
	: :		

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

APPEARANCES:

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18	Audio Operator:	COURT PERSONNEL
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20	Transcript prepared by:	JANICE RUSSELL TRANSCRIPTS
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24 Proceedings recorded by electronic sound recording; transcript
25 produced by transcription service.

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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: I'll start with the obvious. If any of
6 y'all are wondering whether I'm applying for a, a role in a
7 Dustin Hoffman pandemic movie, I am not. My dermatologist is
8 working me over with some Etofex and, and I am not blanching
9 because of your arguments or any other reason, so. Sorry you
10 have to put up with that, but we're near the end.

11 All right. Any preliminaries before we call for
12 appearances? Ready to go?

13 (No response)

14 THE COURT: All right. Who's announcing? You want to
15 start for the debtor and the debtor's counsel?

16 MR. GORDON: Good morning. Greg Gordon, Jones Day,
17 here on behalf of the debtor. My partner, Jeff Ellman, is here
18 on behalf of the debtor and Jim Jones is here as well.

19 THE COURT: Okay, very good.

20 Mr. Steel.

21 MR. STEEL: Good morning, your Honor. Howard Steel,
22 Goodwin Procter, on behalf of CertainTeed. I'm here with my
23 colleague, Stacy Dasaro from Goodwin, and Jack Miller from
24 Rayburn Cooper.

25 THE COURT: Okay, very good.

1 MR. CASSADA: Good morning, your Honor. Garland
2 Cassada of Robinson Bradshaw here also for the debtor and I'm
3 accompanied by Bennett Wright of our firm.

4 THE COURT: All right, very good.
5 ACC?

6 MR. NEIER: Good morning, your Honor. David Neier on
7 behalf of the ACC and with me today is Cristina Calvar --

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

10 MR. NEIER: -- Jim Wehner, Davis Wright, Rob Cox, and
11 Nathaniel --

12 MR. ROSE: Rose.

13 MR. NEIER: -- Rose.

14 THE COURT: Okay.

15 MR. GREECHER: Good morning, your Honor. Sean
16 Greecher from Young Conaway on behalf of the FCR. Here with my
17 partner, Sharon Zieg, also here with Felton Parrish. And
18 Mr. Esserman, our client, is on the phone.

19 THE COURT: Very good.

20 Others in the courtroom announcing? Anyone else?

21 Yes.

22 MS. SANTOS-JOHNSON: Oh. Good morning, your Honor.
23 Diana Santos-Johnson with Waldrep Wall. We are local counsel
24 to Dan Hogan. He's going to be arguing No. 4, the motion to
25 alter or amend, on behalf of the Matching Claimants by phone.

1 THE COURT: All right, very good.

2 Anyone else in the courtroom needing to announce?

3 MR. NEIER: Your Honor, I should have added that

4 Ms. Hardman is on the phone as well.

5 THE COURT: All right, very good.

6 Okay. Telephonic appearances. Anyone who needs to

7 announce that has not or has not been announced for you?

8 What is it, Star 6?

9 THE COURTROOM DEPUTY: Star 6.

10 THE COURT: Star 6 unmutes.

11 (No response)

12 THE COURT: No one? Okay, very good.

13 All right. Are there any preliminaries? Do we need

14 to have the general status of, of the case before we start in

15 on the matters on the agenda?

16 MR. GORDON: Good morning again, your Honor. Greg
17 Gordon, Jones Day, on behalf of the debtor. I do have a status
18 report to make.

19 THE COURT: Okay.

20 MR. GORDON: It involves a number of different
21 components. So it'll take me a, a few minutes to go through
22 this.

23 I think we were last before your Honor, at least in
24 terms of an omnibus hearing on January 5.

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. GORDON: So I'm not going to take these in any
3 particular order.

4 The first thing is LTL. Your Honor's, I'm sure, aware
5 of the fact that we did receive a ruling in that case a week
6 ago Monday. A three-judge panel of the Third Circuit issued an
7 opinion that reversed Judge Kaplan's decision denying the
8 motion to dismiss and that ruling, of course, mooted his
9 decisions on the preliminary injunction and the automatic stay.
10 I just want to say a few things about this, nothing terribly
11 long.

12 But the basic premise for the opinion is that,
13 purportedly based on the different standard for dismissal in
14 the Third Circuit, LTL in the eyes of the Panel was not
15 sufficiently in financial distress to qualify for bankruptcy
16 and the primary basis for that, what the Panel termed the most
17 important basis for its finding with respect to financial
18 distress, was the fact that the funding agreement in LTL, your
19 Honor probably remembers this --

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

22 MR. GORDON: -- included not only a funding commitment
23 from the other company created in the divisional merger, the,
24 the new JJCI, but also included a funding commitment from the
25 ultimate parent company, Johnson & Johnson.

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

3 MR. GORDON: And in the Panel's view, that Johnson &
4 Johnson backstop was the equivalent, I think it said, of "a \$61
5 billion ATM machine." The Panel itself noted the irony of
6 concluding that a bankruptcy filing is commenced in bad faith
7 on the basis that an agreement to fund the case as well as the
8 debtor's liability for asbestos claims provided overly generous
9 protection for the claimants. In effect, in, in the view of
10 LTL, I think the Panel concluded that too much good faith was
11 bad faith.

12 Where we are is that, LTL believes, and I think DBMP
13 is of a similar view, that the decision's wrong. Among other
14 things, we view it as inconsistent with Third Circuit
15 authority, Supreme Court authority --

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

18 MR. GORDON: -- and we believe it effectively ignores
19 the purposes and intent of Section 524(g), including the
20 objective to fairly and equitably treat future claimants.
21 There will be a petition for rehearing filed in the Third
22 Circuit, just so your Honor knows. That's due by Monday.
23 There's 14 days to file that.

24 Couple of other things I would note about this. We've
25 not had an opportunity to discuss the decision with the

1 Committee or the FCR, but it is our view that this opinion has
2 no material impact on this case for at least two reasons. One,
3 as your Honor knows, it was issued in a different Circuit whose
4 standard for dismissal differs significantly from the standard
5 in the Fourth Circuit and the facts of the case are, are
6 different and in particular, as I just noted, the funding
7 agreement includes J&J as a co-obligor to the extent of the
8 value of the Old JJCI and, of course, that difference presented
9 the question of whether there was a difference in the financial
10 distress of Old JJCI versus LTL. We don't have a similar issue
11 in this case because we just have the -- the -- the only funder
12 under the funding agreement in our case is the funding from New
13 CertainTeed. There's no co-obligation from the ultimate parent
14 or any other company.

15 Having said that, from my perspective, the opinion may
16 provide your Honor with some comfort, notwithstanding its
17 result, in this case and the reason I say that is because the
18 Panel did not express concerns about divisional mergers,
19 generally. It didn't find that the restructuring of, of Old
20 JJCI harmed the claimants. In fact, it found the opposite,
21 that the restructuring put the claimants in a more favorable
22 position than they had been in before. And of course, to reach
23 that conclusion the, the Panel necessarily found or had to find
24 that the funding agreement was enforceable and provided the
25 benefits to the claimants that LTL said it would. And, and

1 obviously here, your Honor has from time to time raised
2 concerns about the impact of the restructuring and the funding
3 agreement on the claimants and, you know, this, this may,
4 again, provide some comfort to the Court in that respect.

5 So I'll move on to the next topic unless there's any
6 questions your Honor has about the LTL decision.

7 THE COURT: If others want to address that, I'll wait
8 until they give their status --

9 MR. GORDON: Sure.

10 THE COURT: -- okay? All right. I'm sure there's a
11 disagreement about what it means.

12 MR. GORDON: The second, the second thing I want to
13 report on is something that your Honor hasn't heard anything
14 about for a while. That's Amiel Gross.

15 THE COURT: Okay.

16 MR. GORDON: So your Honor may recall last spring that
17 we informed the Court and the Committee and the FCR promptly
18 after learning about it that in April of 2021 a former attorney
19 with Saint-Gobain Corporation -- and that was Amiel Gross --
20 had filed a whistleblower complaint and that was filed with the
21 Occupational Health and Safety Administration. And your Honor
22 may recall that that complaint had alleged that, that the
23 corporation, or that Compagnie de Saint-Gobain, Saint-Gobain
24 Corporation, Mark Rayfield, the CEO of Saint-Gobain
25 Corporation, and Tom Kinisky, Saint-Gobain's former CEO, had

1 retaliated against him for certain protected activity
2 concerning Saint-Gobain's defense of environmental litigation
3 and that was litigation, your Honor may remember, that was
4 unrelated to DBMP, unrelated to the corporate restructuring,
5 and unrelated to the bankruptcy case. You may recall that
6 Saint-Gobain and the other defendants denied the allegations.
7 They maintained that Mr. Gross was terminated --

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

10 MR. GORDON: -- for violations of company policy. And
11 your Honor, I'm sure, remembers that although the complaint was
12 largely unrelated to, well, I should put it this way. Although
13 unrelated to Mr. Gross' allegations about the defense of
14 environmental claims, I'm sure you recall that his complaint
15 included statements about the pre-bankruptcy corporate
16 restructuring with respect to DBMP and also, the bankruptcy
17 filings, bankruptcy filing, and those statements, of course,
18 prompted a request by the Committee and the FCR to depose
19 Mr. Gross and a motion on their part to reopen the record in
20 the preliminary injunction adversary proceeding to include his
21 deposition testimony. And you may remember that we didn't
22 oppose that motion. The deposition was taken and the Court did
23 reopen the record to include that testimony and in fact, the
24 deposition was conducted in June of 2021.

25 Mr. Gross' testimony thereafter featured pretty

1 prominently in the Committee and FCR's August 2021 privilege
2 challenge motion. I'm sure your Honor recalls that.

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

5 MR. GORDON: In our response we pointed out that the
6 testimony, in our view, had nothing to do with the intentional
7 fraudulent conveyance theory with respect to which it was
8 offered and we also pointed out that we felt that much of his
9 testimony was comprised of speculation and surmise about the
10 restructuring and bankruptcy in which Mr. Gross was not
11 involved.

12 But the update is this with respect to Mr. Gross.
13 Early motion practice in his whistleblower proceeding resulted
14 in the dismissal of all but one count of his complaint and that
15 one remaining count concerned certain statements made by Saint-
16 Gobain Corporation to the media. Dispositive motions on that
17 remaining count were due to be filed in January of 2023. On
18 December 5 of 2022 -- so last, just this past December --
19 Mr. Gross filed a letter requesting that his case be dismissed.
20 The Administrative Law Judge granted that request and dismissed
21 what was left to Mr. Gross' case on December 7, 2022. And I
22 did bring with me today, if your Honor wants it or, and/or if
23 the other parties want it, copies of the order by which that
24 case has been dismissed. As the order reflects, the case was
25 not settled. Mr. Gross dismissed his claims unilaterally. No

1 defendant made any payment to Mr. Gross, nor was any
2 consideration of any kind provided to Mr. Gross. All of, all
3 of the defendants in that action have maintained from the
4 beginning -- and your Honor heard this before --

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

7 MR. GORDON: -- and they continue to maintain today
8 that his claims were false and they were groundless.

9 But I did want to provide that update because there
10 was a fair amount of --

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

13 MR. GORDON: -- of attention paid to Mr. Gross about a
14 year ago.

15 THE COURT: Okay.

16 MR. GORDON: All right. Next update I have, your
17 Honor, is on estimation. As I think I mentioned in the last
18 couple of hearings, we sent a proposed discovery sample to the
19 Committee and the FCR on November the 2nd. We included with
20 that a memorandum from Bates White explaining how this proposed
21 sample was drawn. On December the 9th, we received from the
22 Committee and the FCR a series of written questions about the
23 sample and they were, the questions were submitted to us to
24 assist the experts' review, the Committee's and the FCR's
25 experts' review and consideration of the sample.

1 Shortly after the last hearing -- and this occurred on
2 January the 9th -- we sent to the Committee and the FCR answers
3 to the questions that they provided that relate to the sample.
4 We had an initial meet and confer on estimation issues on
5 February the 1st. We now have a meet and confer session
6 scheduled tomorrow afternoon specifically to discuss the
7 sample. I think that both sides remain hopeful that we can
8 reach agreement on a single sample in the case and as I've
9 mentioned in the past, if the parties are unable to reach
10 agreement on a sample, this issue would likely be presented to
11 your Honor for --

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

14 MR. GORDON: -- your assistance.

15 THE COURT: Okay.

16 MR. GORDON: At the February 1 estimation meet and
17 confer the parties also discussed issues with respect to the
18 claimant representatives' document requests and the debtor's
19 response to those requests. I think, in fact, resolution of
20 some of those issues will depend on the outcome of the
21 negotiations or the discussions that are occurring with respect
22 to the sample, but we did discuss other items unrelated to the
23 sample and we -- we -- we have since that meet and confer
24 session provided some additional information to the Committee
25 and the FCR with respect to the discovery and I think both

1 sides are committed to continuing to work on the issues and,
2 and committed to making every effort they can to reach a
3 consensual resolution of outstanding discovery issues.

4 You may also recall that at the last hearing I, I
5 mentioned that we were about to serve our first set of
6 discovery requests on the Committee and the FCR with respect to
7 estimation. We, in fact, did that shortly after the last
8 hearing on February the, after that hearing, and then on
9 February the 6th the Committee and the FCR served on us
10 responses, their responses and objections to our discovery.

11 Next item I have, your Honor, is trust discovery.
12 Briefing has continued in the Manville Matching Claimants'
13 appeal from the Court's order denying their request to proceed
14 anonymously. Since the last hearing in this court the debtor
15 filed its responsive brief. That occurred on January 26th and
16 the Manville Matching Claimants' reply brief is actually due
17 today.

18 With respect to the DCPF Trusts, since the last
19 hearing the DCPF made the required production of information by
20 the due date in the order, which was January the 13th. As we
21 reported, the DCPF Matching Claimants also filed an appeal from
22 this Court's order denying their request to proceed
23 anonymously. No briefing has occurred yet in that appeal, but
24 there is now a briefing schedule and that schedule is this:
25 The Matching Claimants' opening brief is due on February 27th,

1 the debtor's responsive brief is due on March 29, and the
2 claimants' reply brief is due on April the 12th.

3 I also reported at the last hearing that on December
4 the 30th the DCPF Matching Claimants filed with the District
5 Court a motion for stay pending appeal. The debtor filed its
6 objection to that on January 13th and a reply was filed by the
7 claimants on January the 20th. No decision has yet been
8 rendered with respect to that motion for stay.

9 And then lastly, your Honor, on trust discovery, as
10 your Honor knows based on pleadings you've received and
11 reviewed and today's agenda, the DCPF Matching Claimants have
12 also filed a motion to amend or modify the order denying their
13 motion to quash and, of course, that will be heard later today.
14 Mr. Cassada will handle that.

15 Next item I have is Paddock, the Paddock discovery.
16 There has been progress with respect to the debtor's efforts to
17 obtain discovery from Paddock and that's discovery of claims
18 information and ballot information, as your Honor may recall.
19 On January the 6th, the day after our last hearing here, we had
20 a hearing before Judge Silverstein in Delaware to address
21 ongoing objections of the Paddock Trust Parties about the
22 confidentiality provisions applicable to the claims data as
23 well as issues they raised about the discoverability of the
24 ballot information. DBMP had agreed to accept the
25 confidentiality provisions in your Honor's order in the Aldrich

1 case and Judge Silverstein ultimately after argument found
2 those provisions in that order to be sufficient for purposes of
3 protecting the confidentiality of the information and she
4 ordered Paddock to promptly produce the claims information that
5 was sought and, in fact, after the hearing Paddock did produce
6 the Paddock claims information. That occurred on January the
7 11th. What's been produced so far was information where there
8 was an exact match.

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

11 MR. GORDON: What's still being resolved is and the
12 parties are meeting and conferring on data where there is a,
13 there is a match, but it's not a perfect match. And so there's
14 some back and forth with respect to that issue.

15 On the ballots, at the end of the hearing Judge
16 Silverstein ordered that the information should be produced,
17 but not for all the ballots. You may recall we had asked for
18 all ballots.

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

21 MR. GORDON: She ruled that we would be limited to
22 ballots for DBMP claimants only and she required us to use an
23 anonymization protocol, including a matching key and the like,
24 similar to what we were using with the claims data.

25 And so the current status of the ballot information is

1 that we're in discussions with Paddock and the Trust Parties on
2 the form of order reflecting Judge Silverstein's ruling and, of
3 course, once we reach agreement on that we'll have the order
4 entered and we should be in a position, then, to obtain that,
5 the ballot information that Judge Silverstein permitted.

6 Next item I have is PIQ process. About 2100 proofs of
7 claim were submitted. Of those, approximately 700 have been or
8 likely will be withdrawn because those claimants determined
9 they did not have pending mesothelioma claims. Of the
10 remaining approximately 1400 claims, only 6 have not submitted
11 a PIQ. We're continuing to review the submitted PIQs and are
12 working with the plaintiff law firms to cure deficiencies and
13 our objective remains to resolve all issues consensually if we
14 can or at least narrow any remaining issues and then, of
15 course, if we can't reach a full resolution of all issues as to
16 PIQs, we'll come back to your Honor and ask for your assistance
17 with respect to that.

18 Next item I wanted to report on was where we stand
19 with the discovery referee.

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

22 MR. GORDON: The parties have been working on a form
23 of order to appoint the referee and to set up the referee
24 process. The -- the -- both sides have been exchanging drafts
25 of the order and I think at this point, although we're not

1 entirely clear, we've resolved all issues but one and we can
2 discuss that a little bit later. Mr. Ellman will handle this
3 to the extent we have an issue, but our hope is to be able to
4 share an agreed form of order with Judge Bridges shortly after
5 this hearing and then submit the order to the Court.

6 And we did want your Honor to know that we did notify
7 the other two candidates, Judge Briggs and Judge Ervin, of our
8 selection of Judge Bridges. So they're aware of where we are.

9 THE COURT: All right.

10 MR. GORDON: And then one other update with respect to
11 this. Your Honor may recall that I had indicated that shortly
12 before the hearing on January 5 -- I think it was on January 3
13 -- the Committee and the FCR had sent us a letter. It was a
14 detailed 13-page letter describing their concerns about our
15 revised privilege log. You may recall that we revised the --

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

18 MR. GORDON: -- privilege log over the summer. And
19 while we're waiting for the referee process to commence, we
20 went ahead and prepared a detailed response letter that we sent
21 to the Committee and the FCR on February the 6th. Per that
22 letter, we indicated that there are certain categories of log
23 entries for which we've agreed to conduct some follow-up work
24 to address the concerns raised by the Committee and the FCR.
25 And it goes without saying, I guess, but any issues that we

1 can't resolve with respect to the privilege log obviously will
2 be --

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

5 MR. GORDON: -- addressed by Judge Bridges in his
6 capacity as the discovery referee.

7 And then the last thing I have on my list is
8 investment guidelines. Given the changes in the interest rate
9 environment, the debtor has been looking for ways to invest
10 idle cash in a safe and prudent manner that might achieve a
11 better or higher return for the estate. And your Honor may
12 recall that the Cash Management Order -- you probably don't
13 'cause this dates back to January of 2020 -- provides that
14 "idle cash will be invested in an account through the Vanguard
15 Group or other broker acceptable to the Bankruptcy
16 Administrator." And then it goes on to say "solely in
17 instruments backed by the full faith and credit of the United
18 States." We have, we had proposed to the Bankruptcy
19 Administrator that we invest some of the idle cash in 12-month
20 Treasury bills purchased through JPMorgan accounts and those
21 offer higher rates of return than the current investments. We
22 shared that proposal with Ms. Abel on January 24, she agreed to
23 it on February the 1st, and we informed the Committee and the
24 FCR that we had reached that agreement on the next day,
25 February 2nd. We believe that agreement complies in all

1 respects with the Cash Management Order, specifically the
2 provision I just quoted to you.

3 At this point in time the, the investments have not
4 been made yet, but we're in the process of setting those up
5 with JPMorgan and that should occur shortly.

6 THE COURT: Okay, very good. That it?

7 MR. GORDON: Yep.

8 THE COURT: All right.

9 How about from the ACC or FCR? Mr. Wehner?

10 MR. WEHNER: Good morning, your Honor. Jim Wehner for
11 the Committee.

12 Before Mr. Neier addresses anything else that is going
13 on today, I wanted to talk briefly about the LTL decision.
14 Your Honor, the Committee is considering the implications of
15 the Third Circuit's LTL decision. Unsurprisingly, we do not
16 agree that it has no bearing on this case. We disagree with
17 some of the sunnier findings that Mr. Gordon has extracted from
18 that decision. Your Honor, in our view, the LTL decision is a
19 repudiation of the bankruptcy strategy employed by the debtor.
20 It calls out the emptiness of conjuring up a subsidiary into
21 existence, loading it with liability, putting it in bankruptcy,
22 and then with a promise to pay all of its liabilities through a
23 so-called funding agreement. The decision insists that
24 bankruptcy is a matter of substance, not just of form.

25 Despite the debtor's attempts to downplay the

1 decision, we think the Third Circuit's reasoning is very
2 instructive and while it is true that the LTL decision noted
3 that Judge Kaplan in New Jersey made an observation that the
4 Fourth Circuit standard is different, we note that the Fourth
5 Circuit has not ever addressed the unique circumstances of the
6 Texas twostep. And the Fourth Circuit in Carolin observed that
7 it, for example, it's objective futility -- a futility inquiry
8 is designed to ensure that a bankruptcy petition has "some
9 relation to the statutory objective of resuscitating a
10 financially troubled debtor." That same court, as you know,
11 disregarded a debtor's terminal euphoria about the prospects of
12 a successful reorganization.

13 So as I said, the Committee is still analyzing this
14 decision, but we're, we're very actively doing so and to see
15 how it might help us resolve this case sooner than anyone might
16 have otherwise hoped.

17 Thank you.

18 THE COURT: Thank you.

19 Mr. Neier?

20 MR. NEIER: Good morning, your Honor. David Neier on
21 behalf of the Committee.

22 Just with respect to Mr. Gross, since there were some
23 comments here which were made. The, the Committee's inquiry
24 with respect to Mr. Gross, as Mr. Gordon acknowledges, was
25 completely unrelated to his employment claim and he gave a

1 sworn deposition and there are, at least in part, documents and
2 other testimony that corroborated what Mr. Gross said in his
3 sworn deposition and obviously, we're hoping that, to see more
4 of those documents and more of that testimony. Once the
5 privilege review begins with Judge Bridges, this will be
6 something that we will be raising with him. The fact that he
7 has, his employment claim was found to be without merit or
8 whatever, has nothing, has really no bearing on the unrelated
9 matter that he gave testimony about.

10 And with respect to the discovery referee protocol,
11 Mr. Ellman was handling that, really, just with Ms. Hardman.
12 Ms. Hardman is now on the no-fly list having entered her eighth
13 month and with your Honor's permission, if we're going to seek
14 the Court's guidance on, really, what comes down to one
15 sentence, I would ask that she be allowed to do that by phone.
16 She has given me her notes, but --

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

19 MR. NEIER: -- she's been -- she's been -- she's been
20 interfacing with Mr. Ellman on this subject and Mr. Ellman has
21 said he has no objection.

22 THE COURT: Anyone opposed?

23 (No response)

24 THE COURT: That would be fine.

25 MR. NEIER: Thank you, your Honor.

1 THE COURT: All right.

2 Mr. Ellman.

3 MR. ELLMAN: Jeffrey Ellman from Jones Day on behalf
4 of the debtor.

5 I do think we have a form of order. I believe
6 Mr. Neier actually has a version that has the one sentence we
7 had drafted and a new sentence that I, I saw for the first time
8 this morning, a competing sentence. So we have one sentence
9 we're down to.

10 But effectively, the order appoints Judge Bridges. It
11 provides for him -- I don't, I don't need to go through all of
12 it, but I'm happy to -- it does provide for him to, you know,
13 retain assistance and how that will happen and how the bills
14 will get paid and it talks about the disputes he's going to
15 cover, the reports he's going to issue, and the timing for us
16 to brief those with your Honor. So that's in there and I can
17 go through it.

18 The one issue that's in dispute is while he is working
19 on his report -- and this is at Paragraph 12 of the order on
20 Page 6, at least on Page 6 of my version. I don't know if it's
21 the same in yours

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

24 MR. NEIER: Bottom of 6, top of 7.

25 MR. ELLMAN: Top of 7 as well.

1 THE COURT: Okay.

2 MR. ELLMAN: So the issue is, is should Judge Bridges
3 have the ability to have *ex parte* communications with your
4 Honor. Our view was -- you know, earlier in the order it says
5 he's going to be an independent third party. Our view was he
6 really should just do his recommendation, do his work, write
7 his report, make his recommendations to your Honor
8 independently, and then you'll review it. And we had written a
9 sentence which is, I'm not sure which color it's in. It's the
10 second version of the sentence in your order. It's in red.
11 That really just says he's not going to have *ex parte*
12 communications with you about the topic of his report and
13 recommendation. I know you have some discussions, but those
14 were just --

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

17 MR. ELLMAN: -- you know, general discussions --

18 THE COURT: Welcome to the case --

19 MR. ELLMAN: -- and the like.

20 THE COURT: -- discussions.

21 MR. ELLMAN: And he hasn't, obviously, started. So he
22 couldn't have, you know --

23 THE COURT: Right.

24 MR. ELLMAN: -- discussed with you his report and
25 recommendation. If he needs guidance from the Court, he can do

1 that, you know, with the parties available to see it.

2 We had the impression -- we were, I guess,
3 incorrect -- that we'd all agreed on that last time we were
4 either here or on Teams, wherever we were. That's how the
5 Court preferred to proceed, your Honor preferred to proceed,
6 but we thought it made the most sense to do it that way. As
7 you see, there's a second sentence Ms. Hardman can describe to
8 you where, where they have taken a kind of opposite approach, I
9 think the idea being -- well, she'll describe it -- but the
10 idea being that could be helpful to Judge Bridges to be able to
11 talk to you.

12 So whatever the Court prefers is, obviously, what
13 we'll do. Our view was it made more sense to us to have a real
14 independent person just do the work and then report to you and
15 any communication could be done on the record, so to speak, or,
16 as you pointed out in your e-mail recently to Judge Bridges,
17 copying all the parties. And that's our preferred approach.

18 So that's really where we are on this. And again, I'm
19 happy to walk through the process in the order, any of the
20 terms of it. Obviously, you haven't had a chance to read it.
21 So --

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

24 MR. ELLMAN: -- you might want to do that.

25 And as Mr. Gordon indicated, we were working on this

1 until last night. So we haven't had a chance yet to share it
2 with Judge Bridges. I think as a courtesy it'd be nice to send
3 it to him to make sure he doesn't have any concerns or
4 comments. We haven't done that yet.

5 So I think we would like to resolve this, at least
6 this one-sentence issue, with you today, your Honor, and then
7 have an opportunity to share this with Judge Bridges and see if
8 he has any feedback, take that into account, and then submit
9 the order.

10 THE COURT: Ms. Hardman?

11 MR. ELLMAN: Thank you.

12 THE COURT: Ms. Hardman, do you care to weigh in on
13 this?

14 MR. NEIER: Maybe --

15 MS. HARDMAN: I do, your Honor.

16 THE COURT: Okay. Before you start --

17 MS. HARDMAN: Thank --

18 THE COURT: -- congratulations. I know this is a very
19 exciting time for you, so, particularly the part of trying to
20 work and be expected at the same time.

21 MS. HARDMAN: It is. It is. Thank you, your Honor.
22 I do appreciate that and I appreciate you permitting me to
23 speak telephonically today, especially on substance, albeit
24 limited substance.

25 THE COURT: Okay.

1 MS. HARDMAN: As Mr. Neier noted, I am on the no-fly
2 list. There's something about liability for delivering
3 children midair, I suppose.

4 So we are --

5 THE COURT: My brother is a flight attendant with
6 American and he's very appreciative, so.

7 MR. NEIER: And, and there might be an extra charge
8 for the new passenger.

9 THE COURT: Certainly.

10 MS. HARDMAN: Perhaps, perhaps.

11 THE COURT: Go ahead.

12 MS. HARDMAN: That's -- well, until I need a second
13 seat I will, I will telephonically appear, your Honor.

14 We are, as Mr. Ellman noted, down to one issue of
15 dispute. I understand that you should have the draft in front
16 of you at this point --

17 THE COURT: I do.

18 MS. HARDMAN: -- and we are down to Paragraph 12.
19 Great.

20 The blue language is the plaintiffs' language and as
21 Mr. Ellman noted, the red is the debtor/defendant's language.
22 At the last hearing before your Honor on January 25th where we
23 had a status conference to discuss the selection of Judge
24 Bridges, the debtor had indicated that they were fine with
25 whatever process your Honor and Judge Bridges were happy with

1 as far as communications go and yet in the last few, few weeks
2 or days, I suppose, it seems that this position has changed
3 ever so slightly from their, from their perspective.

4 It seems that, perhaps, there's, they're convinced
5 there's an issue here, but we just, we just don't see it.
6 Rather, we consider that you and Judge Bridges are, are an, an
7 arm or an extension of one another such that Judge Bridges is
8 this adjunct of the judicial function that you serve, your
9 Honor.

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

12 MS. HARDMAN: He's an extension of the Court in this
13 respect which, to us, is a different position than some third
14 party. And efficiencies, at the very least, support continued
15 communication between your Honor and Judge Bridges as you've
16 had at this point years of institutional knowledge on the case
17 and the nuanced issues that permeate the privilege assertions
18 and the corporate restructuring. To us, it seems otherwise
19 inefficient to have Judge Bridges start completely anew when
20 you can short circuit some of that background in decisions
21 you've issued, procedure, and the like. We'll, of course,
22 provide the parties' positions to Judge Bridges on various
23 issues, but if you are able to help Judge Bridges get caught up
24 to speed, all the better from our perspective.

25 Even more than that from this quasi-judicial function

1 that Judge Bridges will serve, we don't see it, again, as the
2 same third party kind of communication. Those reports and
3 recommendations coming from Judge Bridges will be going to you
4 for consideration, in any event.

5 We took a look at this as well just to see what
6 happens in other contexts and I know that there is a forbidden
7 term in the bankruptcy world --

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

10 MS. HARDMAN: -- and I will do my best not to
11 reference that term, but it is an analogous circumstance in the
12 District Court that exists under the special master role.

13 So we looked at that to see whether or not there were
14 circumstances where this was provided for or not and it seems
15 that it's entirely in your discretion, your Honor, but there is
16 also ample case law to support a wide-ranging latitude for a
17 special master to communicate with the District Court, lots and
18 lots of case law that support ample communications between
19 them, because it's a special relationship and, in fact, a
20 couple of courts were cited saying that there's a lack of case
21 law on the prohibition of those communications.

22 So it seems to us, given that analogous circumstance
23 and efficiencies that are needed here, especially given this
24 has been many years in the making, that continued lines of open
25 communication between the referee and this Court would be

1 appropriate here. Of course, what our language shows you there
2 is that it's entirely in your discretion, your Honor.

3 Alternatively, if, if you rather, we can propose to
4 remove both sentences and, perhaps, (indiscernible) discussed
5 and let you work at your discretion, but given the debtor and
6 defendants wanted to have an express prohibition, we just
7 thought we'd put in some discretionary language for you to
8 consider.

9 THE COURT: Okay. Thank you.

10 Here, here's the way I view it and I'm not even sure
11 that Judge Bridges and I at this point understand this the same
12 way at the moment. But I believe, in general -- and this is a
13 close call. We want to be efficient and we don't want to
14 elevate things that are simple factual inquiries into legal
15 disputes in the courtroom, but at the same time I also don't
16 want to reduce Judge Bridges' role. And I'm not even sure I'm
17 entitled to call him Judge Bridges in this context, folks. The
18 canons of judicial ethics say that a former judge is not to be
19 referred to as a judge, but for present purposes Bridges is,
20 is, essentially, acting as a mediator by name, if not. I don't
21 want to turn him into a law clerk and that wouldn't be
22 appropriate and it really kind of reduces the purposes of us
23 doing what we're doing here. Since I'm asking and relying on
24 his expertise in, in the privilege area, asking him to review
25 this and give me a report and recommendation, I don't want to

1 put my fingerprints all over that recommendation. If I want to
2 know what I think, I can do that now.

3 So, so the bottom line is that -- and for the same
4 reason, I've held off on giving him my canvassing list of
5 Fourth Circuit privilege authorities. That might be useful,
6 but I wanted to talk to y'all one more time about that before
7 we did because you may not agree that those are the appropriate
8 cases and you might start reading too much into them. I, I
9 think most of what I have on my list came from you or from
10 hornbooks. So the characterizations aren't even all mine.

11 But the bottom line is that I think we ought to stay
12 away from me communicating directly about this case with Judge
13 Bridges. Now he and I are friends so we would have
14 communications normally about this. We're friends in the sense
15 that we don't socialize, but at the same time I, I used to see
16 him on a monthly basis in our Shelby Division.

17 So I would rather not have direct communications and
18 instead say that he ought to e-mail you folks if he's asking
19 for, "Well, what is this all about." I don't want you to have
20 to brief everything to him, but if you can refer him to places
21 in the record or the appropriate pleadings or orders, or
22 whatever, it would probably be better for transparency that all
23 of you see what questions he asks and then if there's something
24 that he still needs to ask something, invite him to participate
25 telephonically to save money, or, if he needs to be here in

1 person on one of our days where he can come in to court and ask
2 those questions and y'all can all weigh in on, on what the
3 answers should be. I'd rather stay out of this.

4 The local lawyers will tell you my preference is not
5 to do business by e-mail. It doesn't show up in our case
6 docket and others can't see where it is. So I don't like doing
7 things outside of court that don't reflect and certainly in
8 this circumstance, it's almost like his recommendation is like
9 a magistrate recommendation coming to district judges and most
10 of the district courts I know keep a hands-off approach there.

11 So with that said, the one thing I did want to mention
12 to you, two things I want to mention to you about Judge
13 Bridges. One, you do need to run your proposed order by him.
14 He has some restrictions based on being a retired state court
15 judge that -- that -- how things are worded and what he's
16 doing. So we want to make sure those are taken care of. Last
17 thing we want to do him is get him in trouble with the
18 Administrative Office in, in Raleigh, so.

19 The other is that since he's not going to be calling
20 me to ask about "what, what's this all about," we need to give
21 him some sort of access to CM-ECF. We can get him the training
22 down here and get him a login. Unfortunately, because he is
23 acting as a mediator the Government wants to charge for those
24 views. Y'all can spare him some of that, but, by providing the
25 documents yourselves, if you already have them. But I think

1 what we're going to have to do is set it up where he has his
2 own account or his attorney has an account so that that can be
3 done. And Tara Salmons in our clerk's office, I've already
4 told him, can help him with establishing that, so.

5 I'd rather keep my fingers out of this, okay? So --
6 and we'll have the conversations in the courtroom that we need
7 to have, all right?

8 MR. ELLMAN: Thank you, your Honor. Jeffrey Ellman
9 again.

10 I was just going to point out, we did receive the
11 correspondence you forwarded to us and you'll see in Paragraph
12 2 the last sentence there is -- we haven't shared this with
13 Judge Bridges yet -- but that is directly from his e-mail the
14 language that he said he wanted, as we understood it --

15 THE COURT: Okay.

16 MR. ELLMAN: -- to address a concern he had.

17 So he, if he has other concerns, he'll tell us. But I
18 wanted to let you know we did --

19 THE COURT: Okay.

20 MR. ELLMAN: -- address that.

21 And, of course, any costs he would have on accessing
22 documents, the order would provide that we will reimburse him.
23 So there's no issue with that. Obviously, we'll help him as
24 much as we can.

25 THE COURT: The other part about it is all concerned

1 may want to talk to him a little further about his manpower
2 needs in this. He's not familiar with the case and he doesn't
3 know what's coming down the, the track and lest he gets
4 steamrolled by a freight train, I -- I -- he may want a law
5 firm involved. He's been talking to me about a single person
6 helping him. That's his business, but y'all might be able to
7 give him a little more of the length and breadth of this to --

8 MR. ELLMAN: Yeah. We agree, your Honor.

9 THE COURT: -- and tell him what --

10 MR. ELLMAN: And, and the order, again, provides he
11 can hire a firm if he would like to, subject to --

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

14 MR. ELLMAN: -- you know, disclosures and
15 disinterestedness. We would make sure there's no conflict.
16 But obviously, it is up to Judge Bridges how he wants to do
17 this. So we haven't talked to him about that. I think we will
18 be doing that shortly.

19 THE COURT: One of the things you'll appreciate much
20 about him is being a Superior Court judge he's used to doing
21 things by himself without law clerk assistance, but he may
22 benefit from, from some legal assistance in this.

23 So not telling you to do it. I'm just, I would
24 appreciate you having an in-depth discussion with him about
25 that before we, we finish up.

1 MR. ELLMAN: Thank you, your Honor.

2 THE COURT: All right. Other --

3 MS. HARDMAN: Your Honor?

4 THE COURT: Yes, Ms. Hardman.

5 MS. HARDMAN: I appreciate it. Sorry to interrupt. I
6 just wanted to address a couple of comments you made.

7 We are happy to take that information and, and your
8 reactions under, under our guidance and, and Mr. Ellman and I
9 will try to finalize that order. I think sending Judge Bridges
10 a version of the order that we all agree on is probably the
11 best move so that he can then further have, review and comment
12 on something that at least is agreed in concept at that point.

13 You raise a good point about access to documents and
14 there are certainly ways that we bankruptcy lawyers have to, to
15 access those and a claims agent has been retained in this case
16 to make those documents free for the review. So hopefully, at
17 least those will be easily accessible by Judge Bridges on a go-
18 forward basis.

19 And the other item I wanted to add, your Honor, with
20 respect to the status update that Mr. Gordon provided he noted
21 that there was a privilege log response letter sent to us on
22 the 6th.

23 THE COURT: Right.

24 MS. HARDMAN: Even three days ago, we are clearly
25 still reviewing and we will revert. Of course, from our

1 perspective, we just want an expeditious resolution of those
2 issues. And so if there will be changes made to the log or a
3 re-review occurring, we just, we will be focused on making sure
4 that that's done as quickly as possible so that Judge Bridges
5 has an opportunity to meaningfully consider all of these issues
6 at once.

7 THE COURT: All right. Anything else?

8 (No response)

9 THE COURT: All right.

10 Mr. --

11 MR. ELLMAN: Just, just one --

12 THE COURT: Mr. Ellman.

13 MR. ELLMAN: -- thing, your Honor.

14 From what Ms. Hardman said as far as finalizing the
15 order, my understanding is we'll just use the language in
16 Paragraph 12 in red that was proposed by the debtor and I, I
17 think with that we'd be -- we understood what you wanted, your
18 Honor -- I think with that we'd basically have an order we
19 could share with Judge Bridges, you know, as soon as today.

20 THE COURT: Well --

21 MS. HARDMAN: Your --

22 THE COURT: -- let me -- let me -- before --

23 MS. HARDMAN: Your Honor?

24 THE COURT: Before you respond, Ms. Hardman, let me
25 say this one thing.

1 I don't prefer that we transact case business by e-
2 mail, but if we're getting down to things that aren't legal
3 decisions, points of contention, if it's just a, "Hey, the
4 lawyers and I think that we should do this," and y'all are all
5 involved in the e-mail, an e-mail will be okay. I just don't
6 want to do any substantive business with regard to that. If
7 y'all are just talking something over with Judge Bridges, I
8 don't know that we need to bring that into court if you're
9 wanting to just say, "Would the Court mind if we do things this
10 way? The parties have already discussed it with him and" --

11 MR. NEIER: Your Honor, maybe I can make a suggestion
12 that we just leave both sentences out.

13 MR. ELLMAN: Well, I -- I -- I think Judge Bridges and
14 I think probably more than one of our candidates have expressed
15 a desire to have some clear guidance.

16 THE COURT: Yeah.

17 MR. ELLMAN: And I think it's good to have the
18 guidance in there and all the sentence says is there'll be no
19 *ex parte* communications. It doesn't talk about how, whether
20 it's by e-mail or on the docket. There'll be no *ex parte*
21 communications about the report and recommendation. I think
22 that's the, that's pretty straightforward and if the, if the
23 communication's by e-mail, we just get copied. If they're,
24 obviously, on the docket, then everyone sees them.

25 So I would suggest we --

1 THE COURT: Well --

2 MR. ELLMAN: -- just use that language. It's pretty
3 simple.

4 THE COURT: I'm just going to make the call on this
5 one and save you some time. I, I think the words in red should
6 be used and not the words in blue.

7 MR. ELLMAN: Okay.

8 THE COURT: That is part my preference and my
9 practice. There are some judges around the country who have a
10 little more hands-on with the attorneys than I do, but I want
11 to make sure, again, transparency is achieved and that I'm not
12 having any conversations about case matters that, that y'all
13 are not in a position to see, so.

14 MR. ELLMAN: Thank you, your Honor.

15 THE COURT: All right? Okay.

16 Any other status, good-of-the-order type
17 announcements, the like?

18 (No response)

19 THE COURT: All right. I just want to make sure I
20 didn't have -- all right.

21 So to surmise or to summarize, I should not count on
22 receiving Christmas cards from Judge Ervin nor from Judge
23 Grimm, certainly not from Judge Kaplan and Judge Silverstein.
24 Well, it's going to be a dull year.

25 Ready to move on to the calendar? Is there a

1 preferred batting order today? Are we going to take these
2 matters in the order which they appear on the agenda or are we
3 going to do something else?

4 MR. GORDON: Greg Gordon, your Honor, on behalf of the
5 debtor.

6 And I should say one thing. Again, I do have the
7 order on Amiel Gross if anybody wants it. I don't know if your
8 Honor wants it.

9 THE COURT: I don't need it.

10 MR. GORDON: Okay.

11 So just let me know if you want it.

12 With respect to the first three items on the agenda,
13 all of which relate to the, in one way or another, to the
14 receivership complaint and the receiver motion, the defendants
15 in that action made a proposal yesterday to resolve all those
16 matters. That proposal is currently under review by the
17 Committee and the FCR. We're hopeful that that proposal will
18 resolve all those matters and we would ask -- and I believe
19 this is joined in by both the Committee and the FCR -- that we
20 push this off to the next hearing and, in the hope that this,
21 these matters will be fully resolved.

22 THE COURT: All right.

23 Others? Mr. Neier?

24 MR. NEIER: Your Honor, we, we join in Mr. Gordon's
25 request. Obviously, it's his, mostly his motions and our

1 responses, but we join in the request. We're, we're optimistic
2 that we can resolve this particular dispute, that is, the, if I
3 can use the broad term, the receivership dispute.

4 THE COURT: Okay.

5 Is anyone opposed to doing that?

6 What's our March date, the --

7 MR. ELLMAN: I believe it's the 16th.

8 MR. NEIER: March 16th, your Honor.

9 THE COURTROOM DEPUTY: March 16th.

10 THE COURT: -- 16th? Okay.

11 We'll continue 1 through 3 to March 16th, 9:30.

12 MR. NEIER: Thank you, your Honor.

13 THE COURT: I, I appreciate the efforts to try to
14 bridge the gap on that. I was going to ask whether we needed
15 to have those fights today since the complaint has at least
16 been filed, so.

17 That leaves us with No. 4, then, the motion to alter
18 or amend?

19 MR. GORDON: That's correct, your Honor.

20 THE COURT: Any other matters before we get to that?

21 (No response)

22 THE COURT: Okay. All right. Ready to take that
23 matter up.

24 Who will be arguing on behalf of the movant?

25 MR. HOGAN: Your Honor, good morning. This is Daniel

1 Hogan of Hogan McDaniel on behalf of the Certain Matching
2 Claimants and Additional Matching Claimants.

3 Can you hear me, your Honor?

4 THE COURT: I can.

5 Everyone else?

6 MR. HOGAN: Thank you.

7 THE COURT: All good?

8 You're coming through loud and clear.

9 MR. HOGAN: Thank you, sir. And let me start by
10 thanking the Court for your accommodation and allowing me to
11 appear telephonically. As I had indicated to your clerk, I had
12 recently been, tested positive for COVID and did not want to
13 subject the Court or any of the other litigants to potential
14 exposure.

15 THE COURT: Well, we all appreciate that and I think
16 we'll be able to do all right with, with what we have before
17 us.

18 So please proceed.

19 MR. HOGAN: Thank you, your Honor.

20 This is our motion to alter or amend the order denying
21 the Non-Party Certain Matching Claimants' motion and joinder to
22 quash or modify the subpoenas. As the Court's aware, you
23 ordered, you, you entered that order back in November of 2022.
24 The Court is also painfully aware, I'm sure, of the hearing
25 that was held in Aldrich Pump which is, largely, the predicate

1 for this motion.

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

4 MR. HOGAN: The Matching Claimants believe that it is
5 appropriate in these circumstances, considering those findings
6 and rulings that you issued in Aldrich Pump on November 30th
7 where nearly identical arguments were raised, for the Court to
8 reconsider its order regarding the motion to quash as it
9 relates to the Matching Claimants.

10 In, in ruling in Aldrich, your Honor, you'll recall
11 that you expressed concern regarding the confidential and
12 sensitive nature of the information that was sought in the
13 subpoenas. The Court indicated that it was sensitive to the
14 disclosures of non-party information and that it wanted to
15 reduce harm as much as possible. The Court also noted the
16 economic and privacy concerns implicated by the expansive
17 nature of the request in Aldrich Pump.

18 It's our argument, your Honor, that the results in
19 Aldrich Pump conflict with and run contrary to the order that
20 you entered in this case, primarily because of the same privacy
21 and economic considerations that we have in this case. At that
22 hearing, your Honor, you indicated that your position on the
23 issue of random sampling of data had changed after hearing
24 arguments of counsel in Aldrich Pump. I'm not going to quote
25 you back what you said at that, in that transcript, your Honor,

1 but if you look at Page 76, 13 to 21, you'll see that you had
2 indicated that, that the arguments had gotten through to you on
3 sampling and the need for sampling. Accordingly, it's our
4 position that the Court misunderstood the implications of
5 compliance with the DBMP orders and we believe it's, it's
6 critical where the Court misapprehends the parties' position
7 that reconsideration is appropriate.

8 It's a pretty discrete argument, your Honor, but let
9 me, if I could, address some of the arguments that had been
10 made in anticipation of what you're going to hear from DBMP.

11 THE COURT: Okay.

12 MR. HOGAN: They indicated initially that the Matching
13 Claimants never made the arguments that we seek to pursue now
14 in, in denying the motion to quash, okay? We believe that that
15 argument blatantly ignores the realities of these proceedings.
16 The Matching Claimants have joined in the motion to quash the
17 DBMP subpoenas and specifically joined in the objections
18 surrounding the issue of sampling that were made by the Trusts.
19 The fact that the Trusts later withdrew those, their motion to
20 quash doesn't change the fact that we had joined and made those
21 arguments. Joinders are generally allowed, as the Court's well
22 aware.

23 The Court should also reject the conclusory argument
24 that DBMP made regarding the anonymity order, your Honor.
25 You'll recall that the argument that they made was that because

1 we hadn't identified ourselves and, that we had somehow ignored
2 the Court's order that was entered. Your, your Honor, you
3 entered at Docket 30 the order denying the motion to quash.

4 And specifically in that order it provides that:

5 "The requirements of the movants to identify
6 themselves shall be stayed until the 31st day
7 following entry of this order to permit the movants,
8 such movants, if desired, to seek a stay pending
9 appeal."

10 We did that, your Honor, but the argument that DBMP
11 makes is that we somehow flouted, flouted it because we didn't
12 receive the stay within 31 days. That's their argument, but
13 that's not what your order provides. It provides that we seek
14 it. And so we did that. We filed it timely. That's before
15 the District Court, together with our appeal on the anonymity
16 order. And so we believe that that argument is baseless.

17 Turning to their next argument, your Honor, they argue
18 that the motion to quash is rendered moot by the Trusts'
19 compliance with the DBMP subpoena. We argue that you can
20 provide, you can grant us meaningful relief by requiring that
21 the produced documents be returned and that a sample would be
22 constructed similar to what was allowed in Aldrich Pump.

23 DBMP also argues that the redaction of the PII, the,
24 you know, the private information of these individual
25 claimants, really makes our arguments baseless, but it's our

1 position that the redaction of the Matching Claimants' PII does
2 not eliminate the risk, especially to the extent that a sample
3 would. And so from our perspective and being consistent with
4 what you did in Aldrich Pump, a sample is more appropriate.
5 The redaction does not eliminate the risk. A sample does, your
6 Honor.

7 The next argument that I would address is that, they
8 make, is that we lack standing to challenge the order denying
9 the motion to quash, but that argument is baseless. It, it
10 indicates that we rest, you know, we relied solely on the
11 burden that DCPF had, but, but that ignores the pleadings. We
12 made arguments based on the burden imposed on the Matching
13 Claimants independent of the burdens imposed on the Trusts
14 associated with the disclosure of the PII. DBMP has
15 consistently ignored that fact in that the claim submission
16 information of the Matching Claimants it seeks from the Trusts.
17 It's not, it's not DCPF's information. It's the Matching
18 Claimants' information. And so from our perspective that's a,
19 that's a baseless argument.

20 In, in closing, your Honor, we believe the
21 circumstances are appropriate for the Court to, to retract its
22 order and to enter an order consistent with Aldrich Pump and
23 limit, limit the disclosure of the information to a 10 percent
24 sample.

25 THE COURT: Okay.

1 MR. HOGAN: I reserve some time, if I could, your
2 Honor, to respond to DBMP's argument.

3 THE COURT: All right.

4 Who's going to be arguing? Mr. Cassada?

5 MR. CASSADA: Yes, your Honor. I've got, I've got
6 this one.

7 MR. WRIGHT: Shall we put these slides?

8 MR. CASSADA: Your Honor, we have, as has been
9 customary, we've prepared some slides for our presentation this
10 morning.

11 Because there have been a lot of things said both in
12 this case and in other cases about this trust discovery order
13 and what it means and what happened in prior proceedings, I
14 feel it's incumbent upon me to --

15 THE COURT: One moment, Counsel.

16 MR. BENNETT: I might need some help.

17 (Pause)

18 THE COURT: All right, Mr. Cassada.

19 MR. HOGAN: Your, your Honor, Dan, Dan Hogan again.

20 If I could, could I ask Mr. Cassada to e-mail me a, a
21 copy of this slide presentation so that I can see it as well?

22 MR. BENNETT: Your Honor, I just e-mailed that to as
23 many people as I have e-mails for of this group and including
24 Mr. Hogan.

25 MR. CASSADA: Yeah. I'll --

1 THE COURT: Okay. Take a moment.

2 MR. CASSADA: Yeah.

3 THE COURT: Let's hold for a moment and get Mr. Hogan
4 up to speed with the rest of us.

5 Want to take a look at your e-mail and see if it's
6 there?

7 MR. HOGAN: I, I'm looking at it currently, your
8 Honor. I do not yet have it, but I am refreshing my browser or
9 my, my Outlook consistently. I still don't have it. And so as
10 soon as I get it, I'll let you know.

11 THE COURT: Why don't we take a five or ten-minute
12 recess and, and let him get that and have a look at it before
13 it starts and that'll give everyone a break for comfort and we
14 won't have a further interruption.

15 Let's pick up at about --

16 MR. HOGAN: Thank you.

17 THE COURT: -- 20 minutes of the hour.

18 MR. BENNETT: Thank you.

19 (Recess from 10:31 a.m., until 10:45 a.m.)

20 AFTER RECESS

21 (Call to Order of the Court)

22 THE COURT: Have a seat.

23 All right. I assume we've got all our tech resolved
24 and we're ready to go?

25 MR. CASSADA: I'm sorry. Does Mr. --

1 Mr. Hogan, do you have a copy of the presentation?

2 MR. HOGAN: Your Honor, I have it. Thank you.

3 THE COURT: Okay.

4 Please proceed.

5 MR. CASSADA: Okay. Thank you, your Honor.

6 Your Honor, as I was saying before, there have been,
7 there's a lot of litigation in this court where we look back at
8 what happened in the past or we examine orders and, and that's
9 certainly been true for the, the trust discovery order that
10 your Honor entered last February and I feel like it's important
11 today for me to make sure that the parties understand what the
12 trust order does because there've been a lot of representations
13 about the risk imposed on, in this case, the Matching Claimants
14 and others, by productions under the discovery order and, and
15 what, what evidence your Honor heard and what you ruled on
16 before and, and I believe the record is, is clear, your Honor,
17 that virtually none of the concerns that Mr. Hogan mentioned
18 are valid and a lot of things he says about, about the facts, I
19 don't believe, are supported by the record.

20 He begins by asserting a fundamental proposition that
21 this Court misunderstood the implications of its order -- it's
22 -- his order and he relies on the Aldrich hearing for that.
23 Notice, he doesn't say what it is that he thinks the Court
24 misunderstood. If you look at the order, the, the issue in
25 question there was was the fact that part of the data requested

1 were exposure fields and there were some exposure fields, by,
2 by no means all exposure fields, but a small percentage or
3 portion of the exposure fields might contain personal
4 identifying information. That was, that proposition was put on
5 the table.

6 Now Mr. Hogan and, and the parties said in that case,
7 well, you didn't, you never understood this before and, and
8 that's really what Mr. Hogan is, is saying today and he, and he
9 points to your language saying you didn't understand that. As
10 we'll examine today, your Honor, you fully, fully understood
11 that. That, that issue was thoroughly litigated before you
12 both at the October 21, '21 hearing when you, after which you
13 approved the trust discovery order, and then later when we were
14 drafting the order. In fact, your Honor actually gave
15 directions on language that was designed to address that very
16 issue and that language is in, in your order, Paragraph 7,
17 which acknowledges that some of the exposure fields might
18 contain PII.

19 THE COURT: We're getting some feedback from some
20 folks. If you don't have your receiver muted and you're not
21 speaking, please do so.

22 Go ahead, Mr. Cassada.

23 MR. CASSADA: Yeah.

24 THE COURT: Sorry to interrupt.

25 MR. CASSADA: You, you acknowledged in the order that

1 some of the exposure fields might contain PII and you required
2 the PII to be removed. And you did that in two ways. First,
3 you gave DCPF and the Trusts the option of, of scrubbing the
4 exposure data and then you, and then you said that the
5 anonymized mass production from which they would scrub exposure
6 data would be sent to Bates White and then Bates White would
7 review the production and Bates White shall, you required Bates
8 White to scrub any PII. The result is when the anonymized
9 matched production was complete and ready to be sent for the
10 parties, it would contain no PII, period. And that's, in fact,
11 what you ordered. That's, in fact, what happened in DBMP and
12 your Honor may require [sic] it was actually -- today is, is,
13 virtually, the one-year anniversary of when we hashed this
14 issue out. It was the second Thursday in February when we
15 brought to you the order that we were trying to enter and, and
16 one of the major obstacles to the order was to resolve the PII
17 and exposure field issue. So that happened.

18 So going down the list -- and, and that was an
19 argument that was made in connection with requesting the order
20 from you to approve the subpoena. Now when we served the
21 subpoena on the Trusts and the Trusts objected, they did not
22 raise that issue and it would have been silly for them to raise
23 that issue since, since you had already resolved it and it was,
24 and it was expressed in the order.

25 Now Mr. Hogan says that, that you didn't understand

1 the issue when you heard argument in early October. Well, he
2 never argued the issue. It was not before you so you couldn't
3 have misunderstood an argument that was never made. He's --
4 now -- he says, "Well, wait a minute. Wait a minute. I did
5 argue it because I joined in the objections that the Trusts
6 filed," but the Trusts never made the argument and he hasn't
7 pointed to you, to anywhere where that argument was made in
8 October when, when you considered his motion, a motion to
9 quash.

10 So your Honor, with that, I'm going to -- I'll -- I'm
11 going to go through my slides here and hopefully, by the end of
12 this there will be no misunderstanding by anyone, including the
13 Matching Claimants, regarding, regarding what the order means,
14 what its implications are, and what issues were, have been,
15 have been resolved.

16 First, your Honor, as Mr. Gordon, as Mr. Gordon
17 pointed out earlier, the data's been produced pursuant to your
18 order. It's been produced. It, it has no PII. The PII has
19 been scrubbed and that was by agreement between DBMP and DCPF.
20 DCPF has taken the steps necessary to scrub the PII. We agreed
21 to pay their cost in doing so. We've been billed and we've
22 pay, we paid at least part of the bill and we just received the
23 other part recently.

24 THE COURT: Okay.

25 MR. CASSADA: So as things stand today, the, the

1 data's been produced and there is no PII in it. And as I
2 mentioned, the, the PII and the exposure field issue was fully
3 resolved and it -- it's simply -- it's simply no longer an
4 issue.

5 So against that backdrop, your Honor, we believe there
6 are many reasons to deny the relief requested. One is that the
7 Matching Claimants persist in litigating in this court without
8 identifying themselves and your Honor entered an order
9 requiring them to do that, giving them 31 days to get a stay
10 from the Court. They haven't done that and for that reason you
11 should strike their pleadings and that should be the end of
12 this.

13 Second, the, their arguments are moot for the reasons
14 I just mentioned. The data's been produced. It contains no
15 PII. There's no meaningful remedy to be provided now because
16 the purposes, the concerns they raise about PII have all been
17 satisfied. The burden's been borne. There's no risk to the
18 claimants, if there ever was a risk, because the PII doesn't
19 exist.

20 The, the claimants, they, they lack standing. Now
21 Mr. Hogan's made clear that he's not here to argue that the
22 order imposes a burden on DCPF. He's saying it, it imposes a
23 burden on the claimants because their PII is going to be out
24 there. There's no PII. Your Honor, we'll look at the record
25 and, and we'll go down memory lane and, and recall that, in

1 fact, you did resolve this issue and it was litigated. There
2 was no misunderstanding. In fact, there was a, an excellent
3 resolution to the problem that addressed the PII concerns and
4 the burden.

5 And finally, your Honor, I think, I think your trust
6 discovery order and the, and the clearing up of any
7 misunderstandings require us to look at the trust discovery
8 order and, and make clear exactly, exactly what it means.

9 Your Honor, this is a, a timetable that shows what's
10 happened since a year ago this Thursday when we were, when we
11 were in the court. I won't go over all of this in detail, but,
12 but you do recall, I think, that, that you entered the order on
13 February 17 and that order was the result of three hearings
14 before the Court and a lot of evidence and, and as I indicated
15 earlier, the result was that you, you approved the trust
16 discovery. You didn't approve it as, as originally requested.
17 There were a lot of changes to it.

18 DBMP served, issued and served the subpoenas. The
19 DCPF Trusts moved to quash. The Matching Claimants moved to
20 quash. They joined in, in the Trusts' objections. As I
21 indicated before, no objection raised the PII and exposure
22 field issue.

23 On August 26, the DCPF Trusts withdrew their
24 objection. This was two days after the Third Circuit ruled and
25 reversed Judge Connolly's order quashing the, the Bestwall

1 subpoena. The Delaware Court transferred the subpoena
2 proceedings to this Court. In the meantime, I, I think it was
3 early October, you actually heard the motions to quash. No
4 mention at that hearing of any PII and exposure fields that we
5 needed to be concerned about.

6 In the meantime, as indicated before, the DCPF
7 scrubbed and produced, first, what we call the stub production.
8 These were the --

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

11 MR. CASSADA: -- Matching Claimants who didn't oppose
12 the subpoenas and then after your Honor entered the order the
13 DCPF produced the remaining data, again scrubbed of any PII.
14 The cost to DBMP is, roughly, \$86,000, your Honor. You can see
15 those, those two figures are on the timeline.

16 Your Honor may recall that in the original request
17 DBMP did request not only information about the claims made and
18 what exposures were indicated in those claims, but did request
19 a litany of, of personal information. And this, this was
20 requested in the Bestwall subpoena as well. There was a
21 anonymization process there that was suggested to take place
22 after the production where the personal information would be
23 separated from the exposure information. That process is
24 actually, has been undertaken in, in the Bestwall case.

25 Your Honor, when Judge Connolly quashed the subpoena

1 and he cited his reason for doing so, the request for all the
2 personal information, in this case we changed our request and
3 we skinned it down to non-PII information and you, and you can
4 see the, the exact information we've requested here and then we
5 ended up with these fields of, of information. The -- and we
6 were clear in our request that we were not requesting any
7 personal identifying information.

8 In connection with the DCPF's objection, we took a
9 deposition of Richard Winner. He's the Chief Operating Officer
10 and, and he explained in his deposition that the exposure-
11 related fields were, were text fields and that, that it was
12 possible and potentially, that claimants would put their name
13 in one of the text fields or even, I think he cited the example
14 -- and you heard this in Aldrich -- where you had a claimant
15 who was claiming secondary exposure through someone who was
16 occupationally exposed. They might put the name and maybe even
17 the Social Security number of the occupationally exposed
18 person. And so the, the idea was even though you're not
19 requesting it, it might, yeah, it might be in there.

20 Your Honor, we, we keep hearing from Mr. Hogan and
21 others that we're seeking -- they have a word, "formulation,"
22 that they use -- highly sensitive, personal, confidential,
23 identifying information. In fact, he says "a wealth," we're
24 seeking "a wealth" of it, but, your Honor, I, I just showed you
25 what we, what we sought. None of it is, is PII and in fact, I

1 think your Honor knows that when Judge Beyer considered the
2 request for this same information from the co-defendants,
3 including Paddock, when the committee in that case moved to
4 strike the subpoena, she looked at it and she said, "This is
5 not sensitive information. It's not privileged. This is the
6 kind of information you'd expect to see in a complaint." And
7 in fact, the, the persons who are subject to the subpoena are
8 persons who actually filed claims against DBMP.

9 So your Honor, we're not seeking settlement amounts.
10 We're not seeking medical information, not seeking financial
11 data. We're not seeking anything that could be reasonably
12 described as personal, sensitive, personal, confidential
13 information.

14 Now the only evidence on what the Trusts and DCPF
15 consider to be sensitive, personal, and confidential is the
16 testimony offered by Richard Winner -- and this was a
17 declaration that was filed -- and he described in his
18 declaration what the claimants' personal identify or highly
19 sensitive, personal, and confidential information is. I won't
20 read, but you can, you can read it and see that we're
21 requesting none of that information.

22 Now sort of panning out as to what we were requesting,
23 your Honor, I think, I believe you may recall that we explained
24 to you back on November, October 21 when we were first here
25 that there, that there is a database that DBMP has that

1 includes information and data for 318,000 claimants and at the
2 very beginning of the case the ACC and FCR requested that we
3 provide that information to their experts. And so DBMP
4 extracted data for all of the claimants and sent it to the
5 experts -- and this is common in an asbestos chapter 11
6 case -- and that information includes personal identifying
7 information. It includes medical information. It includes
8 information on settlements.

9 So it -- it includes -- it includes the whole thing
10 and, and all of the experts for the parties in this case have
11 that information subject to a protective order. There are, as
12 indicated, there are, roughly, 9,389 claims in the database
13 that were made by mesothelioma claimants for whom, that have
14 been resolved either through verdict or settlement. They've
15 been resolved and/or paid unless they were defense verdicts
16 and, and the information that we sought for the Trusts focuses
17 on, on those claimants. The DCPF Trusts themselves contain
18 database, bases that have millions, millions of claims in them.
19 So we're -- and, and these millions of claims, Mr. Winner
20 testified that there are dozens and dozens of fields of
21 information for each, for each claimant.

22 So you can see, your Honor, we're asking only for
23 information for claimants relevant to us and these are
24 claimants who sued us and who, for whom we paid money and we're
25 seeking only a handful of, of relevant fields. I think the way

1 to, I think the way to look at our request is that we're going
2 to the Trusts and saying, "Look, these individuals sued us and
3 we paid them money. Did they assert a claim against you and,
4 if they did, what did they say about their exposures?" And
5 that's obviously a relevant request because those settlements
6 are going to be a very important focus of this Court at the
7 estimation trial.

8 Turning a little, turning to the order, I, I think I
9 should begin by saying that, that you entered an order and
10 it's, it's an excellent order, your Honor. It is, it is very
11 protective of claimants. And you don't have to take my word
12 for it. You mentioned judges who may not include you on their
13 Christmas card list. You could get a Christmas card from Judge
14 Silverstein.

15 THE COURT: I doubt that.

16 MR. CASSADA: Well, on January 6th, Mr. Gordon --

17 THE COURT: Let me hasten to say I -- I -- I know
18 Judge Silverstein. So --

19 MR. CASSADA: Okay.

20 THE COURT: -And --

21 MR. CASSADA: Well, maybe you'll hear.

22 MS. ZIEG: Not sending Christmas cards.

23 THE COURT: But I think we've pushed a little work her
24 way of late.

25 MR. CASSADA: Well, your -- your --

1 THE COURT: She probably had enough, already.

2 MR. CASSADA: Your trust discovery order made her job
3 really -- because when, when we went up and we asked Judge
4 Silverstein, we had served the subpoenas asking for the same
5 dataset that we're requesting here, she approved the dataset
6 over the objection of -- of the -- a lot of the same type of
7 claimants here, same lawyers, and she said, basically, that,
8 "It looks to me like this order that Judge Whitley entered in
9 Aldrich," which is the DBMP order, "is adequate and covers
10 this. So let me know if you have any objection to it." And of
11 course, the Caplin firm appearing for some of the Paddock
12 claimants came in just with a litany of objections and on
13 January 6 your, this order was sort of put on the table.

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

16 MR. CASSADA: And she patiently listened to the
17 complaints about whether the order provided adequate protection
18 and she, she rejected all of the requests for modification and
19 she applied the order as it's, as it's currently entered.

20 So, so you did, at least in that, that aspect of what
21 we sent up to her, we, I think we made the job easier, easier
22 for her.

23 Your Honor, as, as far as the order itself goes, I
24 think there's, there are two sort of important data extracts
25 that -- that we have -- that we focus on and that the order

1 defines. And one is what we call the matching key and the
2 other is the anonymized matched production. The matching key
3 comes from the debtor's database.

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

6 MR. CASSADA: And it's, it's put together, it's
7 created by Bates White and essentially, it's a list of the, of
8 the 9,000 or so resolved claims with their Social Security
9 numbers and then with a number that's created. We call it a, a
10 numerical pseudonym. So that, that comes from our database.
11 It comes from us, okay?

12 The anonymized matched production is the production of
13 matching data for those claimants that, that comes from the
14 DCPF Trusts and, and when that is complete and sent to the
15 parties you just have data that's not associated with any
16 personal information. The data's only associated with this
17 numerical pseudonym.

18 So that's, that's why we say that, that's an
19 anonymized matched production. And here's, here's how it
20 works.

21 So within the DBMP database we have the names of the
22 claimants. And these are -- this is hypothetical information.
23 Of course we're not using real names and Social Security
24 numbers here. We have the names of the claimants and we have
25 Social Security numbers and Bates White assigns a numerical

1 pseudonym to each claimant and that's the matching key. And
2 then we provide that to the Trusts and, and then the Trusts
3 use, they use the name and the Social Security number in order
4 to match with the information that we've requested, which is,
5 you know, did they find a, file a claim, what's the status of
6 the claim, what did they say about their exposures. They use
7 that to match it with a, with the information. And then they
8 anonymize it by deleting the names and Social Security numbers
9 leaving only the pseudonyms and they deliver that. This says
10 to DBMP. Actually, they deliver it to Bates White and Bates
11 White is kind of a, the funnel that examines the data, makes
12 sure it complies with the order, and, and sends, and sends it
13 out.

14 So that's how it, that's how it works, your Honor.
15 And then once the parties get the, the data, they can gather
16 information from DBMP's database on exposures and they can add
17 that to the anonymized data they've, they've provided and they
18 can find data from other sources in discovery and they can add
19 that. But critically, anytime any data is added, no PII is
20 included with it.

21 So, so the result is in this anonymized matched
22 production and any extract or anything created from it there's
23 never any identifying information.

24 So -- and there -- I should mention at this point the
25 matching key, contrary to what you've been told, including, I

1 noticed, in the Aldrich hearing, the matching key is, remains
2 in the hands only of Bates White and the claims experts for the
3 ACC and the FCR. That matching key never goes to anyone else
4 and in fact, it's, the order says it's going to be kept under
5 lock and key by those two, by those three entities and they're
6 going to limit who has access to it and it, and they strictly
7 limit what you can do with the matching key.

8 So anything, the only information that goes outside of
9 the claims experts is anonymized data. There's, there's one
10 exception to that which I'll, which I'll mention when we get to
11 that.

12 And the, the anonymized matched production, as I've
13 indicated, it, it can only be used by the people who are
14 authorized to use it only for permitted purpose and only for,
15 for those persons who, "need to know it in order to achieve a
16 permitted purpose."

17 So your Honor, our, our first argument is that you, we
18 ask you to enforce your order denying anonymity. In that order
19 you, you denied their motion and you required them to identify
20 themselves by full name and you stayed that for 31 days to
21 permit them to seek a stay pending appeal. The 31 days have
22 gone by. You -- and it was, it was either on the 30th or 31st
23 day that they decided to run into the District Court and seek a
24 stay pending appeal. I don't believe your order meant that
25 they would get a stay beyond the 31 days if the District Court

1 hadn't stayed it. I, I believe you allowed them that amount of
2 time so they could, would have time to go to the District Court
3 and to get relief and to, and to ask the District Court to
4 provide that relief by the 31st day.

5 THE COURT: Which District Judge was the case assigned
6 to?

7 MR. CASSADA: I believe it's Judge Conrad.

8 THE COURT: Okay.

9 MR. CASSADA: Yeah. I believe Judge Conrad. He's,
10 he's been getting these.

11 So basically, your Honor, you've told them they can't
12 keep coming in here and litigating without identifying
13 themselves and it's, and they, they just haven't gotten the,
14 the message. And, and they want to -- with this relief they're
15 requesting there, they just want to prolong the situation.
16 We're going to be litigating these issues -- it was, it was 2-
17 1/2 years ago when we requested this data and now we've finally
18 gotten the data they want to claw it back. It's time to turn
19 the page.

20 And you did say, your Honor, that we stay that for 30
21 days, but otherwise, we're going to list, they either going to
22 list themselves in the pleadings or we were going to have to
23 strike the pleadings. So that's, that was the very clear
24 direction that you gave.

25 Our second argument, your Honor, is that the, the

1 burden and privacy arguments are moot because the data has
2 already been redacted and, and produced. And the case law is
3 pretty clear that when documents requested have already been
4 produced in response to a subpoena, then a motion to quash
5 should be denied as moot.

6 Now there is an exception to that, as Mr. Hogan points
7 out, that if you can provide meaningful relief, then, then
8 maybe, you know, maybe it's not moot. But there's no
9 meaningful relief that's to be provided here because the PII
10 concerns he's mentioned have been resolved. There's no PII to
11 worry about and to the extent there, there's any argument here
12 about the burden that the Trusts or DCPF had to bear to do it,
13 that burden, whatever it is, has already been borne and the
14 data scrubbed and produced and we've agreed to pay for it and
15 in fact, either have or have almost completely paid for that.

16 So there's no reason to provide, grant any relief at
17 all here. And in fact, if you -- not only would it be
18 meaningless at this point for you to require a return of the
19 data, it will create a huge burden in the case. It'll set, set
20 the case back and -- and then -- and now we'll be involved in
21 sample litigation. And you know, our experience has been that
22 we don't, it's not real easy to agree on a sample.

23 Now Mr. Hogan says, "Well, it's easy. Just do a
24 simple random sample." Well, I think, our experience and I
25 think Judge Beyer's come to understand that that would be not

1 useful to have a simple random sample and that you shouldn't
2 approve any sample without an evidentiary hearing where you
3 actually hear from experts on sampling. And again, it's not,
4 not necessary here.

5 In the -- I think in Bestwall, eventually, on the
6 sampling that would apply to the case file review --

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

9 MR. CASSADA: -- Judge Beyer just said you -- "Okay.
10 You each have your own sample. So we're not going to, we're
11 not going to have a trial now on sampling." But in that case
12 they have the full dataset for the claims discovery and there's
13 no, there's no reason to sample that because the full dataset,
14 it is useful, just like the Committee has the full dataset for
15 the, for 300,000 plus claimants. This, it's, it's really rich
16 data that allows the Court to understand the trends of
17 litigation over time and to basically rule confidently at
18 estimation.

19 If you do, if you do what Mr. Hogan's invited you to
20 do, then, I mean, you're going to be the Judge at estimation
21 and you're going to have to make findings and you're going to
22 have some parties who, one party or the other may complain that
23 you didn't give them, you didn't give them what they needed or
24 you picked a sample that, that wasn't representative or didn't,
25 didn't achieve what it was supposed to achieve.

1 So there's no reason to go down that path. We've got
2 the data. There's no PII concerns. There's no burden concern.

3 And then finally, before we actually get to the
4 merits, the Matching Claimants lack standing to assert an undue
5 burden on behalf of the DCPF. So maybe I misunderstood
6 Mr. Hogan's argument here. Because the burden, I think the
7 burden you heard in Aldrich was that it will be very burdensome
8 to have to scrub the data. I thought he was arguing that.
9 He's saying he's not arguing that at all. He's arguing that
10 it's a burden on the claimants because all their PII's going to
11 be out there, but we know that that burden doesn't exist
12 because the data's been produced and there's no PII. And I
13 will point out in your order your Honor said unequivocally
14 don't produce any PII. So it's not an issue and the only
15 conceivable issue there could be is is what burden is there in
16 actually producing the information after scrubbing it.

17 So I want to, I want to get to the question of what
18 actually happened and I think the standard that Mr. Hogan has
19 to assert is a very, it's a very high standard to get the
20 relief he's requesting. He has to show that there was a, sort
21 of a patent misunderstanding. The Court just, just completely
22 sort of whiffed on, on understanding the, the evidence and the
23 argument and that's not, that's not at all the case. As I
24 indicated in the DBMP [sic] case when you heard their motion to
25 quash, the issue wasn't even raised.

1 In Aldrich -- and I, I, I want to be respectful when I
2 say this because I don't know exactly how these arguments came
3 to pass -- but whatever it is, I think in, in my view, the DCPF
4 and the Trusts sort of misstated that the issue of exposure
5 field PII was "new." And maybe that's, maybe they were just
6 saying this is new in the Aldrich case, but it seemed to me
7 they were saying something a little bit broader than that.

8 And I've, I've got here some quotes of what you heard
9 when, when you heard the motions to quash in Aldrich. And
10 Ms. Moskow-Schnoll for the Trusts, she said, you know:

11 "Aldrich is arguing we don't need a lot of protections
12 here and we don't need sampling 'cause this is not
13 PII, but as Mr. Guerke" -- I apologize if I've
14 mispronounced his name -- "will discuss, the exposure-
15 related fields that are requested may still contain
16 personally identifiable information."

17 So there she's saying there's the issue. "These
18 exposure fields, they're saying no PII, but there is." And
19 then Mr. Guerke, who's, who represented DCPF, your Honor -- and
20 by the way, he's with the Young Conaway firm who, as you know,
21 represents the FCR in this case. In our case we had
22 Mr. Rubinstein representing DCPF -- well, he said:

23 "Some of the data for the all exposure fields request
24 will contain Social Security numbers and names. I
25 have a sample I'd like to hand up and hand to counsel

1 to help describe."

2 So he's saying, "Look, man. Exposure fields might
3 contain PII," and then he said at one point, "The information
4 presented today, the sample I provided, the explanation I
5 provided was not, has not previously been presented." Now --
6 and, and as you'll see from the record, if he was, if he was
7 saying that this Court had never heard that and didn't know
8 about this issue and, that was not correct. Now again, he may
9 have just been saying that, that you haven't heard it in, in
10 this case.

11 So when we turn -- turning to this case, when we had
12 our big hearing on October 21, 2021 and we were arguing about
13 the, the order and whether it exposed any risk to claimants,
14 Mr. Rubinstein pointed out that Rick Winner, DCPF's COO, when
15 he was deposed and testified that:

16 "In the DCPF's databases the exposure data sometimes
17 does include personal identifiable information, names,
18 Social Security numbers, and the only way to scrub
19 those data is to go line-by-line through each victim
20 before the data are produced. That is a tremendous
21 burden," he says.

22 And then I cut the, the next sentence in the quote. I
23 wish I had included it. He says, "It would help, it would
24 perhaps be less of a burden if the debtor were limited to a
25 sample." So he's, he's making the same argument there that you

1 heard from, from the lawyers for the Trusts and DCPF in the
2 Aldrich case. So you had, you had heard that before.

3 You ruled -- on December 12, your Honor, you, you
4 approved the trust discovery order. We made a few amendments
5 to it, but when, but then we had discussions about the form of
6 the order. And so that was the hearing we had a year ago
7 today. And in that hearing the order included a, a footnote
8 with some findings on what it was that we were seeking and, and
9 we thought that this footnote fairly reflected sort of
10 statements you made during your bench ruling. But what we
11 explained was that -- that -- after filing our initial motion,
12 the debtor filed a revised form of order to incorporate the
13 privacy and security protections in the order entered by Judge
14 Beyer in the Bestwall case. That was something that you asked
15 the parties to consider doing and we talked with DCPF. You
16 heard all this. They wouldn't agree to, agree to anything, but
17 we, on our own, we modified the order and made it consistent
18 with hers.

19 And then subsequently -- and this was after Judge
20 Connolly ruled -- the debtor further modified the relief sought
21 in its motion by filing a second revised form of order on
22 July 29, 2021 in which the debtor -- and this is the language
23 that, that was the focus of this hearing -- deleted from its
24 request "all of the data fields requiring production of
25 personal identifying information regarding any claimant." That

1 was the key, the key language. And second, "proposed a
2 protocol for anonymization of the remaining requested data by
3 the Trusts before production to the debtor."

4 So the Trusts, DCPF objected to including that finding
5 and Mr. Rubinstein explained, explained why he objected in, in
6 the next slide and he said:

7 "Our other principal concern here is that the finding
8 that the debtor is asking the Court to make in
9 Footnote 2 is not accurate. The debtor's took a
10 rather extraordinary discovery on discovery and
11 deposed DCPF's Chief, Chief Operating Officer, Richard
12 Winner, last summer and Mr. Winner testified
13 unequivocally that the data fields that the debtor is
14 currently seeking will involve the disclosure of PII."

15 So what he was saying was you can't include a finding
16 that the subpoenas now and your order don't require the
17 production of, of PII in the face of this evidence that's
18 undisputed where Mr. Winner says, "Yeah, some of them may
19 include PII."

20 Now DCPF's lawyer went on to say:

21 "The debtor isn't, to be clear and to be fair to the
22 debtor, the debtor isn't affirmatively seeking the
23 production of PII, but when you're seeking data for
24 9,000 people the data fields that the debtor's seeking
25 will involve some leakage of personal identifiable

1 information."

2 Now I explained at the hearing, your Honor, that we
3 wanted an order that was clear that there would be no PII
4 produced because we anticipated that we would be in Delaware in
5 front of the same judge who quashed the Bestwall --

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

8 MR. CASSADA: -- subpoena because it had PII and we
9 wanted to, to show the judge that we had modified the subpoena
10 not to include PII and that addressed the judge's concerns.

11 So it was very important to us that this order be a
12 clean order that resulted in no production of, of PII. And we
13 had that colloquy on the record and, of course, your Honor can
14 go back and look at the transcript and see how much discussion
15 there was on this point.

16 But then, but then your Honor suggested after hearing
17 the parties:

18 "But are you" -- you're addressing the debtor here --
19 "is the debtor opposed, going back to Footnote 2, to
20 adding clarifying language that, while you're not
21 asking for this information, you have -- basically,
22 you all agree that there's a possibility that a
23 claimant may have included that in the exposure fields
24 and that you're not opposed to redacting that before
25 the Trusts turn loose of the information."

1 So what you were suggesting here is if you want a
2 clean order that doesn't provide PII, then, then let's just put
3 that in the order. Let's just put --

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

6 MR. CASSADA: -- in there that they can, that they can
7 redact it. And, and this was a discussion on the record. Then
8 DCPF counsel responded to, when we indicated that we were
9 agreeable to such language, he said:

10 "The debtor alluded to some new language that they
11 might be fine with that would essentially involve our
12 scrubbing or their scrubbing personally identifiable
13 information that ends up in the data fields that the
14 debtor's seeking, even if the debtor isn't
15 affirmatively seeking personally identifiable
16 information.

17 That's the first we're hearing about it this morning.
18 We obviously haven't seen the debtor's proposed
19 language. We'd be delighted to evaluate it."

20 So at the hearing DCPF and DBMP agreed to try to
21 negotiate language and that's the way the hearing ended. You
22 wanted us to enter an order soon and, and not get hung up about
23 this, but did suggest to us that we try to negotiate this
24 language. In fact, sometime during that week -- I don't have
25 it here -- but we did notify the Court that we were able to

1 reach an agreement on the language. And that, the agreement
2 that we reached was to add Footnote 7 to the order. And so
3 Footnote 7 basically memorializes the evidence, that Mr. Winner
4 testified, that:

5 "When claimants describe how they were exposed to
6 products for which a DCPF Trust is responsible, it is
7 possible that they may list individuals by name and/or
8 SSN. To the extent any of the names appear in the
9 exposure-related fields, DCPF and the Manville Trust
10 may" -- key word there -- "redact such names and
11 Social Security numbers prior to the production of the
12 anonymized matched production."

13 Now you said they may do it. There was also this
14 reservation about the burden of doing that. But --

15 THE COURT: Hmm.

16 MR. CASSADA: So you said, "You may do it." You
17 didn't order them to do it, but then you said:

18 "In addition, prior to the delivery of the anonymized
19 matched production to the other retained claimants,
20 Bates White shall search for and permanently delete
21 any such names and Social Security numbers that may be
22 inadvertently included in the anonymized matched
23 production."

24 So that was, that was the resolution. That addressed
25 both the risk of, of what was called PII leakage. It also

1 addressed burden. Because it said they, they can do it. If
2 they want to avoid the burden, send it to Bates White. Bates
3 White'll do it before that anonymized production goes out.

4 And so that's the, that's the, the way it resolved.
5 That footnote makes crystal clear that this is not an issue
6 that was new. It was not something the Court understood [sic].
7 In fact, the Court understood it very well. There's a -- there
8 -- there was a lot of dialogue and evidence referenced in the
9 hearings and the Court was helpful in achieving a resolution of
10 the issue. So -- so that -- that's it on that.

11 Okay. So there's another -- there -- there's another
12 understanding that I think the parties may have about the order
13 that's not true and, and, and I think it's important to, to
14 clear this up because it, it addresses what really is one of
15 the most fundamentally important protections in the order. And
16 that is at the same Aldrich hearing Ms. Moskow-Schnoll ---
17 again, she was representing the Trusts -- she was summarizing
18 sort of what this order does, you know, what it results in, and
19 she, she talked about -- I wasn't here, but I think she had
20 some charts that were showing all the different people who
21 would have access to this information. "And gosh, this is so
22 bad because all this PII is out there and they're not going to
23 be able to, to limit use of, of the information in one case.
24 How can they unforget what, how can they forget that when they
25 go to another case? You can't unforget that." She went on and

1 on about it. Critically, here's what she said. She said:

2 "So in summary, we have two entities, Jones Day and
3 Bates White, holding almost 150,000 claims files" --
4 files. I don't know why she says "files" -- "for
5 12,000 claimants from different sources, 19 trusts in
6 Paddock, plus 24,000 claimants in Bestwall and DBMP
7 and holding the matching keys to deanonymize each
8 subset."

9 So what's she's telling the Court is her understanding
10 is that Jones Day is not, they're not only going to be
11 permitted access to this anonymized matching key, but they're
12 going to have the matching key. And so they're going to be
13 able to deanonymize it and that shows that there's really no
14 privacy at all. And the, the declaration that they submitted
15 to support their position also had Mr. Winner in there and in
16 his declaration he says the same thing, that this matching key
17 is, it's going to be passed around. Everyone's going to have
18 it. And so the idea that this is an anonymized database is a
19 farce because the people who had the anonymized database have
20 the matching key. It's just not so, your Honor. That's not
21 what the order said. That's not what you ordered.

22 And in the order, Section 9(d), it says:

23 "The matching key will be possessed only by the claims
24 expert for each of the debtor, the ACC, and the FCR
25 and it's going to be separate. At all times it's

1 going to be kept separately from the anonymous trust
2 data. The two will never, will never meet."

3 And it -- and whoever holds it at any of these three
4 claims experts' firms has to store it in a separate
5 password-protected location.

6 So the matching key is going to be in the exclusive
7 domain of, of the experts. That's Section 9(d).

8 Plus, the matching key, it can only be used for
9 limited purposes. It can only be used by the experts to match
10 non-PII data from the debtor's database with the anonymized
11 trust data. That's what I showed you before when I showed you
12 the anonymized matched production.

13 So in order to match it, obviously you need to know
14 who the claimants are. And so the, that's the job of the
15 claims experts and they'll, they'll match it and they'll, and
16 the result will be this anonymized matched production that has
17 other, other data in it.

18 The matching key can also, it can also be used to
19 verify the accuracy of the data matching or defense challenges
20 to the accuracy. So the experts are each going to do this on
21 their own and they're going to -- and -- and the other experts
22 can use the matching key to see if they did it right.

23 And then the second bullet is that it can be used to
24 provide sufficient identifying information to authorized
25 representatives to permit individual claims analysis. That

1 means that the claims experts can, point, pointing to, to
2 individual or smaller groups of claims but not the aggregate,
3 can identify the claimants for the claimant representative so
4 they can analyze the claim files for those claimants. That's
5 something that all of the parties are interested in doing and
6 that's a key part of, of the reason for the discovery.

7 But that's, that's the only thing, things that the
8 matching key can be used for.

9 So to the extent that, that the Court may have
10 concluded after Aldrich that, that this was a new issue, I
11 think, I, I'm sure the Court didn't believe it was a new issue
12 in the, in the DBMP case or that the order really was as flimsy
13 as the DCPF and Trust lawyers were arguing that it was. It's,
14 it's simply not true and I think your Honor should understand
15 that this is, as I said before, it's an excellent order.

16 Just a, a few more comments about the order. It's,
17 it's filled with provisions that protect the data and this is
18 not just protecting the matching key. That's separate. This
19 is protection the, protecting the anonymized data. The data --
20 if anyone broke into someone's office and pulled this
21 anonymized data, it would be worthless to them. They wouldn't
22 be able to steal anyone's identity. There's nothing in there.
23 It's just a bunch of numbers with, with information about what,
24 what they said about their exposures to asbestos.
25 Notwithstanding that, we treat it like the, the formula for

1 Coca-Cola or something. I mean, it's -- and all of these
2 provisions are identified here, but, but it's, it's restricted
3 to be used only for permitted purposes, which are defined in
4 the order, which is related to estimation and plan of
5 reorganization. It's -- the access to the matched production,
6 it's limited to individuals and only from, from the parties or
7 their lawyers or their retained experts and only those who have
8 a clear need to know it. You have to, before anyone's allowed
9 to lay their eyes on this matched production, they have to
10 execute a joinder requiring that they consent to be bound by
11 the Court's order and submit to the Court's jurisdiction.
12 Every -- each individual who gets access has to provide for
13 security to keep it safe. There are restrictions about how it
14 can be used in the court. There's an immunity from discovery.
15 The matched production can't be, you know, can't be discovered
16 by someone else. Has to be deleted within 30 days after the
17 end of the case and, and when it's deleted there's a
18 declaration that anyone who has access has to sign it and
19 submit it to the Court saying that they've complied with the
20 order.

21 Couple of things in, in closing here, your Honor.
22 Mr. Winner, again the Chief Operating Officer for Delaware
23 Claims Processing Facility, I asked him -- there's all, all
24 this, these concerns he raised in his declaration about a
25 breach. I asked him if he was aware of any situation where

1 DCPF produced data on a mass scale where there was some kind of
2 data breach and he said, no.

3 I will say they -- Mr. Winner said in his deposition:
4 "Anytime someone asks of this, we insist on a sample.
5 Because that's all you need and that limits the, the
6 implications of a breach for that. So we, we got to
7 have a sample."

8 So we listed -- you may recall this from the last
9 hearing -- all the cases where there were huge numbers of
10 claims for which data was sought where no sampling was ordered
11 and we asked Mr. Winner, "Yeah. You said you always request
12 this. Can you describe situations where there's been the case
13 where you've actually, a sample has actually been ordered," and
14 he, he couldn't. He -- there was no example where DCPF had
15 actually convinced the judge to limit the production to a
16 sample except, of course, the District Court in, in Bestwall.
17 The District Court approved, ordered that there had to be a
18 sample in that case. That decision was eventually overturned
19 by the, the Third Circuit.

20 In a hearing, in a status conference before the judge,
21 before the Fourth Circuit ruled, Judge Connolly explained the
22 situation when he entered the order. He said, "It was Memorial
23 Day Weekend and I wrote this opinion in a couple of hours." He
24 was actually at the, at the beach on vacation and he got word
25 that the time period in ruling on this had, had run and -- and

1 they -- and they needed an order. So he said he, he prepared
2 this opinion in a couple of hours with a very, very able clerk,
3 but "it was a mass, mass rush."

4 He also said, "It looks like I had a very fundamental
5 misunderstanding of a basic fact, which, which kind of concerns
6 me. Because the lawyer's asking for the relief." He -- he had
7 -- he had come to believe from that things that, a fact that
8 wasn't true. And then he said here, "I'm having to rush now
9 this time" -- this is when we had brought up this new subpoena
10 that we said complied with his order -- "which I did last year
11 which is probably why we're in a mess."

12 So, so I don't think, I don't think the Court should
13 put a lot of stock in the, in that order as a model for, for
14 whether there should be a sample. In fact, I pointed out
15 earlier when you entered your order you had three hearings.
16 You spent hours and hours listening to what the evidence was,
17 examining the provisions of the order. It was a, it was a very
18 meticulous, careful process and he did not, Judge Connolly did
19 not have that, have that luxury.

20 And so that, that's it, your Honor. As I indicated,
21 we believe the Court should enforce its anonymity order. The
22 relief they're requesting, it's moot at this point. We've got
23 the data. It's scrubbed. There's no PII. There's no risk,
24 there's no standing, and, and there's no question but this
25 Court fully understood these issues about PII and exposure

1 fields and resolved it.

2 Thank you, your Honor.

3 THE COURT: Thank you.

4 Mr. Hogan? Need a minute?

5 MR. HOGAN: Thank you, your Honor. I just unmuted
6 my, muted my line.

7 MS. ZIEG: Excuse me, your Honor.

8 MR. HOGAN: Daniel Hogan on behalf of the Matching
9 Claimants.

10 THE COURT: Hang, hang on one moment.

11 Ms., Ms. Zieg?

12 MR. HOGAN: Yes, sir.

13 MS. ZIEG: Good morning, your Honor. Sharon Zieg from
14 Young Conaway on behalf of the FCR. Just a couple of things I
15 wanted to note for the record first.

16 There were a lot of characterizations in that about
17 what the trust discovery order says and doesn't say.

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

20 MS. ZIEG: I'm not sure we agree with everything that
21 he said about what it says and doesn't say and who has access
22 and who doesn't have access to it. I, I think at one point he
23 said that the lawyers don't have access to the matching key,
24 like Jones Day doesn't have access to the matching key. I
25 think that's inaccurate. As long as you entered a joinder and

1 you're agreeing to keep it anonymized, it says that -- in 8(a)
2 it says that you can have access to the matching key, its
3 retained experts and authorized representatives.

4 So I -- I just -- I'm not sure -- we haven't even
5 gotten it here yet, but I just want to -- we did just sign a
6 joinder and send it to the debtor. So I'm, I'm not sure what
7 we're getting yet from them, but I just want to put a
8 placeholder in that I'm not sure if everything he said about
9 how the trust discovery order works.

10 THE COURT: There's a joinder to this motion that the
11 FCR just signed?

12 MS. ZIEG: No, no, no. The joinder to -- you file a
13 joinder to the order --

14 THE COURT: Oh, I see.

15 MS. ZIEG: -- the trust discovery --

16 THE COURT: Okay.

17 MS. ZIEG: -- order.

18 THE COURT: All right.

19 MS. ZIEG: I don't think this really has to do with
20 this motion. It's just that Mr. Cassada, Cassada --

21 THE COURT: You want to keep your powder dry --

22 MS. ZIEG: -- went, went --

23 THE COURT: -- in the future.

24 MS. ZIEG: -- very broad into exactly how that worked
25 and I just wanted to make sure. I'm not sure we agree with

1 everything, the way he said it. And maybe we should talk about
2 it and that's fine. But I did just sign a joinder to this
3 order and I was thinking I was going to get access to it.

4 And the other thing I wanted to note is that, looking
5 at the Slides 15 and 16 about the extract of what you get from
6 the DCPF and from -- actually, everything comes through
7 Dr. Bates -- from what I've seen in the Bestwall case I just
8 wanted to say that this is an oversimplification of what
9 information we really get. There's an, there's a lot of
10 information in, for instance, the exposure type and the
11 exposure fields. It's not as simple as just the word "direct"
12 or "indirect," or whatever. There's a lot more information
13 here.

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

16 MS. ZIEG: And I just wanted to be clear for the
17 record that this isn't, this isn't actually what you get. You
18 get something far more informative than this.

19 THE COURT: Note your --

20 MS. ZIEG: Thank you.

21 THE COURT: -- your view of it.

22 MR. CASSADA: Your Honor, can I hand you up a copy, a
23 hard copy of our slides?

24 THE COURT: I'll be happy to take one. Thank you.

25 (Hard copy of slides handed to the Court)

1 THE COURT: Are we ready to go to, Mr. Hogan?

2 MR. CASSADA: I did, I did want to comment on
3 Ms. Zieg's understanding of the order.

4 THE COURT: Do we really need to? Ms. Zieg hasn't --
5 the FCR hasn't taken a position on this motion as yet.

6 MR. CASSADA: Okay. All right. Well, I --

7 MS. ZIEG: Your, your Honor, I have, I'm taking no --

8 THE COURT: She doesn't necessarily agree --

9 MS. ZIEG: -- position on the motion --

10 THE COURT: -- with what you said.

11 MS. ZIEG: -- at all. I just wanted to make sure.

12 Because there was a lot put in this record just now about what
13 things say and don't say and what the information is and isn't
14 and who gets access and who doesn't and I just wanted to make
15 sure that it didn't go unsaid that we don't necessarily agree
16 with --

17 THE COURT: And it's been said, so.

18 MS. ZIEG: -- the evidence that he presented.

19 MR. CASSADA: All right. And I --

20 THE COURT: Let's go back to Mr. Hogan, instead.

21 MR. HOGAN: Your Honor, thank you. Daniel Hogan of
22 Hogan McDaniel on behalf of the Matching Claimants and Certain
23 Additional Matching Claimants.

24 I, I, of course, want to echo the comments just made
25 by Ms. Zieg as it relates to the production of documentation.

1 We are privy to what's actually being produced by
2 virtue of the subpoena. And so I have no way of knowing. I
3 surmised, of course, that what is contained on Pages 15 and 16
4 is a -- is -- it's a, as characterized, an oversimplification
5 of what, in fact, is being produced.

6 And I would also note that, that it appears that, in
7 addition to Bates White, other additional parties, including
8 professionals, do have access to the matching key. And so
9 those, those characterizations, I just wanted to note that we,
10 we disagree with those.

11 THE COURT: Okay.

12 MR. HOGAN: Going to the arguments made, your Honor,
13 let's start, of course, with the anonymity order. In looking
14 at the order that you entered on, I believe it was, the 30th or
15 29th of November, the order provides that:

16 "The requirements that the movants identify themselves
17 shall be stayed until the 31st day following the entry
18 of this order to permit movants (if desired) to seek a
19 stay pending appeal from the District Court. Movants
20 are hereby relieved of any obligation to seek a stay
21 from this Court before seeking a stay in the District
22 Court."

23 I note, your Honor -- and of course, it's your order
24 and, and I respect it -- but I -- I just -- I note the order
25 doesn't provide that we have to obtain a stay pending appeal

1 from the District Court, you know. There's time limits for us
2 to make those applications. We abided by those app, by those
3 time limits and made the application. And so the argument
4 that, that you should somehow enforce the anonymity order and
5 strike what we're, we're attempting to do is wholly
6 inappropriate, from our perspective.

7 Turning next to the argument regarding the fact that
8 the privacy arguments that we made are moot because the data
9 has already been redacted and produced. Your Honor, from our
10 perspective, from the get-go we've made it clear that our
11 position is that this doc, that this data, you know, that
12 there's a burden independent of the burden imposed on the
13 Trusts associated with the disclosure of the Matching
14 Claimants' personal information. DBMP has consistently ignored
15 the fact that the claims submission information of the, of the
16 Matching Claimants is what is being sought from the Trusts and
17 that the Matching Claimants have privacy concerns. The Trusts
18 seek, the Trusts are being forced to disclose a wealth of
19 information that belongs to the Matching Claimants. That's
20 indisputable, okay? From our perspective, this information is
21 -- is -- is obviously very sensitive and as you noted during
22 the Aldrich hearing, you recognized that there's going to be
23 PII contained within the narrative form of certain of the
24 responses to, to the subpoena and it's that narrative,
25 narrative form that gives rise to the disclosure of PII. I, I

1 hear the debtors repeatedly say that, "We're not requesting it.
2 We're not," but the reality is and looking at the charts that
3 there's going to be an element of it that's going to be
4 disclosed in some narrative aspects and you recognized that
5 very issue in Aldrich the, the day after you entered the order
6 in DBMP.

7 And so we -- we -- I just wanted to bring to the
8 Court's attention that inconsistency, as we see it, no
9 disrespect intended, but we -- we -- we see it as, as a germane
10 issue and gives rise to us to have the ability to make the
11 argument that we're making today.

12 Turning to the issue of standing, from our perspective
13 the Matching Claimants have standing to assert an undue burden.
14 The burden, as I indicated, is, is independent of the burden
15 imposed on the Trusts. It's a burden that falls on these
16 claimants. This is their information. That seems to be
17 glossed over by DBMP. They -- they -- they want the
18 information under no uncertain terms. They're entitled to it.
19 I know they're relying upon your order, your Honor, but, but
20 they gloss over the fact that this is information that, of, of
21 a number of individual claimants and it's important information
22 and it should be protected.

23 Turning to the issue that the Court has fully
24 understood and resolved the PII and the exposure field issue.
25 Your Honor, I just point out that the Matching Claimants

1 weren't privy to any of the arguments and, and we had not
2 appeared in any capacity in this case until, really, in March
3 of 2022 and that's in Delaware, right? And so this case, from
4 our perspective, didn't get transferred to your Honor until
5 late last year when, when the, the, the order entering the
6 motion to transfer this proceeding to the North Carolina
7 Bankruptcy Court was entered.

8 And so I don't know that -- that we can be -- that
9 those arguments can be imposed upon us. We weren't privy to
10 them. We weren't, we weren't in privity with anyone at that
11 point relative to the arguments that were made. And so, from
12 our perspective, they're, they're not relevant to us. That's
13 not to say that they're not relevant to the determination of
14 this motion, your Honor, but from our perspective, we weren't
15 privy to them. And so they're, they're not relevant as it
16 relates to us.

17 The, the next argument that the Court's trust
18 discovery order fully protects the claimants' privacy, from our
19 perspective, flies in the face of your finding which, where you
20 recognized in Aldrich that we're going to be seeing some
21 information in narrative form and we're going, and you might
22 have that information that is, in fact, PII and that you, the
23 Court, wants to reduce the harm there as much as possible.
24 It's from that perspective, as we see it, that we should be
25 entitled to have the Court review this order, revise this

1 order, and, and limit, ultimately, what is being produced to a
2 sample. The, the argument that we're, we have no basis that,
3 that there's no relief that we could be granted is inaccurate.
4 The Court could order that the materials that have been
5 produced could be clawed back, that a sample could be created
6 consistent with what was done in Aldrich Pump, and then from
7 our perspective, that -- that -- that is the, the proper
8 outcome.

9 Unless the Court has any questions for me, I'll rest
10 on my submissions, your Honor.

11 THE COURT: Okay. Thank you very much.

12 All right, folks. Let me see if I can get these in a
13 form that you can use.

14 First, the interpretation of the order requiring the
15 Matching Claimants to identify themselves unless a stay was
16 obtained, I do not agree with the interpretation of the
17 Matching Claimants themselves. What I was doing at that point
18 in time was saying I don't see the grounds either to rule
19 substantively on the, on the motion in their favor nor to grant
20 a stay, but out of an abundance of caution, realizing that once
21 the information is out, then you can't get relief once it's,
22 it's already gone, I would stay my ruling for, for 30 days so
23 that a, a stay could be sought by the, from the District Court.
24 I did not say, intend to say that if you filed the application
25 for a stay at District Court, then it would be stayed until the

1 District Court decided whether there was a stay. That's not in
2 the order and that would be nonsensical under the
3 circumstances. The bottom line is that I didn't see grounds
4 for anonymity and I didn't see grounds that would warrant a
5 stay pending appeal, but, just in case, I'll give you time to
6 run to District Court and see if there's an obvious error made
7 there that they want to stop that matter.

8 So bottom line is since that hasn't happened in that
9 time frame, they didn't see anything egregious.

10 I've listened today and I will, I'm not going to
11 strike the motion to amend, but, rather, I'm not going to allow
12 any more participation by the Matching Claimants unless they
13 identify themselves going forward, save and except for a, a
14 Notice of Appeal of this ruling. The bottom line is I don't
15 think it's proper. I have concerns about it, particularly
16 since we have such a large number of potential claimants here
17 and what is essentially as a, a practical matter devolving in
18 these cases into a, a contest of wills between the, the tort
19 firms of America and the corporate community as to how
20 divisional merger bankruptcies are to be pursued and whether
21 it's proper to pursue in these cases.

22 I have no idea who the Matching Claimants are at this
23 juncture. It is possible -- don't overread this -- it is
24 possible that the Matching Claimants are simply a
25 representation of the tort firms themselves protecting their

1 pecuniary interests. That's a possibility. What we have, I
2 was asking these questions in Aldrich of why do you care so
3 much about the estimation and, and someone acknowledged that
4 part of this was the fear that they were going to get tarred
5 with the, with the Garlock brush that, of making
6 nondisclosures.

7 So there, there are interests apart from the clients'
8 interests here. The general rule in Federal Court is that your
9 opponents need to know who you are. None of the exceptions to
10 that Rule apply here. I don't see any reason for a stay and
11 I'm going to have to enforce my earlier order.

12 So if you -- I'm leaving the motion to amend and the
13 briefing that's allowed. That can stay. Anything further,
14 unless the District Court chooses to grant you a stay pending
15 appeal, I'm going to have to at that point just decline to hear
16 you. All right. That's the first part.

17 As to the, the merits of the, the order, that could be
18 the end of it, but I'm going to go ahead and address these so
19 that we don't have to, if the District Court feels otherwise,
20 we don't have to have a remand to consider it further.

21 As to standing, again I don't see an undue burden on
22 the claimants. In fact, let me back up one step farther.

23 Did the Court understand the arguments that were made
24 in this case at the time they were made? As the record
25 reflects, we obviously had a good bit of interaction with

1 regard to these provisions and discussion and I would decline
2 to find that I misapprehended what you were arguing.

3 Now there may be an argument in the Aldrich case that
4 I should have stayed consistent with this ruling and no order's
5 been entered there, is my understanding, and I'm not
6 encouraging a motion for rehearing on that, but, if it comes,
7 it comes. If anything, we had been careful in this case, DBMP,
8 to try to address the privacy concerns and what I did was
9 intentional there. Some time passed and it may be argued that
10 I should have done the same thing.

11 You will note that in Aldrich I was doing two things.
12 I don't want to talk too much about the Aldrich decision
13 because those folks aren't here, but the bottom line was I had
14 two concerns. One was, as I recall it, this was the first time
15 I had actually been presented with demonstratives that showed
16 me exactly what kind of information can be in the narratives.
17 That made a little bit of an impression, but -- and this is
18 where being married for 36 years will help you out -- I'm not
19 one to believe that I've never made an error, either, and I may
20 have in Aldrich because I don't recall, did not then recall all
21 of the, the Footnote 2 and the efforts that we had made to
22 scrub data. I was thinking, primarily, about my secondary
23 concern, which was the need for sampling in these cases,
24 generally, and it might not have been the appropriate thing to
25 do then. I'm not going to decide that today.

1 But the bottom line is the costs in these cases are
2 spiraling ever higher. We are getting into more and more of a
3 morass of litigation that's going to require more and more
4 privilege reviews, estimation, claims file requests, and, and
5 the like and my concern was, overall, that we need to start
6 pulling these cases towards getting to a resolution, not going
7 the other way around, and I view sampling as a way that we can
8 avoid some of the costs and expense, delay, etc., that are
9 occasioned by these cases.

10 So for better or worse, those two things were on my
11 mind at the time and if there is an error that has been made,
12 in my opinion it would be in the Aldrich case, not in this one
13 because this one got very careful consideration and
14 effectively, we dealt with that.

15 So as to standing, I don't see a particular burden
16 here. I agree with Mr. Cassada that while there might be an
17 interest in, in the Matching Claimants as to the information
18 that is being provided, the law I'm not sure is where most of
19 us would feel emotionally. We would say yes, that is your
20 information, but I'm not sure that, legally, that information
21 isn't owned by the Trusts instead of the claimants. But you've
22 got at least some sort of interest there in the data itself and
23 we tried to accommodate that and it was carefully accommodated
24 and I'm satisfied that the accommodations in this case were
25 sufficient to protect the information.

1 And that kind of feeds into the third part of this as
2 to whether or not there is a risk of inadvertent disclosure and
3 whether this is moot and I believe at this juncture it really
4 is. The information's been provided, scrubbed, as I, as been
5 represented in court. There is no PII in the documentation and
6 I'm going to decline the motion to alter or amend.

7 And ask the prevailing party, the debtors, to draw an
8 order consistent with those remarks and the arguments made in
9 their briefing, okay?

10 Anything else?

11 (No response)

12 THE COURT: Anyone -- everyone good for the day?

13 (No response)

14 THE COURT: Well, I'm pleased that you've been able to
15 work some on, on the first three matters. I hope you, those
16 are productive. If not, we'll, we'll talk about them next
17 month.

18 And hope everyone travels safely home and that you
19 enjoy your weekend. As always, you always provide me a lot to
20 think about and we'll look forward to that in the future.

21 Court's in recess.

22 MR. GORDON: Thank you, your Honor.

23 MR. ELLMAN: Thank you, your Honor.

24 (Proceedings concluded at 12:00 p.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

February 13, 2023

Janice Russell, Transcriber

Date

TAB 5

From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Friday, February 10, 2023 11:33 AM
To: Guerke, Kevin A.; Ramsey, Natalie D.; Guy, Jonathan P.
Cc: moskowschnollb@ballardspahr.com; Burns, Tyler; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Harron, Edwin; Wright, Davis L.; Kevin C. Maclay; Todd E. Phillips; Glenn C. Thompson; Robert A. Cox, Jr.; Felder, Debra L.; James Wehner; Enright, Michael; Erens, Brad B.; Cahow, Caitlin K.; Michael Evert (CMEvert@ewhlaw.com); Clare M. Maisano; C. Richard Rayburn, Jr.; Jack Miller; Dikovics, Rachel; Bennett, Lynda A.; Andrew Anselmi; Zachary D. Wellbrock; Timothy P. Duggan; Joseph H. Lemkin
Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

Counsel:

Our negotiations with the ACC and FCR regarding sampling in the Aldrich/Murry bankruptcies are continuing. However, as the DCPF and Verus related parties have elected not to participate in those discussions, we wanted to make you aware of recent communication on the topic we have had with the ACC.

As we have made clear throughout, and as Mr. Evert told Judge Whitley multiple times during our last omnibus hearing on January 30, the Debtors disagree with the Court's oral ruling on November 30 ordering that the Debtors be limited to a ten percent sample on their subpoenas to DCPF and the associated trusts. After further discussion with our client, we are strongly considering seeking reconsideration of Judge Whitley's November 30 sampling ruling. We will make a decision one way or the other before our omnibus hearing next Tuesday. If we elect to seek reconsideration, we will so inform the Court at next Tuesday's omnibus hearing (which I should note is scheduled to begin at 1pm, not 9:30 as is our customary time) and file our motion in ample time to have it heard at the next omnibus hearing on March 30. For your information, the standing order in this bankruptcy provides that any such Motion would be due to be filed on March 9, with responses due on March 23. We will also ask the Court to order the parties to disclose by March 23 any witnesses they intend to have testify at the March 30 hearing to allow time for any necessary discovery.

In addition, to the extent Verus, its related trusts, and its related Matching Claimants seek to prosecute their Motions to Quash/Motions to Proceed Anonymously that have been transferred to Judge Whitley, we will ask the Court to set them for hearing for the same March 30 omnibus hearing. Those motions are fully briefed, but we will ask the Court to set a March 16 witness disclosure deadline to, again, allow time for any necessary discovery.

As noted, we have shared the above with the ACC and FCR (who are copied on this message) and wanted to keep you aware of the discussions. If you have questions, please let us know. Thanks, and have a good weekend.

Morgan R. Hirst
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From: Guerke, Kevin A. <KGuerke@ycst.com>
Sent: Monday, January 30, 2023 7:56 AM
To: Hirst, Morgan R. <mhirst@JonesDay.com>; Ramsey, Natalie D. <NRamsey@rc.com>; Guy, Jonathan P. <jguy@orrick.com>
Cc: moskowschnollb@ballardspahr.com; Burns, Tyler <burnst@ballardspahr.com>; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Harron, Edwin <eharron@ycst.com>; Wright, Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn C. Thompson <gthompson@lawhssm.com>; Robert A. Cox, Jr. <RCox@lawhssm.com>; Felder, Debra L. <dfelder@orrick.com>; James Wehner <jwehner@capdale.com>; Enright, Michael <MENRIGHT@RC.com>; Erens, Brad B. <bberens@JonesDay.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>; Dikovics, Rachel <rdikovics@lowenstein.com>; Bennett, Lynda A. <LBennett@lowenstein.com>; Andrew Anselmi <AAnselmi@acllp.com>; Zachary D. Wellbrock <zwellbrock@acllp.com>; Timothy P. Duggan <tduggan@stark-stark.com>; Joseph H. Lemkin <jlemkin@stark-stark.com>
Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

** External mail **

Morgan,

DCPF does not plan to make a sampling counterproposal. It reserves all its rights and plans to review and comment on any proposal or agreement.

Thanks,

Kevin



Kevin A. Guerke, Partner
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From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Friday, January 27, 2023 1:55 PM
To: Ramsey, Natalie D. <NRamsey@rc.com>; Guy, Jonathan P. <jguy@orrick.com>
Cc: moskowschnollb@ballardspahr.com; Burns, Tyler <burnst@ballardspahr.com>; Guerke, Kevin A. <KGuerke@ycst.com>; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Harron, Edwin <eharron@ycst.com>; Wright, Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn C. Thompson <gthompson@lawhssm.com>; Robert A. Cox, Jr. <RCox@lawhssm.com>; Felder, Debra L. <dfelder@orrick.com>; James Wehner <jwehner@capdale.com>; Enright, Michael <MENRIGHT@RC.com>; Erens, Brad B. <bberens@JonesDay.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>; Dikovics, Rachel <rdikovics@lowenstein.com>; Bennett, Lynda A. <LBennett@lowenstein.com>; Andrew Anselmi <AAnselmi@acllp.com>; Zachary D. Wellbrock

<zwellbrock@aclip.com>; Timothy P. Duggan <tduggan@stark-stark.com>; Joseph H. Lemkin <jlemkin@stark-stark.com>

Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

All:

As some or all of you heard at yesterday's Aldrich omnibus hearing, yesterday the ACC sent a response to the Debtors' sampling proposal of December 19. We want to move quickly to review the proposal with our experts. Although, as you know, the Debtors believe the sample methodology selected should not be relevant to the DCPF/Verus/Trusts/Matching Claimants, various counsel for those parties were active on our last meet and confer and expressed positions regarding sampling methodologies. Obviously, we want to be able to simultaneously evaluate proposals, if any, of the DCPF/Verus/Trusts/Matching Claimants.

Do any or all of the DCPF/Verus/Trusts/Matching Claimants intend to proffer a counterproposal to the Debtors' sampling proposal of December 19 (which is copied at the bottom of these email)? Or are those parties content to accede to any agreement that may be reached on the issue between the Debtors and the ACC and FCR?

Please let us know. Thanks and have a nice weekend.

Morgan R. Hirst

Partner

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From: Hirst, Morgan R.

Sent: Thursday, January 5, 2023 11:43 AM

To: 'Ramsey, Natalie D.' <NRamsey@rc.com>; Guy, Jonathan P. <jguy@orrick.com>

Cc: moskowschnollb@ballardspahr.com; Burns, Tyler <burnst@ballardspahr.com>; Guerke, Kevin A.

<KGuerke@ycst.com>; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Edwin J. Harron <eharron@ycst.com>; Wright,

Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn

C. Thompson <gthompson@lawhssm.com>; Robert A. Cox, Jr. <RCox@lawhssm.com>; Felder, Debra L.

<dfelder@orrick.com>; James Wehner <jwehner@capdale.com>; Enright, Michael <MENRIGHT@RC.com>; Erens, Brad

B. <bberens@jonesday.com>; Cahow, Caitlin K. <ccahow@jonesday.com>; Michael Evert (CMEvert@ewhlaw.com)

<CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr.

<rrayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>

Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

Natalie:

To your first question- if you could send the meeting invite that would be great. If you have questions you can send in advance, we might be better prepared and be more productive. Either way, look forward to talking next week. Thanks.

Morgan R. Hirst

Partner

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From: Ramsey, Natalie D. <NRamsey@rc.com>
Sent: Thursday, January 5, 2023 11:42 AM
To: Guy, Jonathan P. <jguy@orrick.com>
Cc: Hirst, Morgan R. <mhirst@JonesDay.com>; moskowschnollb@ballardspahr.com; Burns, Tyler <burnst@ballardspahr.com>; Guerke, Kevin A. <KGuerke@ycst.com>; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Edwin J. Harron <eharron@ycst.com>; Wright, Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn C. Thompson <gthompson@lawhssm.com>; Robert A. Cox, Jr. <RCox@lawhssm.com>; Felder, Debra L. <dfelder@orrick.com>; James Wehner <jwehner@capdale.com>; Enright, Michael <MENRIGHT@RC.com>; Erens, Brad B. <bberens@JonesDay.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (<CMEvert@ewhlaw.com>) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>
Subject: Re: In re Aldrich Pump LLC et al (Case No. 20-30608)

** External mail **

Speaking for the Committee, we are not yet at a place where we can discuss or evaluate the proposal. We have a number of questions regarding what is intended. As a first step, we think a counsel call would be helpful.

Sent from my iPhone

On Jan 5, 2023, at 11:36 AM, Guy, Jonathan P. <jguy@orrick.com> wrote:

Morgan and Natalie Is this counsel only? I believe it would be helpful for the experts to attend. They are the ones that must agree in the end. Thanks

Sent from my iPhone

On Jan 5, 2023, at 11:17 AM, Ramsey, Natalie D. <NRamsey@rc.com> wrote:

This message originated from outside your organization

Morgan – let's go with the time on the 12th. Do you want us to circulate an invitation or would you prefer to do so?

From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Thursday, January 5, 2023 10:23 AM
To: Ramsey, Natalie D. <NRamsey@rc.com>; moskowschnollb@ballardspahr.com; 'Burns, Tyler' <burnst@ballardspahr.com>; Guerke, Kevin A. <KGuerke@ycst.com>; dkhogan@dkhogan.com; bsullivan@sha-llc.com; Edwin J. Harron <eharron@ycst.com>; Wright, Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn C. Thompson <gthompson@lawhssm.com>; Robert A. Cox, Jr. <RCox@lawhssm.com>; Guy, Jonathan P. <jguy@orrick.com>; Felder, Debra L. <dfelder@orrick.com>; James Wehner <jwehner@capdale.com>; Enright, Michael <MENRIGHT@RC.com>

Cc: Brad B. Erens <bberens@jonesday.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (CMEvent@ewhlaw.com) <CMEvent@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>
Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

CAUTION: EXTERNAL EMAIL

Hi Natalie:

Happy New Year to you. Be happy to do a meeting on this.

Of the times you mention, the best ones would be either Wednesday 1/11 at 5-6 Eastern or Thursday 1/12 at 10-11 eastern. Let us know if one of those works. Given the DCPF parties are copied on this and I know wanted to be part of any discussion, I presume those times work for them as well.

Thanks much.

Morgan R. Hirst
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From: Ramsey, Natalie D. <NRamsey@rc.com>
Sent: Wednesday, January 4, 2023 1:13 PM
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Cc: Erens, Brad B. <bberens@JonesDay.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (CMEvent@ewhlaw.com) <CMEvent@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>
Subject: RE: In re Aldrich Pump LLC et al (Case No. 20-30608)

** External mail **

Morgan,

Would you be available on Wednesday, the 11th, between 4-6pm ET or Thursday, the 12th, between 9:30-11am ET or 3-4pm ET for a meet and confer regarding the proposed sampling strata and protocol?

Thank you, Natalie

From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Monday, December 19, 2022 5:48 PM
To: moskowschnollb@ballardspahr.com; 'Burns, Tyler' <burnst@ballardspahr.com>;
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Wright, Davis L. <DWright@rc.com>; Kevin C. Maclay <kmaclay@capdale.com>; Todd E. Phillips <tphillips@capdale.com>; Glenn C. Thompson <gthompson@lawhssm.com>;
Robert A. Cox, Jr. <RCox@lawhssm.com>; Guy, Jonathan P. <jguy@orrick.com>; Felder, Debra L. <dfelder@orrick.com>
Cc: Brad B. Erens <bberens@jonesday.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>; Jack Miller <jmiller@rcdlaw.net>
Subject: In re Aldrich Pump LLC et al (Case No. 20-30608)

CAUTION:

EXTERNAL EMAIL

Counsel:

In response to Judge Whitley's November 30 sampling ruling in regard to the Debtors' subpoena served on DCPF, we wanted to begin a dialogue with you to see if we can agree to a sampling methodology. After discussing the issue with Bates White, we suggest that we confer on the structure of the sample first so that we can better ascertain where we differ, if at all.

As we understand Judge Whitley's ruling, the goal is to draw a representative random sample of ten percent of the Aldrich Pump and Murray Boiler ("Aldrich Murray") mesothelioma claims resolved through settlement or verdict between January 1, 2005 and Aldrich Murray's bankruptcy petition date of June 18, 2020 (the "Aldrich Murray Random Sample").^[1] The purpose of the Aldrich Murray Random Sample is to govern the claims for which data is produced by DCPF in response to Aldrich's subpoena.

For the Aldrich Murray Random Sample to best aid in the estimation of Aldrich Murray's asbestos liability, reorganization plan formulation, and/or plan confirmation, the sampling methodology should be a straightforward application of stratified random sampling techniques. The stratification is important to ensure that events that could have a disproportionate impact on the analysis of the Debtors' settlement history, such as claims resolved through high-value settlement, are included in the sample in an efficient manner. Stratification increases the probability that low-frequency events are included, while properly weighting those events and keeping the total sample size similar to that ordered by Judge Whitley. This will allow the Aldrich Murray Random Sample to be a representative and efficient sample that can provide a reliable cross-section of Aldrich Murray's mesothelioma claims' settlement history.

In light of the above, the first question posed is whether you agree that the sample for this purpose should be a stratified random sample?

Assuming you are in agreement, the second question posed concerns the appropriate “categories” with which to stratify. We propose the following:

The data for the Aldrich Murray Random Sample are first restricted to the following population:

1. Mesothelioma claims resolved through verdict or settlement (with a resolution amount greater than \$0)
2. Resolved between January 1, 2005 and June 18, 2020

These data are then stratified using the following categories:

3. Debtor
 1. Aldrich
 2. Murray
4. Resolution type
 1. Verdict
 2. Settlement
5. Resolution period
 1. Prior to 2014
 2. 2014 and later
6. Group deal status
 1. Group Deal (whether on or off-complaint)
 2. Individual Resolution
7. Resolution amount category:
 1. > \$0, < \$10,000
 2. ≥ \$10,000, < \$50,000
 3. ≥ \$50,000, < \$100,000
 4. ≥ \$100,000, < \$150,000
 5. ≥ \$150,000, < \$200,000
 6. ≥ \$200,000, < \$250,000
 7. ≥ \$250,000, < \$500,00
 8. ≥ \$500,000

Finally, to simplify the trusts’ matching procedures to their internal databases, the DCPF sample would be limited to only include claimants who have a full SSN available.

For your further information, attached please find a spreadsheet outlining the approximate (based on current data) population of claims included in each of the suggested stratifications for the roughly 12,000 claimants about which information was requested from DCPF. Of course, because some claimants made claims against both Debtors, the total number of claims is greater than 12,000.

Please let us know at your earliest convenience if the above sample structure is acceptable to you. If so, we can then move to the next step of attempting to reach agreement on the selection of the sample within this construct.

¹ The original matching key sent to DCPF was already limited to a subset of claimants. While there are about 28,000 claimants with resolved mesothelioma claims in the Debtors’ data, the original matching key was restricted to approximately 12,000 claimants—or about 40% of resolved mesothelioma claimants—by limiting to mesothelioma claims resolved through settlement or verdict, since 2005, and with a full SSN available. Therefore, a limitation to 10% of the 12,000 claimants originally sent to DCPF would actually correspond to a sample of only 4% of overall mesothelioma claimants.

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^[1] The original matching key sent to DCPF was already limited to a subset of claimants. While there are about 28,000 claimants with resolved mesothelioma claims in the Debtors' data, the original matching key was restricted to approximately 12,000 claimants—or about 40% of resolved mesothelioma claimants—by limiting to mesothelioma claims resolved through settlement or verdict, since 2005, and with a full SSN available. Therefore, a limitation to 10% of the 12,000 claimants originally sent to DCPF would actually correspond to a sample of only 4% of overall mesothelioma claimants.

TAB 6

1 ARMSTRONG WORLD INDUSTRIES, : Miscellaneous Pleading
INC. ASBESTOS PERSONAL INJURY : No. 22-00303 (JCW)
2 SETTLEMENT TRUST, et al., : (Transferred from District
of Delaware)

3 Plaintiffs,

4 v.

5 ALDRICH PUMP LLC, et al.,

6 Defendants,

: :

7 AC&S ASBESTOS SETTLEMENT : Miscellaneous Pleading
8 TRUST, et al., : No. 23-00300 (JCW)
: (Transferred from District
9 Petitioners, : New Jersey)

10 v.

11 ALDRICH PUMP LLC, et al.,

12 Respondents,

13 VERUS CLAIM SERVICES, LLC,

14 Interested Party,

15 NON-PARTY CERTAIN MATCHING
16 CLAIMANTS,

Interested Party.

17 :

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

20 Audio Operator: COURT PERSONNEL

21 Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
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23 Severance, CO 80550
(757) 422-9089
24 trussell31@tdsmail.com

25 Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

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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

TAB 7

Delaware Claims Processing Facility
1000 N. West Street
Suite 300
Wilmington, DE 19801

Invoice

Date	Invoice #
11/2/2022	12

Bill To
DBMP Matter

Due Date
11/30/2022

Description	Hours Worked	Rate	Amount
Professional Services for 9/7/22-10/31/22	266.37	80.00	21,309.60
		Total	\$21,309.60

When making a payment, please reference invoice number.
Make checks payable to Delaware Claims Processing Facility or Wire to:
Bank Name: The Huntington National Bank
ABA Number:044000024
Account Name: Delaware Claims Processing Facility
Account Number: 01892420716
Send billing inquiries to Accounting@delcpf.com

Delaware Claims Processing Facility
1000 N. West Street
Suite 300
Wilmington, DE 19801

Invoice

Date	Invoice #
1/18/2023	13

Bill To
DBMP Matter

Due Date
2/17/2023

Description	Hours Worked	Rate	Amount
Professional Services for 11/1/22-1/13/23	809.4	80.00	64,752.00
Total			\$64,752.00

When making a payment, please reference invoice number.
Make checks payable to Delaware Claims Processing Facility or Wire to:
Bank Name: The Huntington National Bank
ABA Number:044000024
Account Name: Delaware Claims Processing Facility
Account Number: 01892420716
Send billing inquiries to Accounting@delcpf.com