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1		UNITED STATES BANKRUPTCY COURT
		WESTERN DISTRICT OF NORTH CAROLINA
2		CHARLOTTE DIVISION

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 3   IN RE:                          :    Case No. 20-30608 (JCW)
                                          (Jointly Administered)
 4   ALDRICH PUMP LLC, ET AL.,       :
                                          Chapter 11
 5        Debtors,                   :
                                          Charlotte, North Carolina
 6                                   :    Tuesday, June 6, 2023
                                          9:33 a.m.
 7                                   :
     : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :
 8
     ARMSTRONG WORLD INDUSTRIES,      :    Miscellaneous Pleading
 9   INC. ASBESTOS PERSONAL INJURY         No. 22-00303 (JCW)
     SETTLEMENT TRUST, et al.,       :    (Transferred from District
10                                        of Delaware)
          Plaintiffs,                :
11
                v.                   :
12
     ALDRICH PUMP LLC, et al.,       :
13
          Defendants,                :
14   : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

15   AC&S ASBESTOS SETTLEMENT :      :    Miscellaneous Pleading
     TRUST, et al.,                       No. 23-00300 (JCW)
16                                   :    (Transferred from District
          Petitioners,                    New Jersey)
17                                   :
                v.
18                                   :
     ALDRICH PUMP LLC, et al.,
19                                   :
          Respondents,
20                                   :
     VERUS CLAIM SERVICES, LLC,
21                                   :
          Interested Party,
22                                   :
     NON-PARTY CERTAIN MATCHING
23   CLAIMANTS,
                                     :
24        Interested Party.
     : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :
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 1                         TRANSCRIPT OF PROCEEDINGS
                   BEFORE THE HONORABLE J. CRAIG WHITLEY,
 2                    UNITED STATES BANKRUPTCY JUDGE

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

 2 | THE COURT: -- Adversary or Miscellaneous Proceedings,

 3 | of course.

 4 | Let's start by getting appearances. And then I would

 5 | just say announcing, if you've got a limited appearance, just

 6 | tell me which matter you're in. I think most of you cross over

 7 | and the hearings today will cross over from base case to, to

 8 | proceeding. So that won't be that often.

 9 | But let's start with the debtors' side and see who's

10 | here.

11 | MR. HIRST: Good morning, your Honor. Morgan Hirst

12 | for the debtors. I'll try and go through the whole squad

13 | today.

14 | From Jones Day --

15 | THE COURT: It's a memory test.

16 | MR. HIRST: -- you have Brad Erens and Rob Hart

17 | joining me. From Evert Weathersby, you have Michael Evert and

18 | Claire Maisano. From Rayburn Cooper, Rick Rayburn and Jack

19 | Miller. And from the debtors, Allan Tananbaum, and I think I

20 | hit everybody for the debtors.

21 | MR. EVERT: And Rob Sands.

22 | MR. HIRST: Rob?

23 | MR. EVERT: Sands.

24 | MR. ERENS: Sands.

25 | MR. HIRST: Oop, and Rob Sands from Trane

    1   Technologies, yes.

    2   THE COURT: Okay, very good.

    3   Okay. This side?

    4   MS. MOSKOW-SCHNOLL: Beth Moskow-Schnoll for the DCPF

    5   Trusts and also Lance Martin.

    6   THE COURT: Okay.

    7   MR. MARTIN: Morning, your Honor.

    8   MS. MOSKOW-SCHNOLL: Thank you.

    9   MS. BENNETT: Good morning, your Honor. Linda Bennett

   10   from Lowenstein Sandler. I've got my partner, Michael Kaplan,

   11   here on behalf of the Verus Trusts.

   12   THE COURT: Very good.

   13   MR. GUERKE: Good morning, your Honor. Kevin Guerke

   14   from Young Conaway, on behalf of Delaware Claim Processing

   15   Facility. I'm here today with my local counsel, Felton

   16   Parrish. And also, my client from DCPF, Richard Winner.

   17   THE COURT: All right.

   18   MR. GUY: Good morning, your Honor. Jonathan Guy for

   19   the FCR. And here today is Mr. Grier's summer associate,

   20   Rachel Piquena (phonetic).

   21   THE COURT: Okay. Welcome. No, bankruptcy court's

   22   not like this every day.

   23   MR. WRIGHT: Good morning, your Honor. Davis Wright

   24   from Robinson & Cole on behalf of the Committee. I'm joined

   25   today by my colleagues, Katherine Fix from Robinson & Cole, Jim

     1   Wehner from Caplin & Drysdale, and Rob Cox from Hamilton &

     2   Stephens Steele & Martin.

     3   THE COURT: Okay.

     4   Mr. Mascitti.

     5   MR. MASCITTI: Good morning, your Honor. Greg

     6   Mascitti, McCarter & English, on behalf of Trane Technologies

     7   Company LLC and Trane U.S. Inc. And I'm joined by Brad Kutrow

     8   of McGuireWoods.

     9   THE COURT: Okay.

    10   Mr. Oleynik.

    11   MR. OLEYNIK: Morning, your Honor. Jeff Oleynik,

    12   Brooks Pierce, the officer and director defendants in the

    13   adversary proceedings.

    14   THE COURT: Mr. Roten.

    15   MR. ROTEN: Good morning, your Honor. Russell Roten,

    16   Duane Morris, representing Certain Insurers.

    17   THE COURT: Mr. Waldrep.

    18   MR. WALDREP: Good morning, your Honor. Tom Waldrep.

    19   I'm here representing Non-Party Certain Matching Claimants.

    20   And with me is Dan Hogan from the Delaware bar. I'm local

    21   counsel for Mr. Hogan.

    22   I'm also local counsel for Joseph Lemkin, who is on

    23   the phone today, your Honor. That matter transferred from New

    24   Jersey.

    25   THE COURT: Okay.

 1   Others in the courtroom?

 2   MR. ANSELMI: Good morning, your Honor. Andrew

 3   Anselmi from Anselmi & Carvelli. We represent Verus Claims

 4   Services. And Mark Eveland from Verus is in the courtroom as

 5   well. And I'm sorry. And local counsel, Jay Bender, from the

 6   Bradley firm.

 7   THE COURT: Okay, Mr. Bender.

 8   MR. BENDER: Morning.

 9   THE COURT: Thank you.

10   Anyone else in the courtroom needing to announce?

11   Okay.

12   MR. HOUSTON: Your Honor --

13   THE COURT: Yes, Mr. Houston.

14   MR. HOUSTON: -- Andy Houston. I'm, I'm here as local

15   counsel for the Verus Trusts as well.

16   Thank you.

17   THE COURT: Thank you.

18   That got it for the courtroom?

19   (No response)

20   THE COURT: All right. With some trepidation, I'll

21   ask if there are telephonic appearances. Let's do the, if your

22   name begins with A through H of the alphabet, please tell me

23   now. Anyone?

24   MR. WELLBROCK: Good morning, your Honor. Zachary

25   Wellbrock from Anselmi & Carvelli listening in telephonically

 1 on behalf of Verus.

 2   THE COURT: Others?

 3   (No response)

 4   THE COURT: I through M? Anyone?

 5   (No response)

 6   THE COURT: N through Z?

 7   MR. TAYLOR: Good morning, your Honor. Joshua Taylor

 8 from Steptoe & Johnson on behalf of the Travelers Insurance

 9 Companies.

10   THE COURT: Any others?

11   (No response)

12   THE COURT: Mr. Wright, did you want to say something?

13   MR. WRIGHT: Yes, your Honor. I'm, I'm not sure if

14 she's being able to unmute. Natalie Ramsey is also on the

15 phone on behalf of the Committee.

16   THE COURT: Okay, very good.

17   MR. WRIGHT: Thank you, your Honor.

18   THE COURT: Anyone else? Star 6 if you're having

19 trouble with the receiver.

20   (No response)

21   THE COURT: Anyone else?

22   All right. Maybe we have it. Very good.

23   We have a printed agenda and as I understand it, there

24 are three matters up, two of them are uncontested at the

25 present time.

 1   Shall we get those out of the way? Care to lead off,

 2   Mr. Hirst?

 3   MR. HIRST: Sure, your Honor.

 4   THE COURT: The first matter is, is the un, motion to

 5   reconsider the ruling granting the motion to strike, the

 6   debtors' motion to strike, in view of Judge Cogburn's ruling, I

 7   guess, that we're talking about.

 8   Who wants to be heard with regard to that?

 9   Yes, Counsel.

10   MR. HOGAN: Thank you, your Honor.

11   THE COURT: And for the benefit of those on the phone

12   and me and my long list of appearances, if y'all will all

13   please reannounce your name as you're speaking, it would be

14   helpful to those who aren't in, aren't present.

15   MR. HOGAN: Certainly, your Honor.

16   THE COURT: Uh-huh (indicating an affirmative

17   response).

18   MR. HOGAN: Good morning. Daniel Hogan --

19   THE COURT: Uh-huh (indicating an affirmative

20   response).

21   MR. HOGAN: -- with Hogan McDaniel on behalf of the

22   Non-Party Certain Matching Claimants.

23   Your Honor, this is our motion to reconsider the

24   motion to strike. This relates to the Delaware Miscellaneous

25   Proceeding --

 1   THE COURT: Uh-huh (indicating an affirmative

 2   response).

 3   MR. HOGAN: -- which is denoted on your docket as 22-

 4   303. I'll note for the Court's benefit, of course, that this

 5   is an uncontested matter.

 6   THE COURT: Right.

 7   MR. HOGAN: No opposition from the debtors or the FCR

 8   or the Committee or any other constituency has filed an

 9   objection to the motion.

10   You will recall that at the March 30th hearing --

11   THE COURT: Uh-huh (indicating an affirmative

12   response).

13   MR. HOGAN: -- the Court granted the debtors' motion

14   to strike finding that, "Unless you want to identify your

15   clients, I can't let you participate," was --

16   THE COURT: Uh-huh (indicating an affirmative

17   response).

18   MR. HOGAN: And that's on Page 134 of that transcript.

19   As the Court knows, the Non-Party Certain Matching

20   Claimants appealed the order denying the motion to proceed

21   anonymously. And that's in the District Court at 23-cv-0099.

22   On March 8th, the Certain Matching Claimants filed the

23   motion to stay pending appeal in the District Court. On April

24   26, Judge Cogburn entered an order granting that stay. And so

25   from our perspective, your Honor, we respectfully request that

 1   the Court reconsider your March 30, 2023 ruling granting the

 2   motion to strike.

 3   I'll denote for the Court's record that an actual

 4   order hasn't yet been entered on that, just so you, you have

 5   the same benefit of the record that I do.

 6   THE COURT: Right.   Okay.

 7   MR. HOGAN: So your Honor, pursuant to Civil Rule 52

 8   applicable to contested matters, as you're well aware, the

 9   Court may amend its findings and that's exactly what we're here

10   today to ask you to do so that we can participate.   We had

11   previously filed, obviously, an objection to the subpoena.   We

12   also filed an objection to the debtors' motion for a rehearing

13   to address this sampling issue, which is today before the

14   Court, we attended the depositions of the various experts, and

15   we specifically request that the Court reconsider and remedy

16   the motion to strike in light of the District Court's ruling.

17   THE COURT: Okay.

18   Anyone want to be heard in opposition?

19   MR. HIRST: I don't think it's in opposition, your

20   Honor.   On behalf of the debtors, Morgan Hirst.

21   You know, we believe your order was correct when it

22   was issued.   We still believe your order was correct, but we

23   also can read District Court orders and we've seen Judge

24   Cogburn's order.   Since literally the day of Judge Cogburn's

25   order, we told Mr. Hogan we understood it.   He can participate

 1 going forward. We have no objection. As Mr. Hogan pointed

 2 out, they have participated in all the depositions that have

 3 taken place --

 4   THE COURT: Uh-huh (indicating an affirmative

 5 response).

 6   MR. HIRST: -- all of which postdate April 26th,

 7 anyway. So they've been a part of this upcoming motion

 8 proceeding the whole time.

 9   So we agreed with the substance of your order, your

10 Honor, and we have a motion to reconsider Judge Cogburn's order

11 pending at the moment in front of him. But we understand the

12 situation.

13   THE COURT: Okay. It's the same dilemma that we had

14 before where you've announced a bench ruling, but no written

15 order has been entered. Is it a reconsideration? Is it a

16 rehearing? Is it, effectively, a supplemental stay pending

17 appeal with regard to the motion to strike? I don't know how

18 you want to characterize it, but the bottom line is I know that

19 III, Roman Numeral III is bigger than Roman Numeral I and

20 consequently, we will, we will permit the Matching Claimants to

21 participate in the case.

22   Why don't we just say that we grant the motion to

23 reconsider, but without prejudice to the debtors renoticing

24 their original motion should circumstances change at the

25 District Court or at the Circuit Court level.

16

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 1            Now wait.  There's no need to refile another motion.

 2   If, if for some reason we end up with a -- Judge Cogburn, if he

 3   were to be reversed by the Circuit Court or something like

 4   that, then we don't wanna have to go through the whole exercise

 5   again.  Do we?

 6            MR. HOGAN:  Well, your Honor, I, I would -- obviously,

 7   the Matching Claimants would prefer to reserve their rights.  I

 8   don't know what those circumstances might be that might give

 9   rise to that circumstance.

10            THE COURT:  Right.

11            MR. HOGAN:  And so with the understanding that I would

12   ask at least to be heard in the event that some situation

13   unfolded --

14            THE COURT:  Sure.

15            MR. HOGAN:  -- in that nature, I have no opposition to

16   the construct that you've outlined.  But I, I would wanna

17   reserve my right to at least --

18            THE COURT:  Sure.

19            MR. HOGAN:  -- have the opportunity to be heard.

20            THE COURT:  I would assume that if, if whatever came

21   out of the appeal, let's say the debtor were to win that

22   appeal, then we would have to revisit it.  But all I'm saying

23   is why don't we keep the current pleading as the vehicle and

24   then we renotice it and talk about it further.

25            MR. HOGAN:  And, and I'm fine with that, your Honor.
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 1   I think that makes sense.

 2          THE COURT:  Okay.

 3          MR. HIRST:  And just for sake of clarity -- and I

 4   think your Honor's there -- this is the motion to reconsider,

 5   our, the debtors', motion to strike --

 6          THE COURT:  Right.

 7          MR. HIRST:  -- their participation in pleadings in

 8   this hearing.  It is not --

 9          THE COURT:  Right.

10          MR. HIRST:  There's still an appeal going on of your

11   Honor's ruling denying them the right to proceed anonymously

12   and you're not --

13          THE COURT:  Right.

14          MR. HIRST:  -- reconsidering that.

15          THE COURT:  Right.

16          MR. HIRST:  Correct.

17          THE COURT:  Right.

18          MR. HIRST:  Yep.

19          THE COURT:  The -- I can't reconsider what's at the

20   District Court, so.

21          MR. HIRST:  Already -- yep.  It's already gone,

22   jurisdiction.

23          THE COURT:  No.  I'm recon -- effectively, what I'm

24   doing is augmenting his stay with regard to the motion to

25   strike, okay, pending appeal.
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 1          So bottom line is I'm granting your motion, but we'll

 2   talk about it again if, if circumstances change.  For now,

 3   you're allowed to participate and that'll be fine.

 4          MR. HOGAN:  I'm back under the tent, your Honor.

 5   Thank you very much.  I appreciate it.

 6          THE COURT:  Very good.

 7          MR. HOGAN:  Your Honor, just so the record's entirely

 8   clear, do you want me to prepare a form of order?  I mean, tell

 9   me how you want --

10          THE COURT:  Yeah.  That way, that'll keep me from

11   being harassed by the clerk's office on having an open order

12   out.  So why don't we get something that simply says that in

13   view of Judge Cogburn's ruling, the motion to reconsider this

14   is, is basically granted.  And then add a sentence that,

15   "Should circumstances change, either party may renotice the

16   debtors' original motion to strike," and we'll talk about it at

17   another hearing, something to that effect.

18          MR. HOGAN:  That's fine, your Honor.

19          THE COURT:  Something simple.

20          MR. HOGAN:  Understood.  I will run that by debtors'

21   counsel, of course, and we'll, I'm sure, arrive at something

22   close to an agreed form of order.

23          THE COURT:  Okay, very good.

24          MR. HOGAN:  Thank you, your Honor.

25          THE COURT:  All right.  Thank you.
```

19

 1   And of course, we won't wait for the order to allow

 2   the participation.

 3   MR. HOGAN: Thank you.

 4   THE COURT: Okay. There was another matter that was

 5   uncontested, No. 3, in the base case, the Agreed Motion to

 6   Amend the Case Management Order for Estimation.

 7   Should we talk about that next?

 8   Mr. HIRST: We, we can, your Honor. Morgan Hirst

 9   again on behalf of the debtors.

10   In light of what's about to follow, this motion is

11   probably not a particularly big surprise. I will say the

12   genesis of this, the ACC reached out to both us, the FCR, to

13   Trane, the participants in the estimation, did suggest the one

14   year extension and we agree. You know, we did not think, with

15   due respect, that 11 months after we issued the subpoenas we

16   wouldn't have a, any information yet. So that's part of what's

17   necessitating it. There's, and there's plenty of discovery

18   going on in the case.

19   So we did ask by agreement for, basically, the

20   schedule from essentially where we were moving forward to be

21   extended by a year. And so the dates -- it -- it -- the dates

22   in the proposed CMO kinda reflect -- they don't kinda reflect

23   that. They do reflect that. And so it would, it would end the

24   -- it, it would basically set the end of written discovery for

25   August 1, 2024 --

20

```
 1            THE COURT:  Uh-huh (indicating an affirmative

 2  response).

 3            MR. HIRST:  -- is the date we agreed on and then the

 4  dates that flowed behind it will still flow behind it in the

 5  same way they did before.

 6            THE COURT:  Okay.

 7            Anyone else want to be heard on that matter?

 8            Mr. Guy.

 9            MR. GUY:  You know I have to say it, your Honor, that

10  we agreed very reluctantly.  You'll remember what we said when

11  this came up first time around, but there's nothing we can do

12  because the debtors don't have the trust information and

13  because they don't have the trust information, the Committee

14  doesn't have the claim files information.

15            So it's a chicken-and-an-egg problem, but we agreed

16  reluctantly.

17            Thank you, your Honor.

18            THE COURT:  Anyone else?

19       (No response)

20            THE COURT:  All right.  Since all are in agreement, I,

21  I'm not going to disagree.  Motion is granted.

22            Who's gonna do the proposed order there?  Y'all will

23  work it out?

24            MR. HIRST:  We'll take care of it, your Honor.

25            THE COURT:  Mr. Hirst.  Okay.
```

 1   All right. Are there any other preliminaries before

 2   we get to the main event, the debtors' motion for rehearing on

 3   sampling?

 4   MR. HIRST: None from the debtors, your Honor.

 5   THE COURT: Anyone feels the need for case updates or

 6   status reports or anything of that ilk?

 7   (No response)

 8   THE COURT: Okay. Then we'll call No. 2, the Debtors'

 9   Motion for Rehearing Concerning the Issue of Sampling on DCPF's

10   Subpoena-Related Motions and a variety of other joinders,

11   objections, and, and limited statements. So we won't read

12   through all of those. They're on the printed docket.

13   Debtors' motion. Wanna lead off?

14   MR. HIRST: We do, your Honor. Good morning again.

15   Morgan Hirst for the debtors.

16   I think we laid out in an e-mail to Chambers kind of

17   what --

18   THE COURT: Uh-huh (indicating an affirmative

19   response).

20   MR. HIRST: -- the parties, I think, have agreed or

21   certainly there's no objection to in terms of a, of an order

22   for this 'cause there's a lot. And so just -- I'm gonna

23   basically do a one-minute catch-up for you to remind you kinda

24   where we are and then we'll dive into -- you're gonna hear some

25   testimony today and some argument after the testimony.

 1   Your Honor remembers that these subpoenas date back to

 2   your Honor's order, I believe it was July 1st of last year,

 3   when you authorized us to issue these subpoenas based on a

 4   motion we had filed back in April. We served those right after

 5   the 4th of July and obviously have met motions to quash since.

 6   The DCPF case was transferred up here in September from the

 7   District of Delaware. Your Honor on November 30th entered the

 8   order denying their motion to quash, but limiting us to a 10

 9   percent sample. The Verus cases were also then transferred up

10   here from the District of New Jersey.

11   And so we are back. After the March 30th hearing we

12   had, or before that I should say, we filed our motion for

13   rehearing. Your Honor, I believe procedurally, granted our

14   motion for rehearing in that. You said you were going to

15   rehear the DCPF --

16   THE COURT: Uh-huh (indicating an affirmative

17   response).

18   MR. HIRST: -- motions to quash again on the issue of

19   whether or not the subpoenas will be limited to a sample or

20   whether or not you'll order full compliance with the subpoenas.

21   We understand and I believe Verus agreed and the Verus

22   Trusts agreed that they would be, they would participate, but

23   that they would be bound similarly or part of that motion

24   hearing that we're here today and that's certainly how the

25   parties have proceeded since that, since that hearing.

1   Since March 30th, your Honor, what you haven't seen,

2   other than maybe what you've read in the pleadings, the, the

3   Objectors, I'll call them generally, the Trusts and Claims

4   Facility, have retained an expert. We have an expert report

5   from Dr. Wyner. Dr. Mullin was deposed. Dr. Wyner was

6   deposed. Mr. Eveland, the CEO of Verus, was deposed.

7   Mr. Winner, the COO of DCPF, was deposed. You've seen the

8   additional briefing since then as well. The Objectors filed a

9   number of briefs in response. We filed a consolidated reply.

10   The FCR filed a reply as well.

11   And so today I believe, well, I certainly know the

12   debtors are gonna call Dr. Mullin to start off, I believe we'll

13   hear testimony as well from the Objectors, and then we'll

14   conduct oral argument at the end.

15   THE COURT: All right.

16   Others by way of opening? That -- everyone knows why

17   we're here?

18   (No response)

19   THE COURT: Okay, very good.

20   Call your witness.

21   MR. EVERT: Thank you, your Honor. Michael Evert for

22   the debtors.

23   We would call Dr. Charles Mullin to the stand.

24   And your Honor, since, since we're in evidentiary mode

25   today --

 1   THE COURT: Uh-huh (indicating an affirmative

 2   response).

 3   MR. EVERT: -- we'd ask, if there are any fact

 4   witnesses in the room, that we invoke the Rule.

 5   THE COURTROOM DEPUTY: Please place your --

 6   THE COURT: Pardon?

 7   MR. EVERT: If the --

 8   THE COURT: I couldn't hear you over the --

 9   MR. EVERT: I'm sorry, your Honor. Since we're in

10   evidentiary mode today, we would ask if there are any fact

11   witness in the room, we would invoke the Rule.

12   THE COURT: Who's here? Are we opposed?

13   (No response)

14   MR. GUERKE: Kevin Guerke on behalf of DCPF, your

15   Honor.

16   Is, is this a request for sequestration?

17   MR. EVERT: Yeah.

18   THE COURT: I think it is.

19   MR. GUERKE: I don't think we have an objection.

20   THE COURT: Okay.

21   We have a couple of conference rooms. There's some

22   benches out in the, in the way. We'll call you when we need

23   you, folks. All right.

24   (Prospective witnesses exit the courtroom)

25   THE COURTROOM DEPUTY: Place your left hand on the

 1 Bible and raise your right hand, please.

 2   DR. CHARLES H. MULLIN, DEBTORS' WITNESS, SWORN

 3   MR. EVERT: Your Honor, that's the first time

 4 anybody's ever said they couldn't hear me.

 5   THE COURT: I was hearing the people in between you

 6 and me better, so.

 7   Go ahead.

 8   VOIR DIRE EXAMINATION

 9 BY MR. EVERT:

10 Q   Would you state your name for the record, please, sir?

11 A   Charles Henry Mullin.

12 Q   And Dr. Mullin, would you tell me your educational

13 background?

14 A   I received my undergraduate degrees at the University of

15 California at Berkeley in mathematics and economics. I went

16 from there to the University of Chicago where I received a

17 Ph.D. in economics.

18 Q   And have you also participated in other ways in the

19 academic world?

20 A   I, upon getting my Ph.D., I accepted a position on the

21 faculty at Vanderbilt University. I was there for five years,

22 one year of which I took leave and was at UCLA.

23 Q   And have you published articles in the economic literature?

24 A   Yes.

25 Q   And what have those articles generally been about?

1 A   My areas of research focused on econometrics and labor

2 economics. So I was -- econometrics is really statistics

3 applied to the problems that economists face and most of my

4 work focused on what is referred to as robust estimation

5 techniques.

6 Q   Where are you currently employed?

7 A   Bates White, LLC.

8 Q   And what's your position at Bates White?

9 A   I'm the Managing Partner.

10 Q   And what does Bates White do?

11 A   Bates White is an economic consulting firm.

12 Q   Which means that, as a general rule, they provide

13 consulting in what areas?

14 A   We're fairly a diversified firm now. So we were founded

15 about 25 years ago and things like this courtroom and mass

16 torts is part of my focus. We have a finance practice. We

17 have a life sciences practice. We have -- probably anti-trust

18 work is about half the firm.

19 Q   Have you served as an expert witness previously?

20 A   Yes.

21 Q   Have courts in the past found you to be an expert in your

22 field?

23 A   Yes.

24 Q   And what is -- how would you describe your specialty?

25 A   I usually start with the tools and techniques. So

1 statistics, econometrics, economic modeling looking at economic

2 incentives. I've generally applied those in a mass tort

3 setting whether that's in frameworks that get into estimation,

4 on insurance coverage issues that, not all of those stem from

5 mass torts, but many of them do, but most of my work's been

6 either in a mass tort framework or in an insurance coverage

7 framework.

8 Q   Let me get you to expand a little bit on your mass tort

9 experience, if you would.

10 A   Okay. So when I first left academia in 2003 I initially

11 started working on what I think of as the 2000-to-2002

12 bankruptcy wave of asbestos defendants. I spent the first two

13 or three years largely working on bankruptcies like Owens

14 Corning, Armstrong World Industries, all focused on asbestos.

15 Most of my mass tort work stayed in an asbestos framework for

16 about the first ten years and over the last ten years has

17 really diversified across all sorts of products at this point.

18 Q   And what other mass tort, or maybe I should say it this

19 way. What other asbestos-related bankruptcies have you served

20 as an expert witness in?

21 A   So most settle before reports and testimony. Some don't.

22 So I've been retained as an expert in, probably, 20 or 30 at

23 this point of asbestos-related bankruptcies. How many of those

24 I formally served as a testifying expert, I'd have to go back

25 and look. I think Plant Insulation, Specialty Products Holding

 1 Company, I think Thorpe Insulation. I've been, I guess, in

 2 this case --

 3 Q   Right.

 4 A   -- at earlier stages. That's not gonna be -- there's more

 5 if I were to go back and go through the list.

 6 Q   And your retentions in those cases generally surrounds what

 7 type topic?

 8 A   In the bankruptcies, it's normally forecasting the number

 9 and value of future claims and the value of pending claims.

10 Q   Have you designed sampling methodologies in the past?

11 A   Yes.

12 Q   In, in a professional setting or in an academic setting, or

13 both?

14 A   Both.

15   MR. KAPLAN: Your Honor, I apologize. On behalf of

16 the Objectors, we don't have any intention of, of challenging

17 Dr. Mullin's qualifications as an expert to the extent that's

18 gonna help expedite the process. I --

19   MR. EVERT: I'm almost done.

20   MR. KAPLAN: Oh, okay. Just trying to move the day

21 along there for you.

22   THE COURT: Go ahead.

23   MR. EVERT: Thank you, your Honor.

24 BY MR. EVERT:

25 Q   The question was have you designed sampling methodology in

 1   the past and you said yes. And I, and I asked in a

 2   professional setting or in an academic setting, or both?

 3   A   Both.

 4   Q   Can you, as a, as a professional consultant, just can you

 5   give me one example?

 6   A   It's common to use sampling in both insurance coverage

 7   matters and mass torts, in a mass tort bankruptcy proceedings

 8   when those methods are appropriate for the context.

 9   Q   All right. And I've asked you here today, I think, to, to

10   talk, speak to the Court about whether or not a 10 percent

11   sample in the -- of the -- of the 12,000 claimants that have

12   been sought in the subpoenas to DCPF and Verus is appropriate

13   in this setting, is that, is that right? At least is that your

14   understanding?

15   A   That's correct.

16   Q   And have all the opinions you've formed been to a

17   reasonable degree of scientific certainty?

18   A   Yes.

19   Q   So in general, is sampling useful?

20   A   Absolutely.

21   Q   And when is it useful?

22   A   So sometimes, it's just necessary. You, you can't possibly

23   get access to all the information. Other times, it's a simple

24   cost benefit analysis. The more data you have, the less

25   valuable the next piece of information becomes, but if the cost

 1 of getting that data sometimes even gets more expensive, the

 2 more you seek as opposed to less expensive and there'll be a

 3 point where the value of the incremental information isn't

 4 worth the cost of getting it.

 5 Q   And is, in this case, is the 12,000 claimants that are the

 6 subject of the subpoenas to DCPF and Verus, is it, in a sense,

 7 already a sample?

 8 A   Yes.

 9 Q   Explain what you mean by that.

10 A   Well, the debtors' databases contain over 400,000

11 claimants. So 12,000 is already, in round numbers, 3 percent

12 of the universe of claimants the debtors have faced over the

13 years. The majority of that reduction comes from just focusing

14 on mesothelioma claimants and there was a decision made a, a

15 while ago to really focus the proceedings on the mesothelioma

16 claimants as they drive the vast majority of the money in the

17 case, but even within that group I requested that that get

18 further reduced.

19   So for example for Murray, 80 percent of the claims have

20 been dismissed historically without payment. And the subpoenas

21 only seek the claims that received payment, information on

22 those. So 80 percent of the mesothelioma claims were removed

23 from the request because they were dismissed by the debtor.

24   So it's about -- half the claims were dismissed by Aldrich.

25 So you have over half of the mesothelioma claims were removed

 1 from the request. And then the request starts in 2005 as

 2 opposed to going back into the 1990s.

 3 Q   So I take it from that that your opinion is that sampling

 4 is appropriate in some contexts and not in others, is that, is

 5 that a fair statement?

 6 A   Correct.

 7 Q   I, I think we made this clear in our papers, but I wanna, I

 8 wanna make it doubly clear for the Court.

 9   Could you offer the expert opinions that the debtors have

10 asked you to offer in this case if the Court were ordered that

11 you were limited to a sample of the Trust Data?

12 A   Yes, I can do all the work. I can -- the mathematical

13 equations remain the same. It's just that the answers will

14 have more uncertainty around them.

15   So you're really trading off precision, is what you're

16 giving up, not the ability to give an answer. You can still

17 give an answer. That answer will just have more uncertainty

18 about it.

19 Q   So am I correct that your opinion is that in this

20 particular instance it's appropriate that DCPF and Verus

21 produce the entire 12,000-claimant population as opposed to a

22 sample, is that right?

23 A   Correct.

24 Q   And why is that your opinion?

25 A   So it goes back to that same cost benefit analysis.

 1 | Whenever you reduce the data available to you, you're going to

 2 | introduce sampling error. That sampling error is going to

 3 | increase the uncertainty of any of the resultant advice whether

 4 | that's opinions on an estimation hearing or it's about

 5 | designing claims resolution procedures and making sure that

 6 | you're protecting future claimants sufficiently. It's gonna

 7 | create more uncertainty as you reduce the amount of data

 8 | available.

 9 | The tradeoff, then, is is that reduction -- if I take the

10 | totality of the 12,000 and I get more precision, is that

11 | greater precision worth the cost of the production. And then

12 | here, the cost to the facilities is actually fairly low in

13 | that, as I understand it, the debtors are funding for the

14 | actual monetary costs. So it's a very low cost relative to a

15 | material benefit.

16 | Q   So let me just break that down a little bit.

17 | Your, your, your cost benefit analysis on the one side has,

18 | the benefit is what?

19 | A   Twofold. More precise estimates in an estimation-type

20 | proceeding and the second side is a trust that's going to be

21 | able to be designed with a greater degree of confidence and

22 | provide greater protection to future claimants to ensure

23 | they're treated equitably relative to the pending claimants.

24 | Q   Okay. And we'll talk more about that in a minute.

25 | And then on the, on the cost side you're measuring what?

 1   MR. GUERKE: Objection, your Honor. Kevin Guerke for

 2   DCPF.

 3   Dr. Mullin hasn't been qualified as an expert in any

 4   particular field. We object to the extent that he is offering

 5   a so-called expert opinion on DCPF, the Trusts, and the other

 6   facility's costs or burden. He has no qualifications to do

 7   that.

 8   THE COURT: What do you say?

 9   MR. EVERT: Your Honor, we, we're not offering an

10   expert opinion on the exact costs that DC, that any of the

11   Trusts would have in terms of dollar costs. We're not trying

12   to, to quantify it. What we're simply trying to illustrate to

13   the Court is is that there's a cost benefit analysis on the one

14   hand. There's a, there's a benefit to getting more precision

15   and getting the full population, but that has some economic

16   costs associated with it.

17   So the, the term "cost" here is not direct dollars.

18   It's an economic cost.

19   THE COURT: That take care of your problem?

20   MR. GUERKE: That does not, your Honor. He, he's not

21   qualified to offer an opinion on the other side of that

22   analysis.

23   THE COURT: I think you're gonna have to lay a

24   foundation for that --

25   MR. EVERT: All right, your Honor.

 1   THE COURT: -- what he wants.

 2   MR. EVERT: All right.

 3   BY MR. EVERT:

 4   Q   So --

 5   THE COURT: Sustained.

 6   Mr. Guy.

 7   MR. GUY: I think we've got a procedural problem here,

 8   is that, unless I missed it, Mr. Evert hasn't actually had

 9   Dr. Mullins [sic] admitted as an expert --

10   THE COURT: Right.

11   MR. GUY: -- and, on the clear subjects.   So -- and no

12   one's contesting that he is an expert.

13   So maybe we can do that and then it will be clear what

14   his expertise covers.

15   MR. EVERT: Well, he's correct, your Honor, as, as

16   always with Mr. Guy.   I, I hadn't done that because I thought

17   we had already passed that point 'cause there was no objection.

18   So your Honor, we would offer Dr. Mullin as an expert

19   in the fields of economics, econometrics, statistics, and the

20   forecasting of asbestos-related liabilities and claims.

21   THE COURT: Anyone want to contest that?

22   MR. GUERKE: No, no, your Honor.

23   THE COURT: That's not the same thing as what you're

24   objecting to, I understand, but --

25   MR. GUERKE: Subject to our objection, your Honor, to,

 1 we don't have anything else to add, no.

 2   THE COURT: Does anyone else want to question

 3 certification as an expert witness?

 4   (No response)

 5   THE COURT: Okay. I will deem him an expert in the

 6 aforementioned areas.

 7   Now let's talk about the, what he knows about this.

 8 This could take some time, folks, and slow down what we're

 9 doing today. Is there a quicker way? We know that from prior

10 experience that Dr. Mullins [sic] has been looking at, at this

11 in three different cases. Is there a way to speed up the

12 objection? I understand he doesn't know the inside costs of

13 your, your clients as to what it takes to do this, but he does

14 know a good bit about what the process is both from DBMP and

15 Bestwall and, and now here.

16   So is there a, a workaround here or do we need to go

17 through the entire exercise?

18   MR. GUERKE: Your Honor, the, I believe the workaround

19 would be to not elicit testimony on the burden/cost piece in

20 which Mr. -- I'm sorry -- Dr. Mullin is not qualified.

21   THE COURT: That sounds like a rule from me and, and

22 we'll all be happy.

23   I'm gonna allow him to testify. I understand the

24 limitations and I'll let that go into the weight of what I

25 consider here.

1   So go ahead.

2   MR. EVERT: Thank you, your Honor.

3   DIRECT EXAMINATION

4   BY MR. EVERT:

5   Q   The question I think, Dr. Mullin, was you, you described

6   what the benefits of the entire population of -- of -- I'm

7   sorry -- of getting the entire population of 12,000 claimants.

8   When you do your cost benefit analysis as a statistician,

9   what are you looking at on the cost side?

10   A   I am principally focused on two items, the monetary cost,

11   monetary cost of actually producing the data, and then the

12   issue that's been raised as the potential for inadvertent

13   disclosure of PII, or personal information, of claimants or

14   really, not the 12,000 claimants, *per se*, but individuals not

15   on that list that might get inadvertently included.

16   Q   Okay. So, so what are the downsides of using a sample of

17   the Trust Data in this instance?

18   A   So the downside is going to be that when you move from

19   12,000 to 1200 claims, for many questions that could leave you

20   with a very small sample of claims to work with. So not every

21   question of interest applies to the whole universe of

22   claimants.

23   So some questions may apply. You could make up two select

24   claimants in only certain jurisdictions. Some may apply to

25   claimants only in certain industry or occupation groups. And

 1 so you don't actually get to work with the entire set of, if

 2 you took a 10 percent sample, 1200 claimants to address every

 3 question and frequently, or what's typical -- we haven't done

 4 all the work here yet -- but what's typical is you end up

 5 categorizing claimants into different exposure groups and you

 6 forecast separately the value and the number of claims in each

 7 of those groups and most debtors or most asbestos defendants

 8 have some small groups of claims that get the highest values

 9 and getting those small groups accurate is really important to

10 get your overall forecast to be accurate.

11   And so if that group, for example, is only 5 percent of the

12 claims and you have 12, 12,000 claims as a sample, you might

13 only have 60 claims in that group and 60 is not that many to

14 work with, right? So if you have a question that applies to

15 the entire population, 1200 may well be enough and there's

16 certain questions where that's actually what I'm intending to

17 use. There's other questions, though, where that extra 90

18 percent of information is going to round out your sample counts

19 to the point where you can address questions that otherwise you

20 may not be able to reliably address.

21 Q   Don't the debtors already have this information in their

22 database?

23 A   The debtors have some information in their database. So

24 these are all claimants, for example, where we know the name,

25 we know the Social Security number. There's a lot of

 1 information we have or they wouldn't be in the initial request.

 2   What they don't have is a complete work history or

 3 occupational exposure history of claimants and they don't have

 4 that for a number of reasons. One, they don't always collect

 5 it for every claim. Two, even what local counsel has may or

 6 may not have been put into electric, electronic form in the

 7 database. So those records aren't going to be complete and so

 8 we get some information, but not all.

 9   And part of what's going on here, too, is to see, where

10 that information was sought, did the debtors possess the full

11 information set of all the exposures that the Trusts ultimately

12 received or did they only receive a subset of that, is one of

13 the questions it's intended to address.

14 Q   Would you expect the, well, I should say this.

15   Is, is there a possibility that the, that the data from the

16 Trusts in terms of exposure information and the like that

17 you've just described will differ from that in the debtors'

18 database?

19 A   It, it's gonna absolutely differ even if there's -- if, if

20 the question of when sought if they received full information.

21 So the answer to that is yes and post the Garlock ruling,

22 debtor always received full information. They don't seek it.

23 They don't ask that question every time.

24   So if I need to forecast how many claims are in a high-

25 exposure group, I need to know how many claims from, say, one

 1   of the group settlement deals that were not a high-exposure

 2   group and the debtors' database won't contain that for me, but

 3   the trust information will. So it compliments and builds upon

 4   the information that's already available in the debtors'

 5   databases.

 6   Q   So the Permitted Purposes for the use of the data in the

 7   subpoena talk about a number of things. One, one is estimation

 8   and I think a minute ago you, you started talking about how you

 9   might use this information in estimation.

10   Would you expand on that? How, how would you use this

11   information in estimation?

12   A   So I'm gonna completely oversimplify estimation for a

13   moment. You could think of it as you're giving a forecast of

14   how many compensable claims there's gonna be and then you

15   multiply that by what's the average value each of those claims

16   will get. You actually wanna break that down to subgroups to

17   do it accurately but if you think about it, is you're

18   multiplying these two estimates together. When you multiply

19   two estimates together, the uncertainty compounds and if the

20   first has a three-fold range and the second has a three-fold

21   range, then the product has a nine-fold range. Well, if the

22   first only has a two-fold range, the second has a two-fold

23   range, the product has a four-fold range.

24   So the uncertainty is multiplicative in that nature when

25   you're multiplying two estimates together. The Trust Data is

 1   going to help estimate both of those parameters. It's going to

 2   allow us to get a better forecast of the number of claims and

 3   hence reduce the uncertainty in the number of claims. It's

 4   also going to allow us to get a better estimate of the value of

 5   claims.

 6   So it's gonna reduce the uncertainty in both of those. And

 7   so through both of those avenues it's going to give us a more

 8   precise estimate of the future.

 9   Q   This multiplicative analysis, can -- can you -- can you put

10   that into terms? I mean, you're, you're talking about a range

11   multiplied by a range, is that what you're talking about?

12   A   In essence, the uncertainty, right? You can think of each

13   one having a confidence interval around it and those two

14   confidence intervals interact with each other. And so you're

15   getting -- when, when your estimation methodology multiplies

16   two different pieces together, you get a multiplicative effect.

17   When your estimation methodology is A plus B equals C, you get

18   an additive effect.

19   So whether these are multiplicative or additive depends on

20   how you're going through an estimation but in this context, we,

21   as I said, it's a bit oversimplifying, but it's just you're

22   multiplying value by count. And so, you know, we could go

23   through all the details of it, but it's effectively

24   multiplicative.

25   Q   And then among the other Permitted Purposes in the subpoena

 1 for the use of this data has to do with plan confirmation, plan

 2 feasibility, and the like.

 3   How would you intend to use this data in that context?

 4 A   In that context, the plan usually specifies the value of

 5 claims. And so you're really focused on getting the count of

 6 claims correct 'cause that's the place where the uncertainty

 7 remains and forecasting the count of what would have been

 8 claims from 2021, that is usually not too much disagreement

 9 around going one year into the future from your last ten years

10 of history and we're not gonna have a lot of uncertainty there.

11 If I had a 10 percent sample, could I forecast 2021 claims?

12 Yes. 2030 claims are getting more uncertain. The claims that

13 are diagnosed in 2040, you get a lot more uncertainty 20 years

14 into the future. And what it's really doing for you is getting

15 you better forecasts for the years farther out which allows you

16 to better protect those future claimants. If you overpay the

17 pendings relative to -- if you underestimate the number of

18 futures, you'll overpay pendings relative to them, but there's

19 no way to get that money back in 2040 and then the pendings are

20 left, or the futures are the ones left suffering the

21 consequence of that.

22   So you know, in some ways that's the real risk. What are

23 you -- are you gonna be there? Does your plan properly protect

24 those future claimants?

25 Q   All right. Let me try to break both of those down a little

 1 bit.

 2   So one, one of the things that's been of, of great

 3 discussion in this case has been this idea of nondisclosure of

 4 exposure information in the tort system that may result in, in,

 5 in settlements without full information, let's put it that way.

 6   Is that one of the reasons for which you would use this

 7 information?

 8 A   Yes.

 9 Q   And in that particular instance, would you, do you benefit

10 greatly from the entire population versus a 1200-claimant

11 sample?

12   MR. GUERKE: Objection, your Honor. This, this is

13 leading. I mean, we've let some questions go, but it's -- at

14 some point we -- yeah.

15   THE COURT: Sustained.

16   MR. GUERKE: Thank you.

17   MR. EVERT: Okay.

18 BY MR. EVERT:

19 Q   Can you tell us whether or not you would, you would have

20 great advantage from a 12,000-claimant sample versus a 1200-

21 claimant sample for this issue of evidence nondisclosure?

22 A   For that question in particular, it really won't make a

23 difference. The nondisclosure needs two pieces in the

24 analysis. It needs to look at the set of information that the

25 Trusts possess. It needs to compare that to what was the, what

 1 was revealed to the debtor. And as I mentioned earlier, not

 2 all the information that's revealed to the debtor ultimately

 3 ends up in the debtor's claims database.

 4   So to do that comparison, you have to go get the underlying

 5 claim file documents from the debtors, review those documents,

 6 and extract information. That's an expensive process to

 7 collect the files and get them into electronic form. That's,

 8 typically, thousands of dollars per file of costs. So in that

 9 framework, I've proposed designing a sample of historical claim

10 files. That is going to be about 1200 claim files.

11   So as long as those are the same claim files as the Trust

12 Data -- so it's the same 12 -- the two line up, then I could do

13 that comparison on all 1200. The other 90 percent really isn't

14 being used for that purpose. It's being used for other

15 purposes.

16 Q   Would that use of the 1200-claim sample in that particular

17 instance, can you tell us whether or not it would have as much

18 precision as using the entire pop, the entire 12,000-claimant

19 population?

20 A   If you use the entire 12,000-claimant population, it would

21 be more precise. You have ten times the sample and, you know,

22 that's more, gets back to the cost benefit analysis. It costs

23 thousands of dollars, sometimes more than $10,000, to get an

24 individual claim file and turn it into electronic form.

25   So the cost benefit -- it's the cost side that's changing.

 1 The cost of getting the incremental record in that case is very

 2 high for the claim files as opposed to the Trust Data where the

 3 cost is low.

 4 Q   So the -- if you would, tell the Court what the result of

 5 the cost benefit analysis is in that particular instance, to

 6 the extent that you haven't already made it clear.

 7 A   You know, I have recommended a sample of the claim files

 8 because the cost is so high per record and -- yeah, that's the

 9 defining difference between that and the Trust Data.

10 Q   So when we start talking about the use of this data in plan

11 confirmation/plan feasibility, can you tell us whether or not

12 you would gain substantially from the entire claimant

13 population versus a sample?

14 A   So what the extra 90 percent's gonna give me is more

15 complete work history information for another close to 11,000

16 claimants. That's going to allow me to do the analysis by

17 industry and occupation. That's going to allow me to address

18 questions by plaintiff lawyer or jurisdiction in that when I go

19 to those subpopulations I'll still have enough data within

20 those subpopulations to give reliable opinions, while if we

21 reduce that down to 10 percent -- and so we have 1200 claims --

22 for many of those subpopulations I'll no longer have a

23 sufficient sample size to give reliable opinions for those

24 subpopulations.

25 Q   And why are industry, occupation, why -- why -- why are

 1   they important?

 2   MR. GUERKE: Objection, your Honor. He's leading

 3   again. We don't know if they are or are not important.

 4   THE COURT: Well, I think that's been pretty clear

 5   from all the pleadings that have been filed so far. I'll let

 6   that one go.

 7   Go ahead.

 8   Overruled.

 9   You can answer.

10   THE WITNESS: The number of alternative exposures is

11   strongly correlated with industry and occupation. The

12   likelihood of exposure to a given defendant's products is

13   correlated with that.

14   So the typical amount received in compensation or

15   whether compensation's received at all are, vary by the

16   industry and occupation of claimants.

17   BY MR. EVERT:

18   Q   In your work, can you tell us whether or not you use

19   industry and occupation and other information in terms of the

20   forecasting of the likelihood of claims in the future?

21   A   Correct.

22   So if I take one step back, the kind of actuarial curve of

23   how many future claims you're gonna receive is very different

24   for these different industry and occupation groups. So if I

25   take the extremes, shipbuilding, its peak incidence for

 1 mesothelioma is about 20 years prior to the peak incidence of

 2 mesothelioma for construction and those are kind of the

 3 bookends. And then different industry-occupation groups fall

 4 anywhere between.

 5   So depending on a given debtor's concentration of which

 6 industries and occupations they're paying money to depends, can

 7 make as much as a 20-year difference of how far down the

 8 actuarial curve you are. And so if you wanna be predicting how

 9 many claims you're gonna get 10, 20 years in the future, you

10 can't just take the national average curve. You have to be

11 able to break it down into the different subgroups and then see

12 how much is on a curve that's maybe ending 20 years sooner and

13 how much of that liability sits on a curve that ends 20 years

14 later. And there's enough -- that's the uncertainty that

15 you're really able to minimize when you can really do the

16 detailed analysis at an industry and occupation level.

17 Q   And you've mentioned industry and occupation. Are there

18 other, is there other data that would improve, in other areas,

19 that would improve the debtors' database that the Trusts hold?

20 A   So in -- so as I understand, the plaintiffs' theory of the

21 case is, really, what would they have received in the tort

22 system. And that varies a lot by plaintiff attorney. That

23 varies a lot by jurisdiction.

24   So similarly, you'd want to, when addressing that question,

25 you'd want to be able to break down and treat claims separately

 1 | depending on the jurisdictions and plaintiff law firms that

 2 | represent them. So again, you're gonna want to break it down

 3 | to subgroups and be able to do the analysis on those

 4 | subpopulations.

 5 | Q   And can you expand for just a minute on this issue of

 6 | subgroups and subpopulations in a 1200-claimant sample setting

 7 | versus a 12,000-claimant sample setting?

 8 | A   Yeah.

 9 | So this, this is, at least at one level, where I don't

10 | think the two statisticians are in different places. If you

11 | have 1200 claims in the group that you care about, going from

12 | 1200 to 12,000, is that gonna fundamentally change my ability

13 | to give an answer to that question? Not really, you know, when

14 | I wanna break down and look at a subgroup that's 2 percent or 5

15 | percent of the whole population. And so I'm starting with 600

16 | claims or 300 claims in the entire population and then you take

17 | a 10 percent same of that. Now I have 30 or 60 claims in that

18 | subgroup. That really does start to impair your ability to

19 | address questions.

20 | And so it's really when you're analyzing subpopulations,

21 | not all the claims in totality that this comes in and binds of

22 | going to 10 percent of the requested 12,000 claims.

23 | Q   Can you, for me, use occupation as an example of what you

24 | just described?

25 | A   So in this framework you might want to break out insulators

 1 or pipefitters and it turns out there actually weren't that

 2 many insulation workers in the country, you know. It's

 3 probably ten times as many pipefitters.

 4   So if I'd said, if I needed to distinguish between an

 5 insulator and a pipefitter, my insulator group's gonna have

 6 about a tenth the number of people in it as my pipefitters. So

 7 where I may on a 10 percent sample have 50 pipefitters, I may

 8 only have 5 insulators at that point. And so I'm concerned

 9 about when you go down to these different subpopulations, you

10 know. Until you get the data and until you've done the work,

11 you don't know exactly which subpopulations are gonna be the

12 ones of interest.

13   So I can't tell you I need to break out pipefitters and

14 look at them separately right now 'cause I don't have the data

15 that allows me to answer that question yet. That's part of

16 what the discovery is going to give me, you know. But I do

17 know from having done this a whole bunch of times that,

18 ultimately, you're gonna break 'em down into different exposure

19 groups and want to analyze those exposure groups separately.

20 Q   So could you, could you reach those forecasts with just a

21 sample?

22 A   Again, you can do the math. So you'll get a forecast.

23 You'll just have a lot more uncertainty. That forecast may

24 ultimately not do it by certain subgroups or it may force you

25 to put them into, where you'd really like to break one group

 1 into two, it may force you to leave 'em combined and that's

 2 gonna increase the uncertainty of the final opinions. You'll

 3 still get -- the math works. It just has an uncertainty factor

 4 that comes out of that math, too, and that grows as you reduce

 5 the sample size.

 6 Q   And what is the risk that that uncertainty brings?

 7 A   I mean, to me, the biggest risk is to the future claimants

 8 because if you aren't as confident in the number of claims

 9 you're getting going into the future, you're not as confident

10 you're going to treat those future claimants equitably to the

11 pending claims.

12   It's also gonna create uncertainty, a wider range of

13 confidence in estimates in an estimation hearing. Ultimately,

14 the parties, you'll get a ruling or the parties will compromise

15 that issue, you know, but the number of future claims, the

16 parties can't compromise today. That's something that's gonna

17 play out through time. And so I think that's the place where

18 that risk is going to persist, kind of, for years to come.

19 Q   And in your experience can you tell us whether or not that,

20 that risk also extends to certain claims in a, in a trust

21 setting?

22 A   Correct.

23   In the trust setting, that's really the one remaining risk,

24 is how many claims are you going to get through the future that

25 fall into the different valuation categories and if you

 1 underestimate those, and particularly if you underestimate the

 2 number of high-value claims in the future, you'll end up in a

 3 world where you underpay the pendings relative or -- sorry --

 4 underpay the future claimants relative to the pending and if

 5 you think the more uncertainty you have, the greater your range

 6 is for the number of future claims, which means the greater the

 7 possibility is that you get it incorrect.

 8 Q   And in that, in the trust setting, what is typically the

 9 payment structure in terms of equality? Are the -- are the --

10 is -- are the claims paid the same amount?

11 A   So that varies by trust design. So many trusts have

12 scheduled values and those scheduled values is what 75, 80

13 percent of the claims will receive. If the style of trust,

14 let's say the Western Asbestos Trust or the Garlock Trust

15 differentiates claims to a large degree upfront. It doesn't

16 just have a scheduled, the same scheduled value for numerous

17 claims.

18   So it really is differentiating and the trusts historically

19 that have done that differentiation have better protected the

20 futures. You see that those are the ones that, typically, have

21 maintained or increased the money that claimants get going

22 forward. Those that have, just had one scheduled value for the

23 vast majority, most of those trusts have seen the payment

24 percentage decline through time.

25 Q   And in your study of those trusts, can you tell us whether

 1 | or not the highest-claim values have large or small number of

 2 | claims?

 3 | A   It's typically small. And you -- the highest-value claims

 4 | is usually fairly specific circumstances that lead a large

 5 | liability share for any given one defendant.

 6 | So you tend to have a small number of claims in the

 7 | highest-value categories which means those are the hardest to

 8 | estimate 'cause you have the least data and that's where the

 9 | sample would be most binding and create the most uncertainty.

10 | Q   And how is that? How is it that a sample would be, would

11 | create less uncertainty in the instance you just described?

12 | A   I think you meant more.

13 | Q   Oh, I'm sorry. That's right.

14 | A   It's -- as I said, you're looking at a very small subgroup

15 | and whenever you have a small subgroup, if you now take a

16 | sample of a small subgroup you're gonna be, probably, looking

17 | at tens of claims and you'd really much rather be looking at

18 | hundreds of claims to address these questions.

19 | Q   Okay. So as the subpoenas are drafted, Dr. Mullin, if the

20 | Trusts were to produce this data, does it involve a production

21 | of a significant amount of PII, or personal information?

22 | A   So in general, no. The Trusts -- the -- there's a matching

23 | key. So for the 12,000 claimants, the information at this

24 | point that goes back and forth doesn't contain their PII.

25 | That's been removed with an, a number that's the matching key.

1   So the potential risk is third-party PII, you know, not the

2   claimants' PII themselves.

3   Q   Did -- well, let me ask. In -- in -- can you tell us

4   whether or not in the debtors' database the debtors have the

5   claimants' PII?

6   A   For the 12,000 claimants, they have to. The request was

7   limited to individuals for which the name and Social Security

8   number were already known and that's how the matching was

9   performed to, so that they could get a reliable match with the

10 Trust Data.

11 Q   And in your review of the debtors' database, can you tell

12 us whether or not it would also include non-claimant PII?

13 A   The debtors' database has non-claimant PII in it as well.

14 Some of that may overlap with the non-claimant PII in the trust

15 database. Some of it may not.

16 Q   And what is your understanding of the responsibilities of

17 the parties affected by this subpoena in terms of any potential

18 PII to --

19   MR. KAPLAN: Objection, your Honor. Dr. Mullin has

20 not been offered as an expert in data privacy, in any type of

21 privacy. Also, is not a lawyer and can't opine on what the

22 responsibility of nonparties or parties would be.

23   MR. EVERT: Your Honor, I'll rephrase.

24 BY MR. EVERT:

25 Q   What are Bates White's responsibilities under the subpoena

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 1 for PII?

 2 A   So when the production comes from a party to Bates White,

 3 Bates White has an obligation to review that for any

 4 inadvertent PII and if we locate any such PII, to remove that

 5 permanently from the data.

 6 Q   And is that whether or not the party from whom the data has

 7 come has already attempted to remove the PII?

 8 A   Correct.

 9 Q   To this point, the only third-party data like, similar to

10 this in this case that you've received is the Paddock data, is

11 that correct?

12 A   Correct.

13 Q   Can you tell us whether or not there was any PII

14 inadvertently disclosed in the Paddock data?

15 A   There was none.

16 Q   All right.

17   So Dr. Mullin, I'm sorry. If you could just, again,

18 quickly walk me through the process of, as you understand, the

19 way the subpoena directs the parties handle the data.

20   MR. KAPLAN: Objection, your Honor. Dr. Mullin is not

21 a lawyer and cannot opine on what the subpoenas require or

22 don't require That's --

23   THE COURT: His understanding what it says.

24 Overruled.

25   THE WITNESS: So my understanding of the process is

 1 each, start with the Delaware Facility. They went through and

 2 elected to redact information themselves prior to it being

 3 produced in DBMP. My understanding is they intend to do the

 4 same thing here, which is to go through and redact on their own

 5 first and then it'll get produced to Bates White who then will

 6 go through, look to see if there's anything they missed, and do

 7 another round of redaction. As that process was described in

 8 the depositions, that is, effectively, a double-blind review

 9 process. So they had one person go through and then it went

10 to, if they didn't find any PII, there was a second person who

11 reviewed to check if they missed something. And double-blind

12 processes, in general, capture 99 plus percent of the

13 information.

14   So as I understand that process, the testimony was

15 there were thousands of records with PII, you know. It's not

16 clear whether thousands in that is thousands or 20,000, exactly

17 what number, but even if I assume that's tens of thousands, if

18 99 percent of it gets redacted in that double-blind process

19 that the Facility's going through, tens of thousands becomes

20 hundreds and then Bates White does a similar procedure which

21 means hundreds become ones.

22   So the number of individuals with PII that would

23 remain, you'd expect to be under ten, you know, somewhere in

24 zero-to-ten range. It was zero in Paddock. It was zero,

25 actually, when it arrived to Bates White in Paddock. But you'd

 1 expect a zero-to-ten and you'd expect, based on the testimony

 2 for the most part, that to be claimant names, not Social

 3 Security numbers.

 4 BY MR. EVERT:

 5 Q   So if after that scrubbing process that you just described

 6 occurs -- well, after that scrubbing process you described

 7 occurs, what would then have to happen for the, there to be an

 8 inadvertent disclosure or publication of personal information

 9 of a nonclaimant?

10 A   Once that's in the possession of Bates White, presumably

11 that could also end up in the possession of Ankura and LAS, the

12 other two consulting firms that are involved, and you'd need a

13 data breach at one of those firms for that information to get

14 into the public domain.

15 Q   And if such a data breach occurred, what would the, what

16 would be the expectation in terms of the amount of disclosure

17 of PII?

18 A   We have a lot of data loss prevention systems in place. So

19 hopefully, to the degree it -- we've never had a data breach --

20 hopefully, that would get caught long before the totality of

21 the data was taken off of Bates White's systems. But if

22 somebody were able to get the totality of the information,

23 they'd have PII for the 400 plus thousand claims, you know,

24 claimants that are already in the debtors' databases, plus, you

25 know, maybe as many as ten more people that are the third

 1 parties that came through the trust information, to the degree

 2 those parties weren't already in the debtors' data that Bates

 3 White already possesses.

 4 Q   So what sort of security certifications does Bates White

 5 hold in order to keep data of this type?

 6 A   We have a SOC 2 certification, which is really, comes out

 7 of accounting procedures and we have a HITRUST certification,

 8 which is really focused on HIPAA, principally motivated by our

 9 life sciences practice which deals with a lot of health care

10 information, but we've implemented that firmwide.

11   So HITRUST is, arguably, the highest certification you can

12 have in the market at the moment and it has, I forget the exact

13 number, more than 500. I think it's 600 and some odd controls

14 you have to go through and vet. We have certified third

15 parties who also come in and stress test your systems on a

16 regular basis.

17 Q   And across its various practices and its various

18 litigations that Bates White is involved in, can you tell us

19 whether or not you have routinely been subject to

20 confidentiality and protective orders issued in litigation?

21 A   It's part of our daily work.

22 Q   Has Bates White ever been cited for a breach of any of

23 those orders?

24 A   No.

25 Q   We talked a minute ago about the production of similar data

 1 in the DBMP case. Have you become familiar with that?

 2 A   I am familiar with that.

 3 Q   And in that particular instance is it your understanding

 4 that the data requested in the very subpoenas was very similar?

 5 A   Yes.

 6 Q   And do you know what the cost was for DCPF to scrub that

 7 data as you described just a minute ago?

 8 A   In round numbers, the invoice was around $85,000.

 9 Q   And would your expectation be, or do you have an opinion or

10 do you know whether or not that would be a similar cost in this

11 instance?

12   MR. KAPLAN: Objection, your Honor. Same, same

13 objection as before. He's not qualified to offer an opinion.

14 It's also speculation, honestly.

15   THE COURT: I don't think you've got enough of a

16 foundation for that. Sustained.

17   MR. EVERT: All right. Thank you, your Honor.

18 BY MR. EVERT:

19 Q   Are the debtors' databases or the trust -- I'm sorry. Let

20 me start again.

21   In your review of the Trust Data are, have you become

22 familiar with the trust databases?

23 A   I'm familiar with the extracts that come from the Trusts.

24 Q   That is to say that what I'm asking, are you familiar with

25 the way the data is organized?

 1 A   As produced to Bates White, I am familiar with it.

 2 Q   And in your review and preparation have you reviewed the

 3 depositions of the DCPF and Verus management in regard to the

 4 way they went through this process and the way their databases

 5 are organized?

 6 A   Yes.

 7 Q   And with your experience in database management, has that

 8 put you in a position where you can render an opinion about

 9 what would the approximate cost be for the scrubbing of the

10 data requested by these subpoenas for DCPF and Verus?

11   MR. GUERKE: Same objection, your Honor. One, it

12 calls for speculation. There's no foundation. He's not an

13 expert in, in future costs of my client's business operations.

14   MR. ANSELMI: Same objection with respect to Verus.

15   THE COURT: Noted, but overruled.

16   You may answer.

17   THE WITNESS: In general, I'd expect comparable, if

18 not slightly lower, costs. The -- as described by their fact

19 witnesses, at least for the Delaware Facility, part of that

20 cost was setting up an internal tool that was built that they

21 intend to reuse if they, for whatever production is done here,

22 whether that's the 10 percent sample or the totality. So

23 they've already incurred some of the fixed costs of setting up

24 the procedures to go through this type of review. Presumably,

25 you don't need to do those fixed costs a second time.

1   So this request is slightly larger. It's 12,000

2   claimants as opposed to 9,000 claimants. So that would

3   cause -- you'd expect it to go up by about a third just on

4   count, but then there's some efficiencies already of the fixed

5   costs and to a degree, there's overlap in the claimants, which

6   there is a degree of overlap between the actual individuals

7   that were requested. Presumably, they could merge in the

8   redaction that was already done for DBMP as opposed to redoing

9   the redaction on the same claimants. But even if they didn't

10   do that, comparable, maybe slightly lower.

11   BY MR. EVERT:

12   Q   But to be clear, that only applies to DCPF, correct, not to

13   Verus?

14   A   Correct.

15   Q   So in sum, Dr. Mullin, why is this Trust Data one for

16   which, in your opinion, the 1200-claim sample should not be

17   used?

18   A   The costs are relatively small. We said, you know,

19   everybody's PII is important. We are talking about at the end

20   of the scrubbing process zero-to-ten people's, you know, likely

21   just claimant name, as being inadvertently produced at the end

22   of the day.

23   Contrasting that with, you know, the uncertainty that going

24   to a 10 percent sample's going to inject into the process both

25   from an estimation perspective, but, probably even more

 1 importantly, a plan design and protecting future claimants and

 2 kind of ensuring equitable treatment between future and pending

 3 claims.

 4 Q   So do you have an opinion upon, about it, whether in this

 5 instance the cost benefit analysis mitigates towards the

 6 benefits far outweighing the costs?

 7 A   Yes. I -- in my opinion, the benefits far outweigh the

 8 costs in this and all the data should be produced.

 9 Q   Thank you, Dr. Mullin. Those are all the questions I have.

10 A   Thank you.

11   THE COURT: My sense was that the FCR, more or less,

12 supported this motion. Do you want to ask questions?

13   MR. GUY: I'd like to ask a couple, your Honor.

14   THE COURT: Please.

15   Thought we'd go ahead and get supporters and

16 detractors in that order, so.

17   DIRECT EXAMINATION

18 BY MR. GUY:

19 Q   Dr. Mullin, good morning.

20 A   Good morning.

21 Q   What is your familiarity with the trust information that

22 was provided in the Garlock bankruptcy case?

23 A   At a point in time I knew it decently well, but that case

24 ended a long time ago. So I have a general-level understanding

25 of it still.

 1 Q   Do you understand that that trust information was produced

 2 in the Garlock bankruptcy case?

 3   THE COURT: Hang on.

 4   MR. GUERKE: Your Honor, we have an objection to the

 5 FCR asking questions in, in this proceeding.   It's a

 6 miscellaneous action filed in Delaware that was transferred to

 7 North Carolina against our consent and the FCR has not

 8 intervened or moved to join the proceeding and it's our view

 9 that it's improper for the FCR to make argument, to comment,

10 and certainly to question a witness.

11   THE COURT: I understand the technical argument, but

12 I'm overruling that.   My practice, generally, is to, to be

13 overinclusive on allowing parties to participate in a case that

14 had, particularly one that, while a defined miscellaneous

15 proceeding, that has case-wide effect.

16   So go ahead.

17   MR. GUY: Thank you, your Honor.   And I would add

18 we've already argued in our papers and no one moved to strike

19 them.   So a little late on that one.

20 BY MR. GUY:

21 Q   Dr. Mullin, are you aware of what's occurred in the Garlock

22 case in terms of payments increasing or decreasing?

23 A   Yes.

24 Q   And have they increased or decreased?

25 A   My understanding is that the payment amounts increased in

 1 the Garlock Trust.

 2 Q   Thank you.

 3   MR. GUY: No further questions, your Honor.

 4   THE COURT: Any other parties supporting the debtors'

 5 motion?   Affiliates have any questions of this witness?   Good?

 6   (No response)

 7   THE COURT: All right.   Then we'll get cross.

 8   In case everyone knows, North Carolina practice allows

 9 you to examine a witness from the table --

10   MR. KAPLAN: Oh.

11   THE COURT: -- from the counsel table if that's more

12 comfortable, but you're welcome to use the, the podium if that

13 is more in tune with your practice.

14   MR. KAPLAN: It, it is.   Thank you, your Honor.

15 Michael Kaplan from Lowenstein Sandler on behalf of the Verus

16 Trusts.

17   CROSS-EXAMINATION

18 BY MR. KAPLAN:

19 Q   Good morning, Dr. Mullin.

20 A   Good morning.

21 Q   We've met before, correct?

22 A   Correct.

23 Q   Had the privilege of taking your deposition in Washington,

24 DC, right?

25 A   Correct.

 1   Q   I wanna start off by seeing if we can find some areas where

 2   we agree before, inevitably, we disagree, okay?

 3   A   Okay.

 4   Q   We agree that the number of claimants that would be called

 5   for in the sample is 1,200 claimants, right?

 6   A   Correct.

 7   Q   Out of a possible 12,000 claimants, correct?

 8   A   Possible, out of the 12,000 that were requested in the

 9   subpoena.

10   Q   Right. Okay.

11   Now you said a few moments ago -- I think you actually

12   answered it a couple times -- that, "Yes, I can do all the

13   work," when asked the question about whether or not you can do

14   the math, right?

15   A   Correct.

16   Q   So the 1,200 claimants is sufficient in order to do the

17   math, right?

18   A   Tech -- any number of claimants you can run the math on.

19   That's -- the question comes down to how much uncertainty will

20   exist in the result that that math produces.

21   Q   Right. No. I, I certainly understand your testimony and

22   my question was just focused on can you do the math, yes or no,

23   and I think the answer is yes, right?

24   A   You can, you can use the mathematical formulas, that's

25   correct.

1 Q   Okay. And you can use the math in order to estimate the

2 future liabilities, right?

3 A   Correct.

4 Q   You can use the 1,200 claimants in order to forecast and

5 design a plan, Correct?

6 A   Correct.

7 Q   You can use it to determine whether or not the debtors have

8 been, whether or not there were sampling -- excuse me --

9 disclosure issues in the previous histories, correct?

10 A   Correct.

11 Q   So the 1,200 claimants is sufficient to do the math?

12 A   To execute a mathematical formula, yes.

13 Q   Okay.

14   Now a number of times you talked about the fact that you

15 had these, I think you called them subpopulations. Do you

16 recall being asked those questions?

17 A   Yes.

18 Q   Okay. The question about subpopulations, are you doing an

19 estimate of a particular subpopulation?

20 A   For many of the tasks, yes.

21 Q   Okay. Are you -- am I -- let, let me see if I can ask you

22 a better question, which is when you come to court is your

23 total estimation of the debtors' liability going to be broken

24 down by a specific subpopulation?

25 A   So at it's most basic level, that's by agreement at the

 1 moment just looking at mesothelioma claims --

 2 Q   Right.

 3 A   -- which is what has allowed us to reduce this request from

 4 hundreds of thousands to tens of thousands.

 5   So in that sense, we're focusing on only mesothelioma and

 6 then ultimately, the subpopulations will have different

 7 treatments under the debtors' theory versus the plaintiffs'

 8 theory of how you should value claims.

 9 Q   So is it your testimony that someone who used Law Firm A is

10 going to be treated differently than someone who used Law Firm

11 B?

12 A   Under the plaintiffs' theory of what would you have been

13 paid in the tort system, that's absolutely what happens.

14 Q   I'm asking you when you do your estimate. You said that

15 one of the purposes of your, of this exercise is is you wanna

16 be able to estimate the debtors' future liability.

17   Are you going to provide, is it your testimony that you're

18 going to provide the Court with an estimate which says that

19 people who used Law Firm A should be paid this amount and

20 people who used Law Firm B should be paid this amount?

21   MR. EVERT: Your Honor, I'd just raise an objection.

22 I don't think it's appropriate to ask what he's going to

23 provide, ultimately, in estimation. I think it's, it will be

24 fair game to ask what he might do or what -- what -- what

25 things he wants to study, but a precise description, we don't

 1 know yet, so.

 2   THE COURT: With that *caveat*, can you answer the

 3 question?

 4   THE WITNESS: Yes.

 5   THE COURT: Go ahead.

 6   THE WITNESS: So my expectation is to quantify the

 7 liability both under the debtors' theory and under the

 8 plaintiffs' theory. I'm not the one that decides which of

 9 those two theories is correct, right?

10 BY MR. KAPLAN:

11 Q   Okay.

12 A   So I expect to be asked to quantify under both of those

13 theories. When addressing it under the plaintiffs' theory of

14 what would you have been paid in the tort system, those

15 payments do vary by law firm when the other facts are

16 comparable.

17   So I absolutely would be doing that analysis where you

18 break out law firms separately and estimate.

19 Q   And that --

20 A   -- in that manner.

21 Q   I'm sorry.

22   And for that same reason you're planning on breaking out, I

23 think you said, jurisdiction and industry and occupation and

24 gender.

25   Anything else you're going to break out?

 1 A   Ultimately, you're going to explore the data for what

 2 causes material differences in settlement values and you wanna

 3 control for those material differences. You -- so at the end,

 4 that's what I'll be doing. I know 'cause I've done this enough

 5 that law firm will be on that list if you're saying what were

 6 people being paid in the tort system. Jurisdiction will be on

 7 that list. Exactly what else is on that list, I don't know.

 8 That varies by defendant and that's part of the work that I

 9 need to do after I have all the data assembled.

10 Q   And isn't it true, Dr. Mullin, you don't actually know what

11 data has been captured in the trust database, right? You

12 haven't seen it?

13 A   I haven't seen the specific entries for these claimants,

14 that's correct.

15 Q   Right. So you don't know whether or not it captured the

16 plaintiffs' law firm, do you?

17 A   I generally already know the plaintiffs' law firm. That's

18 not really what I'm seeking from the Trusts. The Trusts is

19 really complimenting the exposure history record. In general,

20 the data, the debtors' database tells me the identity of the

21 plaintiff law firm.

22 Q   Okay. Let's focus on what you just raised, which is the

23 exposure history.

24   Sitting here today, you can't tell the Court with certainty

25 that all the exposure history you're looking for is captured in

1   either the Verus or the DCPF trust database, correct?

2   A   I'd be surprised if all of it was, but it's going to

3   compliment and give me materially more information than I

4   currently possess just in the debtors' database.

5   Q   Doesn't that assume that the information has been captured?

6   A   So I've received trust data in different contexts. I'm

7   aware, in general, that it is recorded. They have fields that

8   record it and in every other context it has expanded that

9   information set. I expect that to happen here. Clearly, until

10 I receive the actual data I don't know the full extent of that

11 expansion of information.

12 Q   Right. I just want to focus on the two Trusts, the

13 nonparties here, which is -- and to the question of do you know

14 whether or not the additional work exposure that you're looking

15 for has been captured? Yes or no.

16 A   I know that, in general, they capture it. I don't know if

17 it's captured for any particular claimant.

18   So from a population perspective, that's going to provide

19 me an awful lot of information about work history and

20 exposures. Any particular claimant, that's not the way

21 statistics work. It doesn't let me say for a particular

22 claimant, but across the 12,000 claimants it will contain a

23 sizable amount of information.

24 Q   Again, you, you are looking at -- have you seen -- let me

25 ask you this way.

 1   Have you already seen the data that's in the Verus or DCPF

 2   Trusts that you're seeking?

 3   A   I've seen extracts of that data in different contexts.

 4   Q   My, my question, Dr. Mullin, again, is you're, you're

 5   seeking information for 12,000 claimants from the Verus Trusts

 6   and the DCPF Trusts, right?

 7   A   Correct.

 8   Q   Have you already seen the data that you are looking for?

 9   A   For some of those claimants, the answer will be yes.

10   Q   Okay.

11   A   Some of those claimants, for example, would have been in

12   the Garlock production. Some of those claimants would be in

13   the DBMP production. Some of those claimants may have been

14   produced in an insurance coverage matter that I was part of.

15   So have I seen it generically for some of the claimants,

16   yes. I don't bring data across cases. So I don't have access

17   to any of that information in the current matter. So I've seen

18   some of it, but not in a way where I have access to that

19   information in this current matter.

20   Q   So how many of the 12,000 claimants have you already seen?

21   A   I don't know the answer to that. I'd have to violate what

22   I told you about not bringing information across cases to do

23   that matching and answer.

24   Q   Okay.

25   Now let, let's go back to the sort of overall purposes. We

1   talked about the estimation. We talked about the plan

2   feasibility.

3   You are not doing an individualized review here, correct?

4   A claim-by-claim, a claimant-by-claimant review, right?

5   A   Are you trying to use that term in the same sense they use

6   it in a trust distribution procedure or do you mean

7   something -- I'm not sure exactly what you're asking.

8   Q   That, that's fair. It -- it -- when you are doing your

9   estimate, you are not trying to value individual claims,

10 correct?

11 A   I'm not valuing individual, for example, future claims or

12 even pending claims. I will be doing individual review and

13 looking at some of the historically paid claims and looking at

14 those in detail. But the, the rest will be done in an

15 estimation process probalistically.

16 Q   Right. And that's in the aggregate, correct?

17 A   Correct. You're looking at populations or subpopulations.

18 Q   Right.

19   Now a number of times during your testimony you used the

20 variations of the phrase "more precise" or "greater degree of

21 confidence" or "better estimate," etc. You recall giving

22 answers like that in response to the questions about why a

23 population would be better than a sample?

24 A   Yes.

25 Q   Sitting here today, am I correct that you cannot calculate

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 1  the uncertainty for either the population or the sample, right?

 2  A   Both are unknown 'cause they depend on the nature of the

 3  data that gets produced.  So you can't -- no one can answer

 4  that question until after the data's produced.

 5  Q   Well -- you -- Doctor, I certainly am not gonna argue with

 6  you about statistics.  I'm just asking you whether sitting here

 7  today you can tell the Judge if you got all 12,000 claimants

 8  what the level of uncertainty would be in your estimate?

 9  A   Not in absolute levels.  You can give guidance as to the

10  relative change in uncertainty, but not the absolute level

11  until you have the data itself.

12  Q   Right.  You also can't give the Judge the, to tell him how

13  much uncertainty there would be if it were just the 1,200

14  claimants, right?

15  A   In only relative statements, not absolute statements.

16  Q   Right.  And so you need the data for that, correct?

17  A   To quantify it as a specific number, yes.  You --

18  Q   Right.

19  A   I need the data that's being requested before I can answer

20  that question.

21  Q   So it's possible, I believe as you said, that, that the

22  1,200 claimants may be all that you need, right?

23  A   I, I don't think that's correct.

24  Q   Do you know for a certainty that the 1,200 claimants will

25  not be sufficient?
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1   A   I know there will be questions almost with certainty that

2   will require me to look at small subpopulations. In every case

3   I've ever done this before, there's small subpopulations that

4   get high-claim values that are particularly relevant. I don't

5   know which ones those are here specifically yet, but unless

6   this is the first case of an asbestos defendant where that

7   isn't true, that's what I'm going to find here and the 10

8   percent sample's going to impair the ability to give good

9   guidance on that small group of claims that have

10 disproportionately high settlement values.

11 Q   And how is it, Doctor, that you know that that small group

12 of claims exists in the Trust Data that you just told us you've

13 never seen?

14 A   When we've done trust discovery before, virtually every

15 claim files against at least one if not multiple trusts. It's

16 very rare to find a claimant that files in the tort system and

17 files zero truest claims. That's a very rare outcome. So

18 there may be some that have no trust claims and that is also

19 relevant for me to know that there are none of those alleged

20 exposures. Confirming no alternative exposures is also

21 important and then others will have numerous trust claims.

22 Q   Again Doctor, I just -- I -- I -- I really just want to

23 focus on these Trusts, okay? I, I don't represent anyone else

24 that I, that I know of yet in, in these.

25   So again, these Trusts, you don't know sitting here today

 1 whether or not the Trusts -- that would be Verus and

 2 DCPF -- have the subpopulation information you're looking for,

 3 correct? Not asking you to speculate. I'm asking do you know.

 4 A   Well, it's not really speculating. When you're looking at

 5 populations of claimants, right, it's like saying if there's

 6 10,000 random people here, do you, and they're just random

 7 people, do you know there's a female? And you go, well,

 8 there's a probability if you say 50-50 raised to the 10,000th

 9 power that there's no females. But yeah, there's gonna be

10 women in the group of 10,000.

11   So when you ask me do I know, if you ask me a particular

12 claimant, the answer's no, I don't know for a particular

13 claimant. When you talk about a universe of 12,000 claims and

14 the quantum of trust claims that are made in the tort system,

15 it is inevitable that the vast majority of these people are

16 going to have matches to numerous trusts and it's going to

17 provide additional information to me. I can't tell you exactly

18 which claims, but I can tell you when you look at a large

19 population there's certain conclusions you can make

20 statistically.

21   And so this is going to provide material supplemental

22 information. The exact information for any given claimant, no,

23 that is unknown.

24 Q   Right. And, and so I think we talked about at your

25 deposition that -- and I'm just sort of using numbers out of

 1 thin here, thin air here, which is that if you had 600

 2 claimants of a, in a particular subpopulation, that might be

 3 sufficient for what you're studying, correct? Your concern, I

 4 think you told me, was when you get down to 30 or 20.

 5 A   Six hundred for many questions would probably prove

 6 sufficient, that's correct.

 7 Q   Right. And so building off that, Doctor, is is how is it

 8 that you know, again just these Trusts, that they have a

 9 sufficient amount of data for each of the subpopulations, even

10 if you got all 12,000?

11 A   So there may be some subpopulations that even with the

12 12,000 you don't have enough information. Maybe there's only

13 20 claimants that fit that in the Trust Data, but if you take

14 10 percent instead of getting 20, I'll have 2 and I can do a

15 little bit more with 20 than I can do with 2. But then all the

16 ones that would have had 300 now go down to 30.

17   So what you know is when you go to a 10 percent sample,

18 you're gonna have many more subpopulations where you now have

19 insufficient data than if you take the totality of the data,

20 right? That's what you know. You're getting one-tenth the

21 claims.

22   So you're going to greatly increase the number of

23 subpopulations you can't address. That may be increasing it

24 from zero to ten of interest. It may be increasing it from

25 three to eight. Those, I don't know yet 'cause I don't even

 1 | know which subpopulations at the end of the day are gonna drive

 2 | the analysis, but I know my odds of being left hamstrung by

 3 | having the 10 percent, you know, going to 10 percent, raises

 4 | that dramatically.

 5 | Q   It -- now let's -- I wanna talk to you about the sample

 6 | here, which is -- is -- let me start with this question.

 7 | One, you've already designed the sample. In the event that

 8 | the Judge maintains his existing order, you've already created

 9 | a sample, right?

10 | A   I've proposed a sample. I don't know that the parties have

11 | all signed off on that sample.

12 | Q   Fair enough. It's sort of like the comment about the

13 | proposed order earlier, which is it'll come in pretty close to

14 | final or otherwise. But yes.

15 | And that's a, as I understand it, what, a strat, a

16 | stratified random sample?

17 | A   Correct.

18 | Q   Right. And so that's just not -- again, there's a bunch of

19 | lawyers in the room who did not take statistics. So let's just

20 | see if we can break that down, which is that's just not a

21 | random 1200 people. You go through and you pick every seventh

22 | person in the population, right?

23 | A   Correct.

24 | Q   Right. It's designed to highlight certain categories or

25 | factors that you're interested in studying, right?

 1 A   It's attempting to maximize the efficiency of the sample

 2 size.

 3 Q   Right. So you can in that case create a sample which

 4 focuses -- this is purely hypothetical. I'm not suggesting

 5 this is, is what you did -- but you can design a sample which

 6 says I want more claimants who used, back to my innocuous Law

 7 Firm A, correct?

 8 A   Correct.

 9 Q   Or it could be Law Firm B?

10 A   Yes.

11 Q   Or you could have more of your insulators or pipefitters if

12 you wanted, as you talked about earlier?

13 A   That becomes more problematic 'cause I don't have the

14 complete work history of claimants. So if a claimant only has

15 one job in the claimants' database or the debtors' database but

16 it turns out they were a pipefitter for 20 years and that's not

17 in the database, I have no way of stratifying on the

18 information when I draw a sample that I don't have yet. So the

19 fact that I don't have complete industry and occupation

20 information means I really can't stratify on that because I

21 lack that information at the moment.

22   So that's a place where doing the stratification to try to

23 focus on industry and occupation ahead of time could,

24 ultimately, put you in worse shape. It may put you in better

25 shape, but it's a place where you, if you don't have complete

 1 information, you can end up being worse off as opposed to

 2 better off by trying to stratify.

 3 Q   Isn't it, Doctor, based on an assumption that the debtors'

 4 work history is incomplete? You're assuming that.

 5 A   Well, I, I know the debtors' work history is incomplete for

 6 many claimants. They didn't seek the information for some

 7 claimants. So it -- I, I may have no information for certain

 8 claimants. So in this sense I know I have an incomplete set of

 9 information in just the debtors' database on that topic.

10 Q   Right. And again, I'm not focusing on the 400,000

11 claimants in the debtors' database. I only want to focus on

12 the 12,000.

13   Can you tell the Court sitting here of the 12,000 you're

14 seeking, which you've already told the Judge you have the

15 information on, how many of those are missing, who have a

16 incomplete work history?

17 A   In electronic form? Again, I don't know the answer to that

18 fully until one would go through. I could -- I don't know the

19 numbers off the top of my head to tell you which ones just have

20 blank fields.

21   So some have no information, which is, presumably,

22 incomplete if they were paid and had a gasket exposure.

23 Alternatively, some will have one or two jobs and I don't know

24 if that's complete or not.

25 Q   Right. And you can't -- again, just to, see if we boil

 1   this down -- you don't know sitting here of the 12,000 how many

 2   have the zero, no work history at all, right?

 3   A   That's not something I refreshed my memory on before this

 4   hearing. So --

 5   Q   But --

 6   A   -- I don't know that --

 7   Q   Fair enough.

 8   A   -- off the top of my head.

 9   Q   So I wanna turn back to the, the notion here which is is in

10   terms of the, your calculation of the certainty versus

11   uncertainty of, of what you did here.

12   We agree that you can't do that calculation yet. Can't do

13   the math 'cause you don't have the inputs, right?

14   A   For the absolute level, yes.

15   Q   Right. And so when, when you say for the -- you were asked

16   about, you know, the, the Permitted Purposes and the first one

17   was, was estimation, you said and I, I wrote it down here that

18   it'll be "more precise" or a "better estimate." Do you recall

19   saying that?

20   A   Yes.

21   Q   How much better?

22   A   I suspect if I had to, I mean, the sample size is tenfold

23   on things that you directly estimate from that. That goes,

24   roughly, with the square root of ten. So a little bit more

25   than three-fold increase in the standard errors or confidence

1 intervals. You can stratify and mitigate that a bit.

2   So the stratification, you're still gonna be north of 2,

3 probably 2-1/2 times, but I don't know exactly. You're kind of

4 -- until you get the data back you don't know how much you

5 mitigated with the stratification. So it's probably a little

6 less than three, more than two is the relative change, but I

7 won't know until I'm done exactly where that comes.

8 Q   But the relative change from what, Doctor? Because doesn't

9 it matter what you're multiplying the 1-1/2 or 2-1/2 or 3 by?

10 A   Absolutely. And this is why I said, like, if you're trying

11 to forecast the number of claims in 2021, 10 percent sample's

12 probably fine. There's not that much uncertainty.

13   And so you're starting with, if you say, oh, they would

14 have gotten 1500 claims in the tort system, plus or minus 50,

15 and you say, okay, it's not plus or minus 50. It's plus or

16 minus a hundred. Maybe you're happy to live with that. When

17 you go out to 2030, it's not gonna be plus or minus 50. That

18 uncertainty's gonna get a lot bigger and by the time you get to

19 2040, you know, you may be a number plus or minus 25 percent.

20 Now you're making plus or minus 50 percent and going from plus

21 or minus 25 to plus or minus 50 percent, at least me, makes me

22 nervous about the ability to protect future claimants well.

23   So it varies by what question you're looking at. So for

24 certain questions, I'm in complete agreement. The sample would

25 likely be sufficient. For other questions, the sample's not

 1 going to be sufficient. So it's not as simple as it works or

 2 it doesn't work. It varies with the question that's being

 3 asked.

 4 Q   Well, let me pause on that. You said the sample, you say

 5 for some it is sufficient. We're certainly not gonna argue

 6 about those, but let's talk about the ones you say with

 7 certainty, with conviction there, that you know it's not

 8 sufficient.

 9   And my question to you, sir, is is aren't you just

10 speculating that it won't be sufficient? You don't know yet.

11 You haven't seen the data.

12 A   I'll answer it statistically. Statistically --

13 Q   Right.

14 A   -- there's a small probability, very small, that if we had

15 a 10 percent sample, everything would still work out okay. I

16 can't say that has zero chance of occurring, right? But that's

17 a small probability. There's a very high probability that

18 that's gonna cause certain questions to have an increased level

19 of uncertainty that at least leaves me very uncomfortable and

20 the parties bearing most of that uncertainty are the future

21 claimants.

22   So the claimants that are gonna file 10 years from now, 20

23 years from now, those are the parties that are gonna bear the

24 weight of that uncertainty.

25 Q   Can you quantify the uncertainty for the future claimants

 1 in a number?

 2 A   I'll try it this way.

 3 Q   I just wanna know can you quantify.

 4 A   I'm --

 5 Q   Can you assign a number?

 6 A   I'm gonna try for you.

 7 Q   Okay.

 8 A   The majority of asbestos trusts have cut their payment

 9 percentage heavily, many by more than 50 percent. The trusts

10 that have been designed in a more detailed manner, which the

11 Garlock Trust was one of those. Western Asbestos Trust was

12 one. Thorpe Insulation's another. Generally, the West Coast

13 trusts that have tried to do this more detailed and break

14 people out by their relative valuation and exposure categories,

15 in general, have raised their payment amounts, not lowered

16 them.

17   I wanna be in that latter world again. The increased data

18 improves our odds of living in that world and protecting future

19 claimants and in reality, in the other world future claimants

20 have often gotten less than 50-cent dollars relative to

21 pendings. That's the risk the future claimant is facing and

22 these data explicitly help you prevent that from happening.

23   And you're right. It's a gamble. You're gambling with the

24 future claimants' money, but it's -- that's -- that's who's

25 holding that risk if we go down that road.

 1 Q   Right. But -- last question on this subject, which is

 2 is -- I wanna go back to, actually, what the Judge asked on

 3 March 30th and one of the questions he asked -- and we talked

 4 about it at your deposition - is is why isn't the 10 percent

 5 sufficient and I believe, just so I understand it, your answer

 6 is is it might be, but the cost benefit analysis says you

 7 should give everything, right?

 8 A   In -- at a certain level, the costs of how many

 9 claimants -- not claimants -- third-party PII would be revealed

10 is a probabilistic statement, probably less then ten. So

11 you're looking at a tradeoff of protecting what's likely the

12 name of ten coworkers or less versus the future payments to

13 hundreds if not thousands of future claimants. Those are the

14 two groups you're weighing the risks off of, you know. And in

15 -- from my perspective, getting that accuracy and protecting

16 those thousands of future claimants' payment percentage

17 outweighs the name of zero-to-ten coworkers.

18 Q   And if you got all 12,000 claimant informations, can you

19 tell the Court right now how accurate your estimation would be?

20 A   Again, not in absolute levels --

21 Q   Right.

22 A   -- until you've done all the work.

23 Q   All right. Last, last couple questions. We should agree

24 on these. So let's try and end where we agree.

25   One, you're not a lawyer, right?

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 1 A   Correct.

 2 Q   Okay. You are not a, what I would call a data privacy

 3 professional, right? You don't hold any certifications in data

 4 privacy?

 5 A   Correct.

 6 Q   Right. All right.

 7   MR. KAPLAN: Your Honor, could I just have a minute to

 8 confer with co-counsel and see if there's --

 9   THE COURT: You may.

10   MR. KAPLAN: Thank you.

11   (Pause)

12   MR. KAPLAN: Your Honor, no further questions.

13   THE COURT: All right.

14   It is about time for a mid-morning break, anyway.

15 Would the parties like to stop there and then we'll pick up

16 with whoever else has questions of this witness? Are there

17 others that wish to examine the witness, I assume, before

18 rebuttal? Any other cross-examination from those opposed?

19   MR. GUERKE: Your Honor, it's possible. I don't think

20 so, but I, I'd like a moment at the break to consider that.

21   THE COURT: Okay.

22   Well, let's, let's take the break now and then if you

23 have questions, we'll let you ask them, then we'll get

24 rebuttal.

25   MR. GUERKE: Thank you, your Honor.

 1   (Recess from 11:11 a.m., until 11:24 a.m.)

 2   AFTER RECESS

 3   (Call to Order of the Court)

 4   THE COURT: Have a seat.

 5   Other cross-examination of the witness? Did you

 6   have --

 7   MR. GUERKE: Not from DCPF, your Honor.

 8   THE COURT: Anyone else?

 9   MS. MOSKOW-SCHNOLL: No, your Honor.

10   THE COURT: Any redirect?

11   MR. EVERT: Your Honor, very briefly. So I'll just

12   stay at the table, if that's okay.

13   REDIRECT EXAMINATION

14   BY MR. EVERT:

15   Q   Dr. Mullin, I just wanna ask you a, a quick question about

16   these hypothetical few claimants. I think you referenced ten

17   or so that might squeak through the scrubbing process of the

18   PII. Do you know what I'm talking about?

19   A   Yes.

20   Q   All right. I just wanna be clear. What would then have to

21   happen after they're missed in the scrubbing process for their

22   PII to be inappropriately disclosed?

23   MR. KAPLAN: Objection, your Honor. This is outside

24   the scope of cross. I did not ask about these ten people or

25   the scrubbing of their PII. So I don't know why we need

 1 redirect.

 2   THE COURT: Technically, you're correct, but I'm gonna

 3 allow it, anyway.

 4   MR. KAPLAN: Okay.

 5   MR. EVERT: Thank you, your Honor.

 6   THE WITNESS: There would have to be a data breach

 7 with one of the firms that possess that data.

 8 BY MR. EVERT:

 9 Q   Okay.

10   Thank you, Dr. Mullin.

11   MR. EVERT: Your Honor, those are all our questions.

12   And, and I think with the testimony of Dr. Mullin and

13 our papers that we have on file, that would be the evidence

14 that we're providing for the Court here today.

15   THE COURT: Any other questions of this witness?

16 Anything else?

17   (No response)

18   THE COURT: Any that might come to mind during the

19 break?

20   (No response)

21   THE COURT: All right. You can step down. Thank you.

22   THE WITNESS: Thank you, your Honor.

23   THE COURT: All right. Do we need a moment before we

24 go to the other side, the opponents?

25   (No response)

 1 | THE COURT: Ready to call yours?

 2 | MS. MOSKOW-SCHNOLL: We are, your Honor.

 3 | THE COURT: Okay.

 4 | MS. MOSKOW-SCHNOLL: Thank you.

 5 | Your Honor, we call, we call Dr. Abraham Wyner.

 6 | THE COURTROOM DEPUTY: Place your left hand on the

 7 | Bible and raise your right hand.

 8 | ABRAHAM WYNER, DCPF'S WITNESS, SWORN

 9 | THE COURTROOM DEPUTY: Have a seat.

10 | MS. MOSKOW-SCHNOLL: Your Honor, I think I'm gonna

11 | stay here because I have a couple of slides for his

12 | demonstratives and that way, I can do that.

13 | THE COURT: That's quite all right. As I said, North

14 | Carolina practice allows you to sit at counsel table. You

15 | don't even have to stand. But --

16 | MS. MOSKOW-SCHNOLL: Oh.

17 | THE COURT: -- do what, what comes natural.

18 | MS. MOSKOW-SCHNOLL: I would love to sit, if you don't

19 | mind, your Honor.

20 | THE COURT: Please.

21 | MS. MOSKOW-SCHNOLL: Thank you.

22 | VOIR DIRE EXAMINATION

23 | BY MS. MOSKOW-SCHNOLL:

24 | Q   Dr. Wyner, could you please introduce yourself?

25 | A   Yes. I am Abraham Wyner.

1   Q   And where do you work?

2   A   I work at the University of Pennsylvania Wharton's School.

3   Q   And what do you do there?

4   A   I am a Professor of Statistics and Data Science.

5   Q   How long have you been a professor at Wharton at the

6   University of Pennsylvania?

7   A   I'm heading into my 25th year.

8   Q   Did you start there right after you finished school?

9   A   No. I was a professor at Stanford University for a short

10 time and a postdoc and acting visiting assistant professor at

11 the University of California-Berkeley.

12 Q   And what are some of your duties at Wharton?

13 A   Primarily, it's research and teaching and I also have a

14 considerable number of administrative positions at this point.

15 Q   Do you have an area or areas of specialization?

16 A   Yes. I've been at this a very long time. So that, those

17 things have shifted over the years, but primarily, it's in data

18 analysis, statistical methodology, machine learning, its

19 applications, information theory and probability models.

20 Q   And could you tell us about your educational background?

21 A   Sure.

22   I got my degree in mathematics at Yale University and I got

23 my Ph.D. in statistics at Stanford University.

24 Q   Have you published articles related to statistics or

25 statistical analysis?

 1 A   Yes, many.

 2 Q   And has your work been peer reviewed?

 3 A   Yes. I have many, many peer-review papers as well as some

 4 unpeer reviewed.

 5 Q   Have you ever been engaged as an expert in statistical

 6 analysis?

 7 A   Yes, many times.

 8 Q   Have you ever testified as an expert before?

 9 A   Yes.

10 Q   And did that testimony involve statistical analyses?

11 A   Almost in every case, yes.

12 Q   Did the testimony involve the use of sampling?

13 A   Very frequently, yes.

14 Q   Have you worked with large intersecting datasets?

15 A   Yes.

16 Q   And did any of those datasets include data relating to

17 asbestos trusts?

18 A   Yes.

19 Q   And so you've done work with asbestos trusts?

20 A   Yes, a considerable amount.

21 Q   What type of work have you done for asbestos trusts,

22 generally?

23 A   So I've worked for, exclusively for trusts which,

24 obviously, as we all know in this room, are created after a --

25 the debtors and -- after the bankruptcy. So typically, what

 1 I've been working on is evaluation of models, the, or creation

 2 of models, the individual review model, which is the way future

 3 claims are, are, are paid. I've also done extensive work on

 4 evaluating how the payouts have changed over time and whether

 5 the system for paying the, the claimants is tracking what was

 6 forecasted. I've also looked at issues related to sampling and

 7 in general, I've served as sort of a all purpose statistical

 8 expert for the trusts, trustees and their, and their

 9 counselors.

10 Q   When you talked about just seeing if models were working

11 out correctly in the future for trusts, is that, are you

12 talking about, like, estimation, whether or not their

13 forecasted liability models were working? So they were paying

14 out the way they should?

15 A   Yeah.

16   So once a trust is created, there's an average value,

17 scheduled values, and targeted values for IR claims and total

18 dollar amounts that are, that are included in the, in the TDP

19 and if you're missing those values, there's obviously, you can

20 overpay. That's obviously what's happened, as, as we heard

21 earlier from Dr. Mullin, for many other trusts. You might have

22 to introduce payment penalties or, or percentages. But

23 sometimes, you can underpay. In general, you have to look to

24 see how you're tracking and there are lots of tweaks you can do

25 to, to, to keep yourself from having undesirable outcomes.

 1   Q   So when you've been involved with construction of IR

 2   models, you've been looking at data, correct?

 3   A   Oh, yes.

 4   MS. MOSKOW-SCHNOLL: Your Honor, we offer Dr. Wyner as

 5   an expert witness in the field of statistical analysis and the

 6   use of sampling.

 7   MR. EVERT: No objection, your Honor.

 8   THE COURT: So noted.

 9   DIRECT EXAMINATION

10   BY MS. MOSKOW-SCHNOLL:

11   Q   Okay. Could you please tell us about the assignment that

12   you undertook in this case, what you were asked to do?

13   A   Sure.

14   At the last hearing the Court ordered that there be

15   evidence presented on the sufficiency of a sample and

16   particularly, the background was that 12,000 mesothelioma

17   claimants were at issue. They were held by, information was

18   held by the Trusts and it was --- the, the specific question

19   was can the debtors use 1200, a sample, appropriately designed

20   and weighted sample for their, their purposes and would that

21   cost them any accuracy.

22   So I -- actually, I opined on that directly, but I,

23   primarily, I was asked to respond to Dr. Mullin's declaration

24   and I did two things. I responded to the declaration and I

25   opined on the, the sufficiency of a sample.

1   I have to say I was rather surprised when I read

2   Dr. Mullin's declaration because nowhere in the declaration

3   does he actually talk about the sufficiency of the sample or

4   accuracy at all. He simply talks at length about how, how

5   there are costs associated and those are *de minimis* and,

6   therefore, more data, we can all agree, is better than less

7   data and, therefore, that's the argument. He did flesh out

8   some of the purposes and that was useful. He talked about

9   things that I was able to respond to and that was my charge.

10 Q   And did you prepare an expert report?

11 A   Yes. I did prepare a detailed expert report.

12 Q   And what was your process in preparing that? Did you do

13 that on your own or did you rely on others?

14 A   Well, thankfully, I had counselors to provide an incredible

15 amount of material for me to read, which they did at rather

16 short notice, I will say.

17   THE COURT: They do that to me --

18   THE WITNESS: Yeah.

19   THE COURT: -- quite a lot.

20   THE WITNESS: You know, I'm in the middle of a

21 semester. Fortunately, I'm only teaching -- I -- one, one, one

22 senior seminar. So I had the time at the right time to do

23 this.

24   So there's an incredible amount of stuff for me to

25 read and, and I read, read that and worked with the counselors

 1 to provide my expert report.

 2 BY MS. MOSKOW-SCHNOLL:

 3 Q   Can you describe the materials you reviewed in creating

 4 your report?

 5 A   So mostly, they were just exhibits and they're all in

 6 Exhibit A and you can go through them.

 7 Q   Exhibit A to your report?

 8 A   Of my report, yeah.

 9 Q   And did you provide deposition testimony in this matter?

10 A   I did.

11 Q   What, if any, materials or additional materials did you

12 review in advance of providing your deposition testimony?

13 A   So primarily, I, I reviewed Dr. Mullin's deposition

14 testimony itself, which was really different from the actual

15 declaration that he made, and I also looked at a response that

16 the debtors provided.

17 Q   That would be the debtors' reply brief?

18 A   Yes.   That's the technical term.

19 Q   And I think you also looked at the FCR's brief?

20 A   Oh, yes.   I saw that on the plane last night.   Thank you.

21 Q   Okay.   Why didn't you review these additional materials

22 before drafting your report?

23 A   Because they weren't, they weren't provided to me or

24 actually, some of the things didn't even come into existence.

25   So the deposition, obviously, didn't, didn't happen at the

  1 time prior to the, the deposition itself. But I think it's

  2 really important is that the deposition and the Futures' Claim

  3 brief, whatever you wanna properly call that, outlined brand

  4 new theories that had never, had never even hinted at in the

  5 actual declaration itself.

  6 Q   And did you reach an opinion or opinions?

  7 A   I sure did, yes.

  8 Q   And did you reach those with a reasonable degree of

  9 scientific certainty?

 10 A   Yes.

 11 Q   What ultimate opinion did you reach?

 12 A   So my ultimate opinion is -- you have to be, really, quite

 13 careful about what, what is at issue here. What is at issue is

 14 that we're looking at a, at the sufficiency of, of 1200

 15 observations from a, a group of 12,000, right? So that's --

 16 the fact that there are others is, is not on the table.

 17   And so what Bates White and its experts, Dr. Mullin, are

 18 gonna try to do is, is to provide a, a total liability

 19 estimate, a total count on future claimants for different

 20 disease levels. This is their, their obligation so they can

 21 figure out how to, how much to fund the trust. And what I'm

 22 essentially claiming is that that very big process which has

 23 lots and lots of inputs, it requires information, much of which

 24 Bates Whites [sic] already has, but the process of coming to

 25 that conclusion will be not materially, practically changed by

 1 having 1200 as opposed to 12,000.

 2 Q   And just -- can you describe the statistical principles or

 3 the methods that you relied upon in reaching that opinion?

 4 A   Yeah.

 5   So they're basically foundational principle ideas. So

 6 statistics having to do with accuracies of samples and

 7 stratified samples and weighted samples and what we call

 8 standard errors and, and things related to what we call

 9 uncertainty calculations.

10 Q   And, and do they have specific names or methodologies that

11 you were relying upon?

12 A   Well, standard error calculations, sampling techniques. I

13 don't know.

14 Q   Okay. And those are standard? You said --

15 A   Absolutely foundational.

16 Q   -- they're foundational?

17   So let's talk about your bases for that opinion. In

18 determining the accuracy of a sample, what do you need to know?

19 A   Okay. Well, fundamentally, you have to know what's the

20 sample there to do for you. I mean, what, what is the

21 uncertainty? What is the problem? We often call that in

22 statistics a parameter. What is it that we're trying to use

23 the sample for?

24   So remember, we have 12,000. That would be what we call

25 the population and the population has certain characteristics.

 1 And our subsample, or our, our sample, I should call it, of

 2 1200 is going to be used in place of the information you have

 3 from the 12,000. So when you approach a problem, you have to

 4 know what they are. So Dr. Mullin is actually quite helpful

 5 and he indicated two parameters that we are interested at the

 6 time that you would need to estimate. And one of them was the

 7 proportion of claimants who failed to disclose their exposure

 8 records. That was the first one. And the second one was the

 9 average impact on the settlement value due to those incorrect

10 or improper disclosures.

11   So that already puts front and center two problems. The

12 problem, I mean, really fundamentally related to exposure

13 allegations, but I think it's important to, to kinda step back

14 for a moment and realize, well, what is this really all about,

15 right? Because there's a lot of assumptions that we all know

16 what we're, we're, we're trying to do here. So I wanna make

17 sure that it's clear.

18   So the basic idea -- and Dr. Mullin did a -- did a -- put

19 it up there front and center. We need to predict how many

20 claims are coming in and how many over, really over the lengths

21 of the trust. And we also need to know how much they're gonna

22 be paid, on average. And we typically do this by disease

23 level, but ultimately, there's only one number that we're gonna

24 want, which is the total amount. The TDP will then break that

25 down into different disease levels and average values and

 1 scheduled values and IR models and stuff of that nature. But

 2 ultimately, it's just aggregates, overall averages, and, per

 3 claim. And we also need to know how many claims they are. So

 4 that's really the big, the big problem.

 5   So what's at issue here is to figure out whether or not the

 6 payments that have done in the past, which is the best way we

 7 predict the future, which is, which is with the past, whether

 8 maybe some of those are, have been overpayments, particularly

 9 because they didn't disclose full occupation history or

10 industry history or exposure allegations. And, and some of

11 those might need to be modified and that would change our

12 averages, right? And so once we've changed our averages -- and

13 maybe we also change some of the future estimates on the

14 numbers that would come in based on having this, this, this new

15 information.

16   And so my essential conclusion was that if you are, have

17 only 1200 as opposed to full 12,000, nothing that is, that,

18 that's fundamental to this process is gonna be substantively

19 changed. And one of the reasons why -- and I'll have a chance

20 to talk about it, I'm sure later -- is that figuring out what a

21 future meso claim is gonna get ten years down the line, on

22 average, is gonna be really hard to do and how many there are

23 gonna be, on average, is also gonna be really hard to do, very

24 hard to do. And doing that well is, is, is, is, obviously, a

25 task, but the uncertainty in doing that is what I call

1   irreducible. It's not -- you can get as much data as you want

2   and you're still gonna be very uncertain about the average

3   value of future mesos, for example. And the reason for that is

4   that we don't really know what future mesos are gonna look

5   like. The past mesos were a certain age. They had a certain

6   status of living. We knew certain occupations and exposures.

7   We knew their jurisdictions. We knew their sexes. And that's

8   gonna shift substantially over time in ways that are really

9   hard to predict. I mean, it's important to try to do so and

10 coming up with an average is, is something that's, is

11 necessary, but it's hard to do it really accuracy, accurately.

12 That's what I call the irreducible uncertainty in a prob, in a

13 problem like this.

14   And sitting where I've ben sitting all these years with the

15 trusts, is I can see them having, I can see the, the

16 consultants who did the original forecasts -- and I've looked

17 at many of them -- I can see the problems that they have when

18 they try to predict things way down the road. It just gets,

19 largely, offtrack. And that's expected because it's a very,

20 very hard problem to predict accurately. It's not, it's not a

21 failure of the design, although I do say some trusts have

22 probably failed mightily to do it properly. But it's a very,

23 very hard problem.

24   And so the question is, here, is when I have 12,000 or, or

25 1200 or we have very specific information here just about

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 1 │ exposure allegations, this is gonna have a, a small impact on,

 2 │ it can have an impact on -- on the -- on the -- on the actual

 3 │ average. It can do that, but having 1200 as opposed to 12,000

 4 │ won't change that impact very much. And the uncertainty that

 5 │ you would introduce by having 1200 as opposed to 12,000 is very

 6 │ small compared to that really big uncertainty, which is what

 7 │ are mesos gonna look like and how many are they gonna be in 20

 8 │ years from now.

 9 │ Q   You know, I think -- let's go to your demonstrative now.

10 │ 'Cause I think --

11 │ A   Ooh.

12 │ Q   -- rather than wait.

13 │   MS. MOSKOW-SCHNOLL: Look, it worked.

14 │   Can everyone see that? Yeah?

15 │ BY MS. MOSKOW-SCHNOLL:

16 │ Q   So I think this is what you were just describing, but maybe

17 │ it would be easy if we have something we can all look at while

18 │ you're talking about it.

19 │ A   Sure. I, I can do this 'cause I -- now I have to say

20 │ there's a -- there's a -- this is -- there's a title here.

21 │ I'll go through this. It says Future, Forecasted Future

22 │ Liability with an asterisk. And I put that there because it's

23 │ hypothetical. Don't look at these numbers and say that I

24 │ calculated them from anything. I'm just trying to tell a story

25 │ and that story is dedicated to the problem of uncertainty.

1   So we're not really interested in the forecasted value. I

2 just need a value and I, I grabbed one, 545. And that was one

3 of the numbers that someone threw around as a potential, kinda

4 ballpark for total liability.

5   And so what Bates Whites would do and they would take all

6 the data they could get and, and they may not come up with

7 this, but I just threw out numbers that are kinda consistent

8 with the kind of numbers I've seen in the past. They'd have a

9 lower and upper bound onto how much the total liability would

10 be. It's, it's, it's not a confidence interval. It's what we

11 properly call a prediction interval. So, and that's pretty

12 clear. I wanna predict how many -- how -- what the lower bound

13 would be and the upper bound. It's the kinda thing that I

14 actually do all the time. I mean, if I'm trying to predict how

15 many wins a baseball team's gonna get, I'm gonna tell you a

16 range, low to high.

17   So 545 is the estimate, the expected value, and 400-to-700

18 is the range and the distance, which here is 300 million, is

19 the uncertainty. So you should be looking at the length of

20 that line to tell you what's the uncertainty in that forecast.

21   Now right below it is the forecast that you would have

22 gotten if you didn't use all 12,000. You used only 1200. And

23 then, of course, everything else that the, the, the consulting

24 firms and Dr. Mullin and Bates Whites have at, at their

25 disposal, which is a lot. And what they would do is if they

 1 didn't have the, if they didn't have the full 12,000 -- they

 2 only have 1200 -- they're gonna end up with a slightly

 3 different number. That's what happens when you sample. You

 4 don't get the same answer. But what I -- my analysis says that

 5 the number won't be that different, maybe 540 instead of 545.

 6 But more importantly, much more importantly, the length of the

 7 interval, the upper-to-lower bound is about the same size.

 8   What Dr. Mullin is having you believe -- and he doesn't

 9 write this in his declaration and he didn't talk about it here

10 on the stand, but he talked about it in his declaration -- he

11 straightforwardly said that your uncertainty in the overall

12 forecasted liability is gonna be three times bigger. And I've

13 drawn you a line to indicate how, what it means to be three

14 times bigger going down to under a hundred million -- I just

15 made up 66 million -- all the way up to something over a

16 billion.

17   Now when you hear that, you're like taken aback. You're

18 like, "Oh, my God. I don't want this. You can't do sampling.

19 You're gonna make, you're gonna just throw the baby out with

20 the bath. We'll never know anything with any accuracy if we

21 sample." That's just, that's just not how it works. Because

22 sampling is not the -- the -- the introduction of sampling

23 uncertainty is not multiplicative. It's additive.

24 Q   Okay. I'm gonna -- I'm -- I think this is what you're

25 talking about now.

 1 A   It is.

 2 Q   And how do you calculate it?

 3 A   You're make, making me put on my professor hat here. Very,

 4 very -- all right.

 5   So now we agree --

 6 Q   As, as I've told you many times, we are all lawyers. Most

 7 of us don't know anything about math. So --

 8 A   So one of the things that -- that --

 9 Q   -- professor away.

10 A   One of the things that's very hard for people to understand

11 is that, that uncertainty doesn't add. It does -- certainly

12 doesn't -- it doesn't add directly. And the analogy that I

13 gave in my deposition was what we call the -- the -- the simple

14 analogy is the, the chain is only as strong as its weakest

15 link, right? So if I have a, a ten-link chain and they range

16 in, in, in strength from, from strong to weak, it's gonna break

17 at its weakest. And so it doesn't matter to strengthen the

18 strongest. It's the weakest that's gonna drive everything.

19 And that's really the issue here.

20   So getting back to it and I have a couple of numbers and

21 names that I've given to things. And I -- the, the previous

22 demonstrative made it clear that what I'm talking about is

23 irreducible uncertainty, the really difficult task.

24 "Irreducible" just means really hard, right, the really

25 difficult task of predicting what a future meso will be and how

 1 many they'll be or all the other disease levels. That's what,

 2 that uncertainty I'm calling Sigma. And then there's a

 3 sampling uncertainty, the uncertainty that's introduced because

 4 we only had 1200 observations, not 12,000. And that we call

 5 Tau.

 6   Now the problem is I don't really, I mean, we have to

 7 establish what's Sigma and Tau is. So I'm just gonna throw out

 8 numbers which I think are, are, actually, a little bit too

 9 favorable against what I'm trying to say here, just to be, just

10 to be clear. So I'm throwing out Sigma is about a hundred

11 million. So I'm trying to guess the total value and so that's

12 gonna be about a hundred million, plus or minus 4 to 6. Maybe

13 it's even bigger. Now if there's no sampling, no sampling at

14 all, Tau would be zero, okay?

15   So the total uncertainty according to my formula, which is

16 written over there. It's -- you don't need to even use it

17 because there's no additional uncertainty. So the uncertainty

18 starts at a hundred and stays at a hundred. Now if you have a

19 hundred million uncertainty, Tau, and now, Sigma, and now we

20 add in some sampling uncertainty. Ooh, we only have 1200. So

21 we have some extra uncertainty. So what's gonna happen? Well,

22 that might be -- actually, I think it's a lot smaller than 20

23 million, but it's, but we'll just call it 20 million.

24   Here's the formula. Sigma, it's Sigma squared. So 100

25 squared, woo-hoo, big number, plus Tau squared. Now take the

 1 square root. If you then figure out what the overall certain,

 2 uncertainty is, it's almost exactly where you started, a

 3 hundred to a hundred and two. And the point here is that

 4 sampling does add a little uncertainty, but it's negligible

 5 compared to the big task.

 6   Now we're not saying you don't get any value out of 1200.

 7 Oh, you're gonna do a lot of stuff with that. That's gonna --

 8 it's -- I'm not saying you shouldn't do an investigation about

 9 alleged exposures and those issues, very necessary, but the

10 difference between 1200 and 12,000, it just isn't that much.

11 Because 1,200 is a big sample. And the uncertainty here is

12 it's, it's the strong part of the chain. The weak part is the

13 predictions.

14 Q   And that's all based on statistical principles, right?

15 You're not just pulling this out of thin air?

16 A   No. It's fundamental -- yes. It's -- I'm not pulling it

17 out of just thin air. It's fundamental statistical principles.

18 Q   Okay. Let's go back when -- and you were talking about

19 when you reviewed Dr. Mullin's declaration you pulled out two

20 parameters that he mentioned in his declaration. I think you

21 said the first parameter was proportion of claimants who failed

22 to disclose alternative exposures and the second was the effect

23 of partial information on average claim values.

24 A   Yes.

25 Q   And are those, are those what you would expect if you're

 1 trying to figure out the overall, you know, number of estimated

 2 liability?

 3 A   Absolutely. So those are very specific parameters of the,

 4 of the population and they're going to affect your overall

 5 dollar amount. That's really at issue here, is that when -- if

 6 you go back and look at the meso claims on average, well, maybe

 7 they misrepresented their exposure levels. And so, therefore,

 8 the dollar amounts in the past are too high and we need to

 9 adjust that given the fact that we have the different history

10 of exposures and maybe those claims were overvalued. And so,

11 so figuring out the percentage of, of claimants that would have

12 a change and, and what the change would be are the two primary

13 issues, of course.

14 Q   So, so it makes sense that he wants to measure these

15 parameters, the ones that he mentioned in his declaration?

16 A   Yes.

17 Q   Did he, in his declaration, did he talk about the, needing

18 the data for any other purposes?

19 A   Not really -- not -- his declaration didn't say anything

20 specifically.

21 Q   In Dr. Mullin's declaration did he mention the need for

22 data to study subpopulations?

23 A   No, not at all.

24 Q   In his declaration does, does Dr. Mullin ever discuss why a

25 sample of 1,200 is insufficient?

 1 A   No, never, not once.

 2 Q   As an expert, if you were submitting a report to the Court

 3 on your plan to use data, to use a dataset, would you

 4 articulate all your intended purposes, or at least all your

 5 major intended purposes for that data?

 6   MR. EVERT: Objection, your Honor. Calls for

 7 speculation.

 8   THE COURT: Overruled.

 9   THE WITNESS: Yes, I would. That would be the focus.

10 BY MS. MOSKOW-SCHNOLL:

11 Q   So let's discuss again the first parameter of interest

12 noted by Dr. Mullin, the proportion of claimants who failed to

13 disclose alternative exposures.

14   Would a sample of data from 1200, 1,200 claimants provide

15 an accurate result for testing this proportion?

16 A   Yes, and I detailed exactly in my report how accurate it

17 would be.

18 Q   And is that, again, based on statistical principles?

19 That's how you determine how accurate it would be?

20 A   Yes.

21 Q   And let's discuss the second parameter, the effect of

22 partial information on average claim values.

23   Would a sample of data from 1,200 claimants allow

24 Dr. Mullin to calculate the average size of the impact of

25 nondisclosure on average claim values?

1   A   Yes.

2   Q   And you heard Dr. Mullin testify, right?

3   A   Yes, I did.

4   Q   Did he basically acknowledge that a sample would be fine

5   for that?

6   A   Yes, he did.

7   Q   So for these two parameters or purposes noted by Dr. Mullin

8   in his declaration, would there be any material benefit to

9   using the full census versus a sample?

10 A   He certainly didn't articulate a purpose and I couldn't

11 think of one and the purposes that he did articulate don't

12 require more than a large sample of 1,200. And so my

13 conclusion stood that it doesn't, won't materially or

14 practically change things to have more data.

15 Q   Now he -- didn't he mention, Dr. Mullin, mention or discuss

16 the analytical burden of sampling?

17 A   He did.

18 Q   Did he, did he explain what he meant by that?

19 A   I didn't -- he didn't explicitly explain, but it seemed to

20 me that he was talking about the extra work that the

21 statisticians would have to do to deal with a, a sample. And

22 it, it is a little bit of work, yes, but we're well equipped to

23 do it.

24 Q   Is it substantial?

25 A   Not really, no.

 1 Q   Is it basically just doing another calculation that is a

 2 calculation that just exists in the statistical world?

 3 A   Yes. It's, it's what Dr. Mullin called the "math."

 4 Q   Okay.

 5   Did you review Dr. Mullin's deposition testimony?

 6 A   I did.

 7 Q   In his deposition did Dr. Mullin provide additional reasons

 8 for why he wants claims data for 12,000 claimants versus 1,200?

 9 A   Yes, he did.

10 Q   And what were those two additional things, or the

11 additional reasons?

12 A   He talked about two of them that I recall specifically.

13 One of them was this idea of subpopulations. That sorta popped

14 up in the declaration. Somehow, he talked at length about how

15 he needs to build estimates for individual subpopulations and

16 that having 1200 wouldn't be sufficient for, for estimating

17 the, the subpopulations. And the second thing he talked about

18 was the effect of the inaccuracy, the introduction of

19 additional sampling variation on the total amount and that

20 related to my previous declaration.

21   So those are the two things he introduced.

22 Q   And was his deposition the first time that this came out?

23 A   Yeah, that was it. Wasn't in the declaration at all.

24 Q   Okay. So let's go through these.

25   So the first is the small subpopulations.

1 A   Uh-huh (indicating an affirmative response).

2 Q   Having read his deposition testimony and now having heard

3 him testify, do you, do you understand why he needs that data?

4 A   Well, that's interesting. No, I don't understand why he

5 needs the data. I know why he's telling you he needs the data,

6 but I think I need to put some context here.

7   The subpopulations, there are, obviously, lots of

8 subpopulations. You have different law firms and you have

9 different jurisdictions, you have different occupations and

10 industries, and you can even throw in things that I've never

11 seen matter ever, which is things like sex and, of the, of the,

12 of the claimant. I mean, it's possible. You can, can always

13 do that, but you have to really remember what the task is here.

14 The task is to calculate the, an average value or an aggregate

15 value for the trust.

16   I don't think I've ever seen -- and I'm not sure it's at

17 issue here -- but I don't think Bates Whites and Dr. Mullin is

18 charged with the task of making many trusts. We have the

19 trusts for pipefitters and we have the trusts for shipbuilders

20 and we have the trusts for pipe builders who are 20 years old

21 who live in Arkansas. We don't need to build a trust for all

22 of those. We're building one trust with one dollar amount.

23 And yes, you can try to arrive at that dollar amount by

24 building up from the, from the subpopulations to the overall

25 value, but if you -- remember, our goal is the overall value.

 1 The fact that some of the subpopulations are not as accurately

 2 estimated as you would if you had a lot more data is ultimately

 3 rather irrelevant to the ultimate task. Let me give you an

 4 analogy. You didn't ask me, but I run the Wharton Sports

 5 Analytics and Business Initiatives. I'm gonna use a football

 6 analogy. I hope you're okay with that.

 7   If I'm trying to measure the quality of a football team,

 8 okay, how can I do that? Well, a football team is comprised of

 9 lots of parts. So I could try to measure the quality of its

10 running team and I can look at its special teams and its

11 safeties and its secondaries and its, and every single

12 situation that'll come in. Now a team might have 10,000 --

13 I'll just throw it out. Actually, maybe I'll use the number

14 12,000 -- 12,000 plays and if I had all 12,000 I could really

15 probably get a really good estimate of all the attributes that

16 make a football team a, a, a football team, but some of them

17 are gonna be really rare 'cause some of them don't really show

18 up that often and those, I'm not gonna get quite that

19 accurately.

20   But I'm ultimately interested in just evaluating the

21 quality of the football team and 1200 used to measure the

22 quality of the football, which is what I want, is gonna be way

23 more than enough. Sure, I'm not gonna know exactly the

24 contribution of a very rare subpopulation to that overall

25 quality, but ultimately, I don't need that for evaluating the

 1 quality of the team itself.

 2   And so if there is any specific need why you need to know

 3 for the overall purpose a very precise number on a

 4 subpopulation, Dr. Mullin didn't explain that.

 5 Q   Are small subpopulations generally relevant to estimate

 6 total future liability?

 7 A   Well, generally not because if it's a small subpopulation,

 8 then, by definition, you don't need that much information

 9 'cause they're small and especially when you throw in a

10 statistician's toolkit, which is weighted and strat, weights

11 and stratification. When you know what you're looking for and

12 what, you know what drives uncertainty, you can target the, the

13 subpopulations that drive uncertainty and that, of course, is

14 what's proposed.

15 Q   And, and I believe Dr. Mullin said something to the effect

16 of that he was particularly interested in small subpopulations

17 with high-claim values.

18 A   Yes. And in fact, that's actually very important. The

19 stratification -- in fact, if you go back a step and you say,

20 well, we got 12,000. We're looking at mesos in the first

21 place. We're looking at them because they're high value.

22 Valuation, valuations of the claims, the payment values that

23 are attached to them is a huge, huge factor in all of this.

24 And so the stratification will target the, the large value. So

25 any small subpopulation that has any appreciable number of

 1 | large claims will absolutely be included in our 1200.

 2 | So when I talk about sampling 1200, I'm actually talking

 3 | about an efficient sampling of 1200 and the efficiency is gonna

 4 | be gained by looking at the large claims and disproportionally

 5 | sampling large claims. And so that is, of course, what's

 6 | proposed.

 7 | Q   And would you agree, then, with Dr. Mullin's statement that

 8 | sampling can mitigate uncertainty, I mean -- sorry --

 9 | stratification or the way you, the method of sampling can

10 | mitigate uncertainty?

11 | A   Yes. In fact, the method of sampling can mitigate

12 | uncertainty enormously. It's a very important task, very

13 | important. Stratification is a very important task and when

14 | you have this incredible detailed information about the

15 | claimants -- now -- and you have -- you know what they were

16 | paid, you know what their law firm was and for all of them,

17 | Bates Whites knows this. They know the jurisdiction. They

18 | know all kinds of information and some of them might be -- have

19 | no -- missing fields, but that's information by itself, by the

20 | way. Missing this is often, information. We know what they're

21 | alleged occupation is. We don't know whether that would

22 | change, of course. That's the purpose of the exercise.

23 | But we have a lot of information available as to do a

24 | detailed stratification to make sure that the characteristics

25 | of the sample match the characteristics of the population, at

 1 least the known characteristics of the populations. You want

 2 to make sure that they match pretty well and particularly if

 3 you have a driver, like payment size. That's the one that

 4 you're gonna use and in particular, you know, this is not

 5 the -- this -- the -- we actually have two pieces of

 6 information to go on here. We have Bestwall case where

 7 Dr. Mullin's colleague, Dr. Gallardo-García, he proposed a

 8 sample almost exactly the same situation and I looked at it and

 9 it was something I, it was put into evidence and, and I read

10 and all the stratification was on size. No effort to stratify

11 on law firm, no effort to stratify on jurisdiction, no effort,

12 no subpopulations that we heard of, occupation, it was all

13 size.

14   And ergo, I mean, subsequently, we have another, we have a

15 -- I, I saw an e-mail that detailed a, a sample for this

16 purpose and that purpose, again, was entirely driven by sample

17 size. No subpopulations on law firms or jurisdictions or

18 anything else, driven by size because, frankly, it's the size

19 that matters.

20 Q   And why does the size matter? Is it because if something

21 only appears on a random, like very infrequently, that that

22 just won't impact the overall average, right?

23 A   Yeah. Appearances of things that are frequent --

24 infrequent things can have an impact if they're really, really

25 large. And so when you sample you have to be concerned that

1 you're gonna miss things that are infrequent. That's true. I

2 mean, you will miss things that are infrequent, but infrequent

3 things won't have an impact unless the, unless the size that's

4 attached to them is large enough to have that impact.

5   So you mitigate that by making sure you sample large ones.

6 In fact, generally, you go for all the largest ones. So you

7 don't even do a sample at all. The first strata is all the

8 largest ones and that's a very standard auditing practice. So

9 that's, that's kinda how you, you, you make sure that, that

10 information on some of the subpopulations doesn't hurt your

11 overall estimate because it doesn't -- it -- it won't if you do

12 it properly.

13 Q   And in his, in his deposition Dr. Mullin said, "If a law

14 firm only has 300 claims, then I would need all 300. Dr. Wyner

15 and I would agree that 30 claims is not enough." Do you agree?

16 A   Again, you have to have a purpose for what, what, what the

17 "enough" is, right? So if he were to build a trust just for

18 this law firm and it's gonna be funded and there's no money

19 going in and out and it's gotta fund every claim for that law

20 firm in perpetuity, 30 won't be enough. But that's never the

21 goal here. The goal is to fund all of this, all the thing

22 simultaneously, and one little law firm being slightly

23 misestimated is only a small piece in a much bigger picture.

24   It goes back to my initial argument with the, with the,

25 with the football team. If I, if I only have 30 special teams,

 1   I might not get the special teams right, but it's not gonna

 2   affect the overall estimate of the quality of the football team

 3   as a whole. And that's really what we're trying to do here, is

 4   estimate the total amount of liability, not the specifics. But

 5   you know, you have to have a question when you say something is

 6   not enough. Thirty is not enough. What's the question and

 7   what is it not enough to do? If, if I have a question, if law

 8   firms come in two types, are they, do they always represent

 9   claimants who never failed to disclose any, any allegations,

10   exposure allegations or do they always do it, one or the other?

11   Thirty'll do that wonderfully 'cause you'll know quickly

12   whether you're either group. If it's in the middle, it can

13   figure out are you 50 percent? You can do that well, as well.

14   So it all depends on the level of accuracy that you need

15   and when you -- you can't just throw out number is not enough

16   until you tell me what you're trying to do, right? So I'm

17   gonna do another sports analogy. Here we go.

18   If I have a, two baseball players and I'm trying to decide

19   who's better and I'm trying to decide one is, one is bad, is,

20   is mediocre, batting average of .270. Another is terrific,

21   .300. Will 30 observations -- 30 -- a sample of 30 from each

22   of them be able to do it? The answer is no. You can't do it

23   with 30. They're, they're too close. So you can't do it.

24   So when you say something's not enough, you have to have a

25   purpose. What's it for? And being able to say specifically

 1 accurate things on the law, on the law firm and the basis is

 2 necessary only if you're trying to build a trust specifically

 3 for law firms. But we're not trying to do that. We're trying

 4 to build an aggregate, an overall trust, and we'll get plenty

 5 of information about the trust, the law firms that appear

 6 frequently and with large values due to our stratification.

 7 Q   They said in their reply brief, Jones Day wrote in their

 8 reply brief that, "A sample of 1,200 would limit or render

 9 impossible debtors' ability to study subpopulations."

10   Do you agree with that?

11 A   Well, no, not in a material way. It won't -- it won't --

12 not -- it will render your ability to study subpopulations not

13 differently than for any purpose, important purpose of this, of

14 this matter in any substantive way.

15 Q   So the second new point that you mentioned was that errors

16 introduced through sampling can have a great impact on

17 estimating future liability and Dr. Mullin opined that using a

18 10 percent sample could triple the amount of uncertainty.

19   Do you agree with that?

20 A   No. I don't agree with that even remotely.

21 Q   And that comes back to the demonstrative that we already

22 went over?

23 A   That's right.

24 Q   Okay.

25   Are there any significant benefits to using a full census

 1 rather than the sample in determining and estimating future

 2 liability?

 3 A   Not that any I can see at this point.

 4 Q   Do you recall that Dr. Mullin stated in his declaration

 5 that the broader population of asbestos claims number is

 6 400,000.   So the 12,000 claims they've subpoenaed is itself a

 7 sample?   And I think he testified to that today, again.

 8 A   He did.

 9 Q   Does that have any impact at all on the efficacy of using a

10 sample of 1,200 versus a full sentence of 12, census of 12,000

11 mesothelioma claimants?

12 A   So that brings up two issues I need to clarify. First,

13 this is something that I teach almost the first day of class,

14 which is the accuracy of a sample depends only on the sample

15 size, not on the size of the population that it's drawn.

16 People have a very hard time with that. If I tell you I'm

17 taking a random sample of a thousand from a population of

18 20,000, that's no less accurate or more accurate than a sample

19 of a thousand taken from a population of 20 million.

20 Q   Now is that statement -- I'm assuming that's based on some

21 type of principle.

22 A   That's based on fundamentals of sampling without

23 replacement or with replacement, actually, in this context.

24 Basic probability theory, a statistical theory demonstrates

25 that. There's, there's something called the correction factor,

 1 which is actually in my report that I introduced, but the broad

 2 principle is absolutely valid.

 3   So introducing the idea that this is 1200 out of 400,000

 4 somehow doesn't change anything at all. The accuracy of 1200

 5 depends on 1200, not the fact that it's drawn from, from

 6 400,000, but that's actually not what's at issue here. What's

 7 at issue is the accuracy of 1200 compared to 12,000 and that

 8 12,000 isn't a sample in the sense of a statistical random

 9 sample. It's just a subset. And I wouldn't, I wouldn't call

10 12,000, the meso, I wouldn't call that a sample. I mean,

11 technically, it might be, but it's a subset of the data, the

12 subset that we're interested in.

13   And so what we have is a sample, a random sample weighted

14 and appropriately stratified of 1200 from the 12,000 that we're

15 interested in. The 400,000 is really not a, nothing here.

16 Q   And Dr. Mullin opined both at his deposition and today on

17 the stand that you, a statistician can't tell you the sample

18 size you need before the data's produced. Is that correct?

19 A   I'd be out of a job if I couldn't do that. I mean, the

20 fundamental issue in almost medical study is to do just that.

21 It's called a power analysis. You -- you -- you see things --

22 certain things are not available accurately ahead of time, but

23 they can be approximated or bounded. We have a, we have

24 information on the effect size, we call them, or effect size

25 that we're trying to measure. And so that guides the

 1 | construction of a sample.

 2 | So no. You can absolutely opine and provide some useful

 3 | information on the size of a sample before you generate a

 4 | study. I, I hate to tell Pfizer that their study of the COVID

 5 | vaccine was just done out of thin air because they didn't, no

 6 | idea what they were -- they -- what they were doing when they

 7 | created their sample size.

 8 | Q   In sum, just briefly, why is it your opinion that a 1,200

 9 | sample is sufficient here?

10 | A   Because the, the problems at issue relate to proportions,

11 | proportions of, of the data that has alternative exposure

12 | allegations, and the change in the size of the, of the value

13 | given those -- those -- those -- those changes. Those are

14 | averages and there's proportions. There's something that we

15 | wish to calculate for the entirety of the population and we'll

16 | be able to do them quite accurately with 1200 observations

17 | appropriately weighted and stratified.

18 | Q   Thank you.

19 | THE COURT: Anything else?

20 | MS. MOSKOW-SCHNOLL: Your Honor, would you like a

21 | paper copy of the demonstratives?

22 | THE COURT: That would be fine. Thank you.

23 | Any other questions before we get -- we'll reverse the

24 | order. The parties that are objecting to the debtors' motion,

25 | anyone want to ask questions of the witness? Anyone else, then

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 1  we'll come back to Mr. Evert?

 2            MS. BENNETT:  No.

 3            THE COURT:  We good?  All right.

 4            Cross.

 5            MR. EVERT:  Your Honor, this is the first that we've

 6  seen these demonstratives.  So I was gonna ask for a minute and

 7  given the time, I didn't know if it made sense to just break

 8  for lunch.

 9            THE COURT:  How do you folks feel?

10            I was gonna let you run up to as late as 1:00, but we

11  need to take a break at some point.

12            MR. GUERKE:  I, I suggest we go to 1:00, your Honor.

13            THE COURT:  Why don't we take -- how much time do you

14  need to look at the demonstratives?

15            MR. EVERT:  Just give me --

16            THE COURT:  Ten or fifteen?

17            MR. EVERT: -- 15 minutes, your Honor, and that'll be

18  fine.

19            THE COURT:  All right.  Let's use the time as best we

20  can.

21            We'll take, hopefully, a ten-minute break.  If you

22  need 15, we'll go that far.  Let us know when you're ready.

23            THE WITNESS:  Can I get down?

24            THE COURT:  And of course, you can step down, but you

25  don't need to discuss your testimony thus far with anyone right
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WYNER - CROSS   120

1   now, okay?

2   (Recess from 12:07 p.m., until 12:19 p.m.)

3   AFTER RECESS

4   (Call to Order of the Court)

5   THE COURT: Have a seat.

6   Ready for cross?

7   MR. EVERT: Thank you, your Honor. I think that,

8   hopefully, got me a little more organized.

9   THE COURT: Okay.

10   MR. EVERT: Michael Evert for the debtors, your Honor.

11   CROSS-EXAMINATION

12 BY MR. EVERT:

13 Q   Hello, Dr. Wyner.

14 A   Hello.

15 Q   Good to see you again.

16   I think you've illustrated today that your primary of

17 expertise is as a statistician, is that fair?

18 A   Yes.

19 Q   And you've been involved, I think you told me previously,

20 in a number of pieces of litigation where you testified as an

21 expert on the issue of a given sample and what that sample

22 means?

23 A   Yes.

24 Q   And the dispute that occurs in that litigation about what

25 the sample means is all about the sampling error, is that fair?

 1 | A   Typically, the sampling error and issues related to error

 2 | and variance and bias.

 3 | Q   And the difference between the true value and the, of the

 4 | population and the value of the estimate is, essentially, the

 5 | definition of the sampling error, is that right?

 6 | A   Yes.

 7 | Q   And it -- sampling error is an error that we expect to

 8 | occur when we make a statement about a population that is based

 9 | only on the observations contained in the sample, is that fair?

10 | A   Very good.

11 | Q   And there's also a sample variation that occurs where the

12 | results from one sample will differ from those provided from

13 | another sample, is that true?

14 | A   Yes.

15 | Q   And you agree with me that sampling leads to a loss of

16 | accuracy?

17 | A   I mean, yes, it agrees in the sense that more data is

18 | better than less data, but the real question is always how much

19 | better. And with samples there's what we call a diminishing

20 | return.

21 | So once the sample is fairly large, there's, or, actually,

22 | it's a theorem. Each additional data provides less information

23 | than the previous piece of information.

24 | Q   And another negative of sampling is that, the litigation

25 | that ensues over the meaning of the sample, which you just

1   talked about previously, right?

2   A   Yes.

3   Q   And if you analyze the entire dataset rather than a sample,

4   by definition there's no sampling error, is that right?

5   A   That's right.

6   Q   And if the entire population is available, the chief motive

7   for examining a sample rather than the population is cost,

8   right?

9   A   Yes.

10 Q   So one should undertake a cost benefit analysis to

11 determine whether or not to use a sample?

12 A   That's a good idea.

13 Q   All right.

14   And I think you agreed with me that if the cost is zero,

15 then you should always prefer the population to a sample, is

16 that right?

17 A   Well, every positive number is bigger than zero. So yes.

18 Q   Okay.

19   Now in your testimony today you, you focused on the issue

20 of how to fund the trust in the sense of that's what you saw as

21 the issue posed to Dr. Mullin, is that, is that fair?

22 A   Well, I mean, Dr. Mullin talked about that in his

23 declaration and this is -- and, and in his deposition -- and he

24 didn't talk about, really, anything else.

25 Q   All right. So let me -- let me -- let me make sure I've

 1 | got that.

 2 | So did, did you read the subpoena?

 3 | A   Yeah, I read the subpoena, sure.

 4 | Q   Okay. So, so do, do you recall that in Paragraph 5 of the

 5 | subpoena it says, "The subpoenas seek evidence that is relevant

 6 | and necessary to specific purposes in connection with the

 7 | estimation of the debtors' liability for current and future

 8 | asbestos-related claims and the negotiation, formulation, and

 9 | confirmation of a plan of reorganization in these cases"?

10 | A   Yes.

11 | Q   All right. And do you remember that it said that, in the

12 | subpoena, that, "The determination of whether pre-petition

13 | settlements provide a reliable basis for estimating the

14 | debtors' asbestos liability, the estimation of the debtors'

15 | asbestos liability, and the development and evaluation of trust

16 | distribution procedures for any plan of reorganization

17 | confirmed in these cases"?

18 | A   Yes.

19 | Q   Do you recall that from the subpoena?

20 | A   Yes.

21 | Q   Okay. So you, you had seen that there was a lot more at

22 | issue for the data here sought from the Trusts than how much to

23 | fund the trust?

24 | A   Well, ultimately, those things are very vague, right? So

25 | they're not specific. So if you talk about creation of a TDP,

 1 well, I don't think this issue -- the TDP has lots and lots of

 2 attributes into it for what are the rules, what are -- and none

 3 of these things have to do with this data.

 4   So when you say about construction of, say, the TDP, well,

 5 what attributes of it? One, one of them would be what are the

 6 scheduled values gonna be? What is the predicted, what is the

 7 average value gonna be for the IR models? Those are things

 8 that are, again, focused on liabilities and averages.

 9   And so, yes, there's a whole discussion on the TDP, but you

10 have to be specific about what is involved here and, and what's

11 related to those issues. And again, the things that I can

12 conceive of where these issues are really at, at, at stake are,

13 relates to, basically, values involving averages, percentages,

14 proportions, totals.

15 Q   So as I understand your testimony, it was in there, but it

16 just wasn't specific enough, is that, is that what you just

17 said?

18 A   Well, I mean, not only not specific enough, but, but

19 Dr. Mullin wasn't specific --

20 Q   Okay.

21 A   -- so.

22 Q   And likewise in his declaration where Dr. Mullin said, "The

23 relationship of exposures alleged to the various occupations

24 and trades of the debtors' historical claimants and the extent

25 to which the full range of alleged exposures is changing over

 1 time are important to estimating the debtors' legal liability

 2 share," you, you had seen that as well in his declaration,

 3 correct?

 4 A   Yes.

 5 Q   So you had seen that Dr. Mullin talked about studying

 6 occupations and trades of the debtors' historical claimants and

 7 the like. Again, not specific enough for you?

 8 A   No, because it doesn't talk about the way that intersects

 9 with the quantity that is affected by sampling.

10 Q   Okay.

11   So Dr. Wyner, I'm trying to find --

12   MR. EVERT: Do you have his declaration, Wyner's

13 declaration?

14   MR. HIRST: Uh-huh (indicating an affirmative

15 response).

16   MR. EVERT: Thank you.

17   I apologize.

18   THE COURT: Take a moment. That's good.

19   (Pause)

20 BY MR. EVERT:

21 Q   Ah. In, in your declaration, Dr. Wyner, you said -- and we

22 talked about this at your deposition -- you said, "If called to

23 testify, I may also explain principles and terminology referred

24 and alluded to in this report as well any document, as well as

25 any documents referenced herein," do you remember that?

1 A   Vaguely, I suppose, yeah.

2 Q   And, and I asked you about it at your deposition and I

3 said, "Does that essentially mean, 'If I don't use the same

4 words that are in my report, don't hold it against me?'"

5 A   I don't recall exactly, but something to that effect.

6 Q   Okay. All right.

7   So, so we can agree you're not tied to the words you used

8 in your report, is that right?

9 A   No. Yeah.

10 Q   All right.

11   So your focus of your testimony today rather than these

12 issues about negotiation and formulation of a plan and TDPs and

13 the like, instead it's been focused on one aspect of

14 Dr. Mullin's role, which is the overall estimation of how much

15 to fund the trust, is that fair?

16 A   Well, I mean, that has been the thrust of what I've been

17 talking about because that's the things that Dr. Mullin talked

18 about in his declaration and it's also things that he talked

19 about in his, his actual testimony right over here today.

20 Q   Some of the things, would you agree?

21 A   Sure. I mean, that's what --

22 Q   Okay.

23 A   I can only respond to things that come up.

24 Q   Well, it's some of the things he talked about --

25 A   Uh-huh (indicating an affirmative response).

 1   Q   -- not all of the things he talked about, would you agree

 2   with that?

 3   A   I think we're splitting hairs, but yes.

 4   Q   Okay. And it's your opinion that the effort to try to

 5   estimate the current and future asbestos claims against the

 6   debtors is one that's fraught with, essentially it's fraught

 7   with uncertainty, is that fair?

 8   A   Yes. That's absolutely true.

 9   Q   Okay.

10   A   I don't think anyone would disagree with that.

11   Q   And I think that your opinion, as you expressed as I

12   understand today, is that the sampling error that would, by

13   definition, result from the use of a 1200-claimant sample

14   instead of a 12,000-claimant population would be immaterial in

15   light of the overall uncertainties in the estimation of the

16   asbestos liabilities, is that right?

17   A   That's right.

18   Q   And am I correct that at the time you first rendered that

19   opinion you had not read the order ordering estimation in this

20   case?

21   A   I'm not real -- I don't recall. Sorry.

22   Q   Okay. We, we talked about it. You'd not read it at the

23   time of your deposition. So it's fair to say you'd not read it

24   at the time you rendered your opinion --

25   A   Yeah.

1 Q   -- is that fair?

2 A   That'd be my written opinion, yes.

3 Q   Yes.

4 A   Yeah.

5 Q   And, and you rendered this opinion despite the fact you

6 have never before published an opinion or expert report on the

7 forecasting of future asbestos claims, is that right?

8 A   None -- I have never given one for a court, for example, or

9 published it in -- but I've given opinions to trusts on a

10 private basis, yes.

11 Q   You have never before rendered an opinion or an expert

12 report on the forecasting of future asbestos claims, is that

13 fair?

14 A   You have to be careful. I -- the second part, yes, that's

15 fair. I've never issued an expert report.

16 Q   Okay.

17 A   But offered an opinion, I've given many opinions.

18 Q   I understand. I understand. We all have a lot of

19 opinions.

20   And, and you've never before published an opinion or an

21 expert report on the value of current and future asbestos

22 claims pending against a company, is that fair?

23 A   That's fair, yes.

24 Q   And you have not been involved in any form in the

25 confirmation of a plan of reorganization, is that fair?

 1 A   That's fair. Well, secondary reorganizations. I've been

 2 involved in, in, in NARCO's case, which was just reorganized.

 3 Q   Well, let me just make sure for, for the Court's benefit.

 4   You mean the, the trust recently settled with the funder

 5 and they are modifying the trust accordingly, is that what you

 6 mean?

 7 A   Yes, that's what I mean.

 8 Q   Okay.

 9   And in, and in fact, the only times that you have looked at

10 issues -- and obviously, you've done a lot of work and I know

11 sports statistics is a huge expertise of yours and all -- but

12 the only times you've looked at issues related to future

13 asbestos claiming has been in connection with your consultancy

14 with two trusts, is that right?

15 A   Correct.

16 Q   And those two trusts are the NARCO Trust and the DII Trust,

17 is that right?

18 A   That's right.

19 Q   All right. And in those instances what you have done is

20 you have reviewed more than one actuarial or other consulting

21 report that have made estimates as to the future instance of

22 mesothelioma, correct?

23 A   Correct.

24 Q   And when you've reviewed those reports you provided to your

25 clients at NARCO and DII your critique of those estimates based

 1 on your expertise in statistics, is that fair?

 2 A   Yes.

 3 Q   But you have never before built a model for forecasting

 4 future claims like the model Dr. Mullin described today and has

 5 built before and will be building here, is that right?

 6 A   That's correct.

 7 Q   And the work you did for the NARCO Trust was associated

 8 with the individual review model, correct?

 9 A   Part of the work I've done.

10 Q   Okay. And the goal of the individual review model was to

11 value a claim pursuant to the NARCO trust distribution

12 procedures, is that fair?

13 A   Correct.

14 Q   And you based that model on various factors that affect the

15 severity of damages and evaluating a claim, correct?

16 A   That's right, as --

17 Q   Among those factors were an injured party's industry,

18 correct?

19 A   Yes.

20 Q   Occupation?

21 A   Uh-huh (indicating an affirmative response).

22 Q   Age?

23 A   Yep.

24 Q   Law firm?

25 A   Yep.

1 Q   Economic loss?

2 A   Also.

3 Q   Dependency?

4 A   Yes.

5 Q   Life status of the claimant?

6 A   Yep.

7 Q   Many of the same factors that Dr. Mullin described today,

8 is that correct?

9 A   Yes.

10 Q   And you were not surprised when we talked about at your

11 deposition that Dr. Mullin was also interested in considering

12 those factors, is that right?

13 A   Potentially, yes.

14 Q   All right.

15   Now when you did your work for the NARCO Trust did you have

16 the entire database?

17 A   I had a lot of data. I'm not sure what, if I can answer I

18 had everything, but I had a lot of data.

19 Q   Do you believe you had a sample of the NARCO data?

20 A   Well, we certainly subset it, but we didn't do random

21 sampling. Again, I don't think so, no.

22 Q   Okay. You, you think you had the entire population of the

23 data, is that correct?

24 A   Well, it's not the entire population. I, I had the subset

25 of the population that was relevant to the tasks that I was

1   performing.

2   Q   I see.

3   You said in your direct testimony that forecasting claims

4   ten years down the road is really hard to do. Did I basically

5   get that right?

6   A   Yes.

7   Q   All right. And as I understand it, what you're suggesting

8   here today is adding sampling error, which is some level of

9   uncertainty, to make it harder?

10   A   I'm sorry. Can you repeat the, the second half of that, or

11   just start from, from again?

12   Q   What you're suggesting today is that we add sampling error

13   to add some level of uncertainty which just makes it harder?

14   A   Yeah. It makes it harder, but -- and, and my, my essential

15   point was it makes it harder in a way that's not material or

16   practically worse.

17   Q   I see. So the answer to that is to use less data?

18   A   No. The answer to that is -- well, there's a, there's a

19   cost benefit analysis and there's a cost at getting this data

20   and the -- and there's a -- if that weren't there at all, then,

21   of course, this wouldn't be an issue, but there is an issue of

22   cost. And I wasn't asked to opine on cost. I'm just under the

23   operating assumption that somebody here cares a lot about cost.

24   And so given that that exists, I was asked to talk about

25   the benefit side and try to quantify that and I did that as

 1 best as I could without really trying to compare it to

 2 anything. I let other people talk about that.

 3 Q   I got it. You're not here to talk about the cost side?

 4 A   Not really, no.

 5 Q   So you -- so you -- you -- you stand by your position that

 6 if the cost is zero, you should take the entire population, is

 7 that right?

 8 A   Well, that's an easy one.

 9 Q   There you go.

10   Now I wanna talk for just a second about your mentioning of

11 Dr. Mullin's partner, Dr. Gallardo-García's, declaration in the

12 Delaware Bestwall matter. Do you remember that discussion?

13 A   I did.

14 Q   And I, I think you -- I didn't hear in your direct if you

15 said that you were arare, you were aware that Dr. Gallardo-

16 García's declaration was directed to issues that arose in the

17 case after a sample had been ordered by the Court. Are you

18 aware of that?

19 A   Yes.

20 Q   And you're aware, ultimately, that decision on a sample was

21 reversed on appeal?

22 A   I'm not sure.

23 Q   All right.

24   And are you, are you aware at all of the extent of the

25 litigation over the sample that had occurred prior to

1   Dr. Gallardo-García's declaration?

2   A   No, I'm not aware.

3   Q   All right. So when you say you would have said more, or

4   something like that, in Dr. Gallardo-García's declaration, you

5   have no concept of what was already said in the case?

6   A   Well, I don't have the background, no.

7   Q   Okay. And either way, you'd agree with me that, consistent

8   with the position of the debtors here, that sampling relative

9   to a full dataset increases the analytical cost and reduces the

10 precision of the results, agreed?

11 A   Tech -- I mean, certainly increases the analytical cost and

12 it does, it does lower the precision. But again, the relevant

13 question is to what degree?

14 Q   I, I understand, but that's exactly what Dr. Gallardo-

15 García said in his declaration, didn't he?

16 A   I don't remember what he exactly said.

17 Q   Okay.

18 A   So.

19 Q   Would you -- you, you have no recollection as to whether or

20 not in that declaration he said, "Sampling relative to a full

21 dataset analysis increases the analytical cost and reduces the

22 precision of the results"?

23 A   I mean, again, that, that statement is sort of technically

24 true, but practically irrelevant.

25 Q   All right.

 1   And --

 2   MR. EVERT: One minute. Bear with me.

 3   (Pause)

 4   BY MR. EVERT:

 5   Q   Apologize, Dr. Wyner. Stay with me one minute here.

 6   THE COURT: And for housekeeping purposes, we'll run

 7   up till about 1:00.

 8   MR. EVERT: I, I'll be through shortly, your Honor.

 9   THE COURT: Okay.

10   MR. EVERT: If I can remotely get myself organized

11   over here. So my apologies.

12   (Pause)

13   BY MR. EVERT:

14   Q   So in focusing on how much to fund the trust, Dr. Wyner,

15   you have not really focused on the issues of the estimates and

16   forecasting that goes into the confirmation of a plan of

17   reorganization, is that fair to say?

18   A   That's fair.

19   Q   And it's fair to say that you've not focused on the

20   estimates and forecasting that goes into the question of

21   whether a plan is feasible, is that fair?

22   A   That's fair, too.

23   Q   And, and in your work for trusts you are always aware of,

24   of the ongoing issues in regard to claiming against those

25   trusts, is that fair?

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 1   A   Yes.

 2   Q   So can you tell me the DII Trust, which is one of the two

 3   trusts where you have asbestos experience, what has happened to

 4   the payment percentage in that particular trust for future

 5   claimants?

 6   A   I'm not currently -- I haven't done an evaluation recently,

 7   so I'm not sure. But payment percentages are often very much

 8   in place in many trusts.

 9   Q   The payment percentages go down when the trust has more

10   claims than they forecast, isn't that right?

11   A   That's right. That's absolutely right.

12   Q   All right. And would you be able to agree with me that the

13   DII Trust has gone over the last 15 years from a hundred

14   percent payment percentage to a 60 percent payment percentage?

15   A   Yes, that's true.

16   Q   All right.

17   Thank you, sir. Those are all the questions I have.

18   THE COURT: Okay.

19   Others? Mr. Guy.

20   MR. GUY: Thank you, your Honor. I'll be very quick.

21   I guarantee we're gonna get lunch.

22   CROSS-EXAMINATION

23   BY MR. GUY:

24   Q   Dr. Wyner, good afternoon.

25   Are you aware there's no agreed sample here between the

 1 parties?

 2 A   There was -- I know that there's no agreed sample, but

 3 there certainly was a proposed sample.

 4 Q   Thank you.

 5   And we all agree that more data is better than less, right?

 6 A   I think everybody does.

 7 Q   Right. Do you -- well, you are aware because you've worked

 8 for trusts as a statistician, but are you aware that all the

 9 trusts use statisticians to prepare their forecasts?

10 A   Well, I'm gonna get particular here. There are a lot of

11 people who put on the hat of a statistician who aren't, but

12 there, they all hire people who call themselves statisticians,

13 yes.

14 Q   And you said in your testimony earlier a lot of them got it

15 wrong?

16 A   Well, I mean, not in the, in the sense that the forecast

17 didn't match what actually happened and that's probably, I

18 mean, this is the principal reason why you have payment

19 percentages, although there could be others as well.

20 Q   So for the Trusts that are here today arguing that they do

21 not want to provide full information, only wanna provide a

22 sample -- they're listed here, AC&S, Combustion, GI, GST,

23 Kaiser, Quigley, THAN -- are you aware that all of those, other

24 than GST, have reduced their payment percentages?

25 A   I'm not aware, but I'm not surprised.

1 Q   THAN, for example, I can represent to you, reduced its

2 payment percentage from a hundred percent to 10 percent.

3 That's a magnitude of what?

4 A   That's a big magnitude, but I'm not sure that the trusts

5 are the ones who, who funded the, the, who funded the trusts.

6 Those were done by Bates Whites, right? Don't they the ones

7 who come up with the amounts, not the trusts?

8   So if there's any underfunding, it's not the trusts that

9 did it.

10 Q   Well, it was funded at a number that the experts determined

11 was sufficient to pay all claimants a hundred percent.

12 A   Yeah. It's hard to do, isn't it?

13 Q   Right.

14   So you said before that, you know, just adding a little bit

15 of information --

16 A   Yeah.

17 Q   -- is gonna result in negligible benefit?

18 A   Compared to this enormous uncertainty, yes. That's right.

19 Q   If you're a future claimant in THAN --

20 A   Uh-huh (indicating an affirmative response).

21 Q   -- who's now getting 10 percent, would you say that's a

22 negligible prejudice --

23 A   Well --

24 Q   -- compared to the current claimant who got a hundred

25 percent?

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 1   A    But that's not -- you're -- there's a cause and effect

 2   here, right?  So the effect is not the, I mean, the, the

 3   sampling didn't cause that.  It's caused by something else.

 4   Q    Well, the sample, we don't know whether they used a sample,

 5   but we know that they had forecasts in these cases and they got

 6   them wrong, correct?

 7   A    That's right, yes.

 8   Q    Right.

 9        Do you agree with me there's a probability that they might

10   have gotten a better forecast if they'd had more data?

11   A    Well, I can't put a probability on anything that isn't

12   random.  So I can have, I have to reject trying to answer that

13   question.

14   Q    But it's not zero?

15   A    It -- again, it's not a -- it's not -- it's not like --

16   it's not zero.  It's -- it would be or it wouldn't.  You'd have

17   to know what it is.  It's not an issue of chance, I mean.

18        So the real question is you would have to do, is you'd have

19   to look, okay.  Let's go back in time and see what was

20   available to them at the, at the, at the process where they

21   made the forecast.  Was there any data that was available to

22   them in sample or in entirety that would have seen, allowed

23   them to see that their forecasts in the future would not be

24   accurate?  It's not a matter of probability.  It's really a

25   matter of evaluation.
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 1 Q   So why do you think all these trusts, the majority of

 2 trusts get it wrong?

 3 A   I'm not gonna speculate on that.

 4 Q   And you don't think for a second it could be anything to do

 5 with the amount of data they have available to them?

 6 A   Oh, God. I -- as I said, I can't speculate and I can, we

 7 can think of lots of things, but I don't think the, a sample of

 8 1,200 as opposed to 12,000 was the driving element. I mean,

 9 there's gonna be a lot of big things where things, explanations

10 for why things went wrong and that's not gonna be one of them.

11   MR. GUY: Nothing further, your Honor.

12 BY MR. GUY:

13 Q   Thank you, Dr. Wyner.

14 A   Okay.

15   THE COURT: Anyone else of this witness?

16   Ms. Moskow --

17   MS. MOSKOW-SCHNOLL: I just have a very brief --

18   THE COURT: Sure.

19   MS. MOSKOW-SCHNOLL: -- brief redirect.

20   REDIRECT EXAMINATION

21 BY MS. MOSKOW-SCHNOLL:

22 Q   Mr. Evert was going through, like, all the things you

23 looked at when you were critiquing models used for estimating

24 future liability like occupations and law firms and gender, and

25 whatever, all those things, right?

1   A   Yeah --

2   Q   And --

3   A   -- roughly.

4   Q   And, and then he said that aren't those the same kind of

5   things that Mr., Dr. Mullin wants to look at, remember that?

6   A   Yeah, I do.

7   Q   But aren't, aren't you doing two different things?

8   A   Yes, completely different things. I'm building an IR

9   model, or have built IR models. IR models are about giving a

10 value to an individual and making sure that that value is the

11 proper value as compared to what that individual would have

12 gotten if he had been sitting in a, in a courtroom. That's the

13 goal of an IR model. That's not the goal here. You won't --

14 what the goal here is to figure out how to fund the trust and

15 all its ramifications and all its issues. It's not an IR

16 model. That's something that happens much later.

17 Q   And so can, can Dr. Mullin review subpopulations data even

18 using a 1,200 sample?

19 A   Of course. There's gonna be lots of subpopulations

20 available to him with 1,200 observations, particularly when

21 it's stratified.

22 Q   Okay. Thank you.

23   THE COURT: Anyone else?

24   (No response)

25   THE COURT: Okay. You can step down. Thank you, sir.

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 1            All right.  We're about quarter till 1:00.  Is this a

 2   good time for a break?

 3            Will someone tell me where we're going afterwards?

 4   Are we ready to argue or is there other evidence to be

 5   presented?

 6            MR. GUERKE:  Good afternoon, your Honor. Kevin Guerke

 7   for DCPF.

 8            I have a question about what's in the record right

 9   now --

10            THE COURT:  Uh-huh (indicating an affirmative

11   response).

12            MR. GUERKE:  -- which may inform us on what our next

13   steps are.  We have submitted the declaration of Richard

14   Winner.  Richard Winner is present here today.  His dep, his

15   deposition was taken and the deposition was attached to one or

16   more filings.

17            At our last hearing we submitted into the record a

18   sample claim form and the DBMP invoices.  Just a point of

19   clarification.  Are those items in evidence for this case?

20            THE COURT:  I would assume that's a matter of

21   discussion between the attorneys and, potentially, argument.

22            Are you --

23            MR. EVERT:  We have no objection, your Honor.

24            THE COURT:  -- good?

25            All right.  Let's, let's accept those --
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 1   MR. EVERT: I --

 2   THE COURT: -- as being in evidence.

 3   MR. EVERT: Let me just say. Our, our assumption has

 4   been that all the papers that have been submitted in

 5   association with this have, are in the record.

 6   THE COURT: All right. Are we all in agreement the

 7   declarations that have been filed are received in evidence for

 8   this hearing?

 9   MS. BENNETT: We join in that understanding, your

10   Honor.

11   THE COURT: Okay. We're all, all good with it? Yes.

12   MR. EVERT: Yes, your Honor. Yes, your Honor.

13   MR. GUERKE: Okay. But subject to the, the motion to

14   strike and the objections to Dr. Mullin's --

15   THE COURT: Right.

16   MR. GUERKE: -- deposition -- I'm sorry --

17   declaration.

18   Well, thank you, your Honor. That, that clarifies --

19   THE COURT: Uh-huh (indicating an affirmative

20   response).

21   MR. GUERKE: -- things.

22   We will, we'll discuss at the break our next step.

23   We'll, we'll discuss it with the debtors.

24   THE COURT: Okay.

25   This -- why don't we take an hour and then you can get

 1 something to eat and have whatever discussions you need and

 2 pick up at about a quarter till, okay?

 3   MR. MASCITTI: Thank you, your Honor.

 4   THE COURT: We're in recess.

 5   MR. EVERT: Thank you, your Honor.

 6   (Lunch recess from 12:46 p.m., until 1:47 p.m.)

 7   AFTER RECESS

 8   (Call to Order of the Court)

 9   THE COURT: Have a seat, all.

10   We got everyone?

11   I think the question was had as to where we were on

12 the, on the objecting parties' witness presentation.

13   Do we have more witnesses to, to present?

14   MR. HIRST: It's the objectors' turn, but I think

15 we've reached a deal with the Objectors on some of the factual

16 testimony coming in.

17   THE COURT: Okay.

18   MR. HIRST: The two witnesses in the room, as you

19 know, your Honor, Mr. Eveland from --

20   THE COURT: Uh-huh (indicating an affirmative

21 response).

22   MR. HIRST: -- Verus and Mr. Winner from DCPF, their

23 deposition, their declarations are in the record and have been

24 for some time. Their depositions, their complete transcripts

25 are actually attached to our reply brief that was filed last

 1 Friday, whatever day it was filed last, or two weeks ago.

 2   THE COURT: Uh-huh (indicating an affirmative

 3 response).

 4   MR. HIRST: I believe the parties have agreed that

 5 we'll agree to basically rest on that being the factual record

 6 for those two witnesses. There's no need to call them live.

 7 We won't cross them live. And so --

 8   THE COURT: All right.

 9   MR. GUERKE: That's correct, your Honor. And there,

10 there are, as I mentioned before we broke, the additional two

11 invoices from DBMP and the claim sample that I submitted at, at

12 our November 30th hearing. And I could, I could hand those up

13 if, if you're interested.

14   THE COURT: Yes. That, that would be helpful. Save

15 me from having to go back and look.

16   But otherwise, we're gonna receive their testimony by

17 declaration?

18   MR. HIRST: Yep.

19   THE COURT: Okay.

20   MR. HIRST: With the deposition transcripts as well.

21 That will serve as the cross.

22   THE COURT: Begging the question, then, are there

23 particular places in the transcripts that I need to go look at

24 or do you, were you gonna highlight those or do you want me to

25 read all of it?

 1   MR. HIRST: So your Honor, I mean, we certainly -- I

 2   guess from our perspective I wouldn't wanna force you to read

 3   all of it, having sat through all of it. We highlighted in our

 4   reply brief, I think, the transcript cites we thought were --

 5   THE COURT: Okay.

 6   MR. HIRST: -- particularly relevant and we may

 7   highlight some spots in the deposition during argument.

 8   So I think, I think you're probably good relying on

 9   us, but if you're --

10   THE COURT: All right.

11   MR. HIRST: -- terribly interested, go for it.

12   THE COURT: Objecting parties the same?

13   MR. GUERKE: Yes, your Honor. We didn't, we didn't

14   highlight all the relevant testimony that he gave. That was

15   consistent with his declaration, but his deposition testimony

16   is consistent with his declaration and we would submit it on

17   that basis.

18   THE COURT: Okay, very good.

19   All right. Then are we ready to argue?

20   MR. GUERKE: One, one housekeeping item, your Honor.

21   THE COURT: Yes, sir.

22   MR. GUERKE: Richard Winner traveled all the way down

23   from the great state of Delaware and since he won't be

24   testifying today, may he be excused?

25   THE COURT: Any objection?

1   MR. EVERT: No objection, your Honor.

2   THE COURT: Released. Thank you.

3   MR. GUERKE: Thank you.

4   MR. KAPLAN: Same for Mr. Eveland, your Honor?

5   THE COURT: Again?

6   MR. EVERT: No objection, your Honor.

7   THE COURT: All right. Thank you, Gentlemen.

8   MR. EVERT: Your Honor, the only thing that we have

9   left is we had wished to call Dr. Mullin for a brief rebuttal

10 on the demonstrative that was used in the direct of Dr. Wyner.

11   THE COURT: Okay. We're through with evidence on this

12 side, on the objecting parties, unless we have rebuttal,

13 counterrebuttal?

14   (No response)

15   THE COURT: All right. Go ahead. Call him.

16   MR. EVERT: Thank you, your Honor.

17   We'd call Dr. Mullin, Charles Mullin, back to the

18 stand, please.

19   And Dr. Mullin, you'll remember you're please, please

20 remember your under oath still.

21   DR. CHARLES H. MULLIN, DEBTORS' WITNESS, RECALLED ON REBUTTAL

22   (Set up of demonstrative to be displayed)

23   DIRECT EXAMINATION

24 BY MR. EVERT:

25 Q   Dr. Mullin, thank you.

 1   So you were able to be here and see Dr. Wyner's testimony,

 2   is that right?

 3   A   Correct.

 4   Q   And I wanted to ask you about the second demonstrative that

 5   he used in his testimony, which is up on the screen now and is

 6   entitled Negligible Impact of Sampling on Overall Forecast

 7   Uncertainty.

 8   Have you had a chance to look at that?

 9   A   I have.

10   Q   And if you could, Dr. Mullin, explain to me how that, that,

11   this demonstrative does not accurately reflect your testimony?

12   A   So I don't object to the mathematical formula if you're

13   estimating a given item, that you have these two components,

14   but the formula, it's basically assumed an answer. It starts

15   with total uncertainty in the absence, its sampling of 102 and

16   has, you can eliminate 2 percent of that uncertainty. You go

17   from 102 down to a hundred.

18   So it's basically embedding the assumption that if this

19   data's not helpful, then taking a sample of data that wasn't

20   helpful doesn't hurt you very much because it wasn't helpful in

21   the first instance. So this has embedded in that that

22   irreducible uncertainty dominates, which actually isn't true in

23   this context. And that's the real flaw in this, is that it's

24   not true that these ratios of a hundred million to 20 million

25   are right.

1   And he didn't say those were right. These were

2 illustrations, but, as I recall his testimony, he said, if

3 anything, he thought the hundred million was being generous.

4 Maybe that should be bigger and maybe the 20 million should be

5 smaller so that maybe it's even less than a 2 percent change

6 and that core assumption is what's wrong.

7   When you're estimating future claims, the techniques for

8 that have evolved dramatically over the last 40 years. That

9 first forecast is Nicholson's 1982 paper. That forecast is not

10 accurate. That forecast used 13 occupational groups, industry

11 occupation groups. The current state-of-the-art forecasts, the

12 one that Bates White used in Garlock, the one that we intend to

13 use going forward here, uses the three-digit industry and

14 occupation codes from the U. S. Census data. That gives you

15 over 10,000 cells of people in different industry and

16 occupation combinations. It takes advantage of the digitalized

17 data put together through the University of Minnesota IPUMS

18 Program, digitalized all the U. S. Census data. So now you can

19 bring that in. That wasn't available until the 2000s. That's

20 what gives you that foundation. And so today on the modern

21 models, not the old Nicholson model, not the old KPMG model --

22 those ones are outdated and they predate the availability of

23 this information -- those do allow you to very accurately

24 project the future demographics.

25   So if you want to know the demographics of people with

 1 mesothelioma 10-or-20 years from now, that now you can do with

 2 a high degree of accuracy. That wasn't true 40 years ago. The

 3 trick is to map that level of accuracy to a given debtor's data

 4 and you can only do that mapping if you have reliable industry

 5 and occupation information. I have it from the U. S. Census

 6 data for the population. I know how the population

 7 demographics will change, but I need to know which subsets of

 8 that to map in. That's the advantage.

 9   And so you may well -- I don't know exact numbers -- but in

10 my opinion your, the irreducible part here is smaller than the

11 reducible part. So if you flip these around and said it was 20

12 million for Sigma and a hundred million for Tau, you'd get an

13 80 percent improvement. That 20 percent for Sigma, the total

14 uncertainty with no sampling would be 20. You reverse the

15 numbers, it's still 102. So then you go from 102 down to 20.

16   So it's all about how helpful do you believe the data's

17 gonna be. If you don't believe it's helpful, he's absolutely

18 right. Taking a subset of data that's not helpful won't hurt

19 us. If you believe it's helpful, then taking a subset of the

20 data is really gonna hurt you. And this doesn't give you any

21 guidance as to which of those is correct. My experience in

22 doing this, the models that we've been using since Garlock have

23 proven very accurate. The Garlock Trust validates that in how

24 the projections have played out. In our financial reporting

25 work and insurance underwriting work and work in different

 1 contexts, those projections have been panning out.

 2   So we're in a different position now. What you may have

 3 thought of as irreducible uncertainty 30 years ago, today is

 4 very much reducible and it's the industry and occupation data

 5 that really allows you to get that benefit.

 6 Q   And how will the full census of the 12,000 claimant trust

 7 data help you do that?

 8 A   So it's going to allow me to map that claimant information.

 9 What are the high value industry and occupations and exposure

10 patterns in the claimant data? How does that, then, map to

11 what's available through all the U. S. Census data to tell me

12 how many claimants will look like those very particular groups

13 in the future?

14   So that's what allows you to say precisely how many in

15 these high-value claimant occupation group if we're doing a

16 Garlock-style claims resolution procedure. How many are in the

17 high-value group? How many are in Tier 2? How many are in

18 Tire 3? Tier 5 don't -- yeah. The bottom tier doesn't matter

19 that much 'cause they don't get a lot of money. But the top

20 tiers really matter and it's, the industry and occupation data

21 is what's critical for being able to map that to what is,

22 actually, very good data now on the future demographics.

23 Q   And when you said it's "very good data now," has that data

24 evolved over time?

25 A   Absolutely.

 1 Q   Yeah.

 2   Thank you, Dr. Mullin.

 3   THE COURT: Again, Mr. Guy, any, any questions of this

 4 witness in rebuttal?

 5   MR. GUY: No, sir. I wouldn't dare.

 6   THE COURT: How about from the objecting parties'

 7 side?

 8   MR. KAPLAN: Yeah. I think --

 9   THE COURT: Mr. Kaplan?

10   MR. KAPLAN: Your Honor, I'll take you up on the North

11 Carolina practice of just standing here today, if --

12   THE COURT: We normally sit, but you're welcome to do

13 that as well.

14   MS. MOSKOW-SCHNOLL: I got it right. I sat.

15   MR. KAPLAN: I'm, I'm sitting, then. This is

16 fantastic.

17   THE COURT: You have old eyes. You can't, you can't

18 read your papers if you're standing.

19   MS. BENNETT: Exactly.

20   THE COURT: Go ahead.

21   MR. KAPLAN: Thank you, your Honor.

22   CROSS-EXAMINATION

23 BY MR. KAPLAN:

24 Q   Dr. Mullin, if I understand this formula correctly, it's

25 the square root of Sigma squared plus Tau squared. That's what

 1 | Dr. Wyner lectured us on and I'm trying my best to repeat those

 2 | and sound intelligent, is that correct?

 3 | A   That's the formula on the screen.

 4 | Q   Okay. Can you give me the, sitting here today, again

 5 | focusing on this case and these Trusts, can you give me the

 6 | input for Sigma?

 7 | A   I can't give you a precise number, no.

 8 | Q   Okay. Can you give me the input for Tau?

 9 | A   Again, no. I can -- those are things we won't know till

10 | later.

11 | Q   Thank you.

12 | MR. KAPLAN: No further questions, your Honor.

13 | THE COURT: Anyone else?

14 | (No response)

15 | THE COURT: Mr. Evert?

16 | MR. EVERT: No, your Honor.

17 | THE COURT: You may step down. Thank you.

18 | THE WITNESS: Thank you, your Honor.

19 | MS. MOSKOW-SCHNOLL: Your Honor, may I briefly put

20 | Dr. Wyner back on the stand?

21 | THE COURT: You may.

22 | ABRAHAM WYNER, DCPF'S WITNESS, RECALLED ON REBUTTAL

23 | DIRECT EXAMINATION

24 | BY MS. MOSKOW-SCHNOLL:

25 | Q   Just remind you you're still under oath.

1   What do you think of Dr. Mullin's statement that

2 irreducible uncertainty should be flipped with sampling

3 uncertainty?

4 A   I completely 100 percent disagree.

5 Q   And can you explain why?

6 A   Well, I think there's two issues here. One is that we're

7 confusing the sampling uncertainty and the, with the point of

8 doing this exercise. I'm not saying the data, getting the data

9 isn't gonna change forecasts. It very well can do that. What

10 I'm really talking about is the difference between getting 1200

11 observations and getting 12,000. That's what we call sampling

12 uncertainty.

13   So the data itself can make a big impact on, on, on the

14 kinds of forecasts that are made, possibly. It could make

15 nothing. We'll have to wait and see until we see the data.

16 But sampling uncertainty is measurable. We kinda know

17 approximately what it, what it is, right? That's when you have

18 1,200 observations.

19   So I'm -- I'm -- I'm -- it is interesting to know that the,

20 the consulting firms that get together to make these forecasts

21 have gotten better. That's good to know, but I look, you know,

22 every, quarterly, every six months that, at what's coming into

23 the trusts that I, that I, that I consult for and these numbers

24 are bopping around like a ping-pong ball. And that's what I

25 mean by irreducible uncertainty. I mean, we just don't -- it's

 1 very hard to predict how many are gonna come in. I mean, maybe

 2 over --

 3   And so I -- I -- I -- my general sense is that Sigma is

 4 just way bigger than Tau. And that's just the way to put it in

 5 straight mathematical terms. Dr. Mullin says it's the other

 6 way around. I know what this, what Tau is and I know what,

 7 'cause that's something I can compute based on sample. I know

 8 it's a really small number and it just doesn't jive with what I

 9 think I understand about what we call Poisson processes, right,

10 the numbers of mesos that you would get in any given year.

11 It's -- these are for any individual is a, these are modeled

12 with, with collections of binomials and they create Poisson

13 processes and, and when you aggregate them up, they have other

14 distributions and the standard deviations on those are pretty

15 large, right?

16   So how many claims you're gonna get in a year and how --

17 how -- how -- how valuable they are. They're really large. I

18 mean, we try to track -- so one of the things we try to track

19 is the average age of a meso, right? We know what happened in

20 the past and we wanna know what, when they finally come in,

21 what age are they going to be. Remember, the exposures all

22 happened a long time ago.

23   So yes, it's good to know that these models are getting

24 better, but there's still a huge amount of just natural

25 variability that's just built into human beings. Some get

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 1 sick, some don't, some report, some don't, things happen. They

 2 have dependents and economic loss and all these things are

 3 random variables, right? You can't forecast them at -- at --

 4 perfectly and that is what we call the irreducible uncertainty.

 5 Q   I think that's it.

 6 A   That's it.

 7 Q   Thank you.

 8   THE COURT: Mr. Evert?

 9   MR. EVERT: Your Honor, I just have one question.

10   THE COURT: Yes, sir.

11   CROSS-EXAMINATION

12 BY MR. EVERT:

13 Q   Dr. Wyner, just to be clear, you've never tried to make one

14 of these forecasts, correct?

15 A   From ground zero, no.

16 Q   Yeah, okay.

17   Thank you very much.

18   MS. MOSKOW-SCHNOLL: Thank you.

19   THE COURT: Anyone else?

20   (No response)

21   THE COURT: You may step down.

22   Any other evidence to be presented?

23   MR. HIRST: None from the debtors, your Honor.

24   THE COURT: Y'all need a few minutes or you're ready

25 to argue?

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 1           MR. HIRST:  We're ready to go.

 2           THE COURT:  Okay.  Please proceed.

 3           Debtors first.

 4           MR. HIRST:  Okay.  The only thing we may need a minute

 5   to do is get our computer plugged in, but let's see here.

 6           THE COURT:  Okay.

 7           Well, then, for the benefit of all the lawyers in the

 8   room, while I don't normally say much about my personal

 9   background, there was a time in 1981 when my college roommate

10   and I, both economics majors, decided where we were going.  He

11   decided to go to the MBA School at Wharton and I decided to go

12   to law school.  I'm so pleased, so.  Of course, he has been

13   retired for five years now and owns three homes around the

14   country, but notwithstanding that.

15           Ready to proceed?

16           MR. HIRST:  It looks like we are.

17           MR. HART:  Uh-huh (indicating an affirmative

18   response).

19           MR. HIRST:  Yeah, we are.

20           Good afternoon again, your Honor.  Morgan Hirst for

21   the debtors.

22           Your Honor, at the March 30 hearing you made the

23   comment that the subpoena proceedings have kinda tied you up in

24   knots and it was an apt metaphor because it's -- it's -- 11

25   months later, it's certainly tied me up in knots and one of
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 1 those knots you had in your shoe when you were a kid, it's like

 2 quadruple knotted and needed to get, you know, it had gum in it

 3 and you needed somebody to come in and unwedge it for you. We

 4 hope today we've kinda un, loosened those knots up for your

 5 Honor --

 6   THE COURT: Uh-huh (indicating an affirmative

 7 response).

 8   MR. HIRST: -- and got you to a point where we can get

 9 to a decision once and for all and believe the best way for us

10 to start is to go back over a few simple points that your Honor

11 knows, but I think are worth going over again, anyway.

12   We issued the subpoenas to get information from the

13 Trusts for the 12,000 mesothelioma claimants who resolved

14 claims against the debtors from 2005 till the petition date.

15 We call it the Trust Data. The Court approved those subpoenas

16 before we sent 'em, approved 'em just about 11 months ago after

17 contested hearings on those. Your Honor found the Trust Data

18 at that time to be relevant and necessary to estimation of the,

19 of the debtors' asbestos liabilities, but also to the

20 development/evaluation of trust distribution procedures for any

21 plan of reorganizations, reorganization. Those are what are

22 referred to in the subpoena and in your Honor's trust order as

23 the Permitted Purposes.

24   The entire, the entirety of the Trust Data here is

25 obtainable from DCPF and Verus and it's obtainable in

 1 electronic form. It's not the type of thing we have to go

 2 gather documents or go into a warehouse. It is all reduced to

 3 electronic form. And so as a result, collecting it and

 4 ultimately producing it is done by electronic queries. It does

 5 not, the evidence will show -- and it's reflected in the

 6 deposition transcript -- the actual queries don't take very

 7 long. They take a data analyst to write this code and query

 8 down the information.

 9   We heard today -- and Dr. Wyner doesn't disagree,

10 Dr. Mullin doesn't disagree -- when you can have the entire

11 dataset, when it's available to you, it's better than having a

12 sample. It eliminates the, the sampling error. It eliminates

13 uncertainty that comes with samples. It eliminates litigation

14 about the propriety of the sample chosen and how reliable that

15 sample is for the conclusions it's being used to do. No one

16 credibly disagrees with these points.

17   Dr. Mullin testified that if he is restricted to a

18 sample of the Trust Data here his forecast for estimation, his

19 forecast for confirmation, his forecast for trust distribution

20 procedures, they will be less precise. They will have more

21 uncertainty. This is particularly so in attempting to forecast

22 claims and claiming within certain parameters, which Dr. Mullin

23 talked about, like occupation, industry, gender, law firm,

24 jurisdiction. This is what was done for the trust established

25 in Garlock. The trust, as we heard, just doubled its payment

 1 percentage, a positive note. In short, because these

 2 characteristics are all subpopulations of the Trust Data, you

 3 may end up with some of these small populations exhibiting

 4 these characteristics and if we limit ourselves to a sample,

 5 we're gonna end up limiting ourselves to a very small group of

 6 those.

 7   You heard Dr. Mullin say if the debtors have to live

 8 with a 10 percent sample, we'll live with it and we will be

 9 able to put forward calculations at estimation and at, at plan

10 confirmation based on that sample, but do we think it's a good

11 idea for us? Do we think it's a good idea for the Court when

12 you're gonna be making all of these critical decisions whenever

13 you get the chance to make them in the future? And the

14 answer's no. Doing so risks our forecasts having less

15 precision and less certainty and your Honor having less

16 certainty in your own decisions when we come to estimation.

17   Given the downside, given the immense protections that

18 your Honor put in for the Trust Data in question here -- and we

19 haven't talked much about it today and we'll talk a little bit

20 about it in closing here -- but we have immense protections in

21 your trust discovery order for the confidentiality of the

22 documents, of, of the Trust Data. We have numerous ways to

23 eliminate almost entirely or certainly dramatically reduce the

24 burden on the Trusts. We're paying for all of this, the

25 debtors are. The option is for the Trusts to do the redaction

 1 work they claim to need to do. We have to do it no matter

 2 what, we through Bates White.

 3   So the Objectors, of course, they've been pushing for

 4 a sample from, and, and to their credit, they've been

 5 consistent about it from Day 1. This has been a position of

 6 theirs for 11 months, but they ultimately have no risk in the

 7 outcome. They will not be here in two years, three years,

 8 whenever we get to do estimation and plan confirmation.

 9 They're not going to be here having to defend the sample in

10 front of your Honor. We're going to have to live with it and

11 your Honor's gonna have to live with it.

12   Now the one argument the Objectors have raised, where

13 the so-called burden would fall on them, is the burden of

14 redacting this PII that they claim might be inadvertently

15 included in some of the text fields that the subpoenas request

16 and your Honor knows we are not asking for the PII to be

17 produced. Our subpoenas don't ask for any PII, whatsoever. We

18 already have it for all the claimants that are actually being

19 sought. We likely have it for many of the nonclaimants who the

20 Trusts have indicated they're concerned about that might be

21 included in there. We might have it for the same reason they

22 do. Because it was, it was submitted to us. But they've

23 raised a concern about that and as I said, your Honor's trust

24 discovery order deals with this in a variety of ways.

25   And first of all, starting with the protective order,

 1   the, the protections in your confidentiality order. That is

 2   the way we ordinarily deal with confidentiality issues in

 3   litigation, including confidentiality issues that are far, that

 4   are at least equal to or even beyond the confidentiality

 5   considerations here. They have the right to redact the

 6   information at our cost. Bates White has to redact the

 7   information at our cost. You heard Dr. Mullin say after the

 8   testimony he heard about how DCPF does it and after how Bates

 9   White will do it the chance of any PII coming to Bates White,

10   ultimately, is, is incredibly low and then for that PII to

11   ultimately be exposed to the world then requires a data breach

12   at Bates White.

13   So your Honor, hopefully for the last time, let me go

14   over in a little more detail some of these points and we'll

15   start with our presentation. Because we've done so many of

16   these I think we can breeze through these fairly quickly.

17   If we can go to slide -- and these are the four

18   categories we're gonna talk about today. We'll start with the

19   subpoenas.

20   You can go to the next slide, Rob.

21   So you know the claimant population we're talking

22   about. As Dr. Mullin said, it is, I mean, we didn't just throw

23   this number out when we crafted these subpoenas in the first

24   place back last April. We were deliberate about what we chose

25   and we do not choose all 400,000 claimants who filed asbestos

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 1  claims against us.  You can see the categories of information

 2  and you're familiar with these as well and a lot of them, to be

 3  perfectly honest with your Honor, are not particularly

 4  confidential, claimant law firm, date claim was filed,

 5  approved, etc.  Those are the categories of information we

 6  want.

 7          Next slide, Rob.

 8          So you know the timeline, I think, as well.  Eleven

 9  months ago is when we issued the subpoenas.  The amount of

10  litigation -- and Mr. Guy'll probably like this for one of his

11  charts -- but the amount of litigation that has been involved

12  in the subpoena fights, not with just Verus and DCPF, it's --

13  it's just -- it's astronomical and it's been, frankly, nearly a

14  full-time job for a few of us over the last 11 months.  And so

15  far, we have information from one of those groups of subpoena

16  targets.  We have information from Paddock and that's it.

17          So your Honor knows your rulings.  We talked about it

18  at the beginning of the day when we set up the status of where

19  we're at.  The motion to quash had been denied other than the

20  sampling and your Honor granted our right to rehearing and

21  we're here to talk about whether the sampling is sufficient.

22          So if we can skip up to, actually, Slide 8, Rob.

23          So the Permitted Purposes -- and I talked about these

24  in the intro -- and this is straight from your Honor's trust

25  discovery order.  This is straight from the, the attachment to
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 1 the subpoenas. So all of the subpoena recipients received this

 2 when they received the subpoena. This is what we're seeking,

 3 this is what you approved us to seek this information for, and

 4 this is why we want to use it and it's, it's pretty clear what

 5 we want to use it for. It's not just estimation. It's for a

 6 variety of roles when it comes to plan confirmation.

 7   Next slide.

 8   So you know, I think it became pretty clear from

 9 Dr. Mullin's testimony forecasting is a lynchpin of what we're

10 gonna do in so many ways here in estimation, at plan

11 formulation, at plan confirmation. We need to forecast a

12 variety of things. We need to forecast claim counts. We need

13 to forecast claim dollars. We have a lot of things to forecast

14 and we're forecasting quite a ways out, as Dr. Mullin testified

15 about today. And these forecasts -- and you heard Dr. Mullin

16 say it -- are gonna rely extensively on what we get in the

17 trust discovery. Do we have other sources? Of course, but the

18 trust discovery is gonna be an important piece of how

19 Dr. Mullin forecasts.

20   So your Honor, this is in Page 1 of our reply brief,

21 and I'm not gonna read all of these out, but this is where the

22 parties do agree -- and by "the parties," I, I frankly mean

23 Dr. Mullin and Dr. Wyner here -- about the importance of

24 sampling and how sampling works. And I guess the, the, the

25 bottom line of it all is that at the end of the day, if it's

165

1   available and all else being equal, getting the entire dataset

2   is better than getting a sample. Reduce the sampling error and

3   knocks out sampling error and that is an undisputed point.

4   Next slide.

5   You heard Dr. Mullin talk about uncertainty is one of

6   the drawbacks here and you heard Dr. Wyner confirm sampling

7   necessarily creates sampling error. It necessarily adds to

8   your level of uncertainty. There's certainly debate as to what

9   that impact was, but there's no debate that there is an impact.

10   You also heard, like another thing Dr. Wyner and

11 Dr. Mullin agree on, forecasting for 30 years, which is what

12 we're gonna be doing here, is a hard job and we want to

13 eliminate as few of the, as much of the uncertainty as we

14 possibly can that we can possibly control for. Because there

15 are things we can't control for when we forecast. So we wanna

16 reduce as many of that as possible and one of the things we can

17 reduce is the effect of sampling error from the Trust Data if

18 we have the entirety of the Trust Data.

19   Dr. Mullin also talked about, I think both in his

20 deposition, but I think today as well, that a lot of the, a lot

21 of the things he's forecasting come from multiple inputs. It's

22 not just a, a stagnant piece, your Honor. It's, it's multiple

23 inputs at once and when you have uncertainty on one piece of,

24 one factor and uncertainty on another factor, when you mix 'em

25 together it's not just additive. It's a multiplicative

 1 process. And so your level of uncertainty jumps even more on

 2 those types of forecasts.

 3   Next slide.

 4   Second drawback or category of drawbacks relating to

 5 sampling is the lack of sufficient information and this goes to

 6 the subpopulation points I think you heard quite a bit about

 7 today. And there's no doubt some of these are gonna be studied

 8 and put before your Honor. The occupation and industry code

 9 are certainly keys to our view and the Garlock view of the

10 world on legal liability. And unless I can convince Mr. Wright

11 to take a different view for the ACC, we know they're gonna

12 have a tort liability figure and that's gonna involve law firm

13 and jurisdiction. And so these are all factors we're gonna

14 have to study and if we're limited to 1200 claims, you increase

15 the possibility -- and do we know what it is now? Of course we

16 don't -- but we increase the possibility that we're not gonna

17 have a big enough sample for some of these particular

18 subpopulations Dr. Mullin wants to study.

19   Next slide.

20   And who pays the price? Well, I mean, we've heard who

21 pays the price and we've heard it *ad nauseum* today. The

22 forecasts are forecasting future claiming and the farther out

23 we go, it's gonna be the future claimants who -- the, the more

24 uncertainty there is, the more at risk the future claimants

25 are. The closer we can get to where we wanna be, the less

 1   likely it is that the future claimants, we're gonna come up

 2   short for the future claimants in terms of the trust.

 3   So few things about the way -- and this partially

 4   comes from the briefs, your Honor. It also partially comes

 5   from today -- but there's a variety of ways that the Objectors

 6   either misstate or misunderstand Dr. Mullin's analysis. All we

 7   heard today and frankly, in the briefs, was about estimation

 8   and how we can be fine with a sample for estimation and how we

 9   can be fine, frankly, for a sample for discovering undisclosed

10   claiming history and the like. And as to that second point,

11   Dr. Mullin doesn't disagree and we've all -- and he said that

12   right upfront. We're gonna be working off a sample when it

13   comes to, to that point, but the Permitted Purposes, as your

14   Honor knows, go way beyond that and Dr. Mullin testified in

15   details concerning that. Plan formulation, plan confirmation,

16   plan funding, all of these things, the creation of the TDPs,

17   these are all Permitted Purposes for use of the data. They're

18   all ways we intend to use it in this case and they're all

19   impacted significantly by being reduced to a sample.

20   In Garlock -- another point they raised -- this was in

21   their briefs, your Honor -- they said we already have this info

22   from our own claims database. We have occupation and industry

23   codes and there's two points I would say on that. There's two

24   points. No. 1, it comes from Garlock. Garlock points out, and

25   not necessarily, there's a different world of disclosure in the

 1 trust-disclosing world than there is in the tort-liability

 2 world. They get, frankly, higher levels of information, is

 3 what Judge Hodges found, than we do. And so there's gonna be a

 4 lot of cases we don't have it. And so, you know, we will need

 5 this and, and Dr. Mullin testified about how the Trust Data

 6 will supplement what we don't have and in many cases, we don't

 7 have a lot.

 8   The Objectors -- and this was what you heard at the

 9 end and so I won't go over it too much, in part, because I

10 won't do it nearly as well as Dr. Mullin did -- but the, the

11 Objectors oversimplify the impact of the sampling error by

12 this, this idea that the entire process is so fraught with

13 uncertainty that the error is very small. And Dr. Mullin

14 explained why that's so, but at bottom, why would we accept any

15 uncertainty at all? Why would we accept controllable

16 uncertainty? If we can control aspects of that uncertainty to

17 make it better, why, why wouldn't we do that here?

18   And, and then the fourth point, I guess, is, is about

19 Dr. Gallardo-García's declaration in Bestwall. I think your

20 Honor knows this, but just to make sure you do understand the

21 timeline. Dr. Gallardo-García's declaration came after the

22 ruling by the Delaware District Court ordering a sample. And

23 so he was justifying the sample that Bestwall was intending to

24 use. There was lots of litigation, as your Honor knows, before

25 that District Court opinion where the parties were fighting

 1   about whether any sample needed to take place and of course, as

 2   your Honor knows, that ruling in Bestwall was then reversed by

 3   the Third Circuit and Bestwall, of course, has a complete

 4   dataset from DCPF seek, in response to the subpoena. And by

 5   the way, they have a complete dataset with all of the PII we're

 6   talking about today. Remember, the Bestwall subpoena as

 7   originally drafted requested PII. They have it all. And so in

 8   large part, we believe Dr. Gallardo-García's affidavit is

 9   absolutely right, it's correct, and it's completely relevant to

10   the, what we're talking about today.

11   Okay. Next slide.

12   So then, let's look to the benefit side of sampling.

13   And just, and this is not the topic we've spoken a lot about

14   today, but it's the topic I think your Honor's heard a lot

15   about in past months. And so just a reminder. First of all,

16   reminder of what we don't seek in the subpoena. We, we crafted

17   the subpoena very narrowly. We are not seeking any of the

18   traditional categories of things that courts deem to be

19   confidential. We aren't seeking PII. We aren't seeking

20   settlement amounts. We aren't seeking medical info. We aren't

21   seeking financial information. Judge Silverstein, when she had

22   the Paddock motions to quash in front of her on these identical

23   subpoenas, said that for the fields we are asking for, which I

24   showed you earlier, "many of these are the fields of

25   information that could be gleaned from any complaint filed in

1 the tort system."

2   So this is not secret information. This is

3 information that, that these claimants filed when they filed in

4 the tort system, in the first place.

5   So then to the, the burden and I mentioned this at the

6 outset. There is virtually -- and you'll see in the deposition

7 testimony -- there's virtually no burden in querying the, the

8 digital information requested by the subpoenas. Every single

9 field that is requested by our subpoenas is available

10 electronically and available for being queried. And the

11 testimony in Verus from Mr. Eveland was that one of their data

12 analysts, "This would be a routine task to draft up the code

13 necessary and would take a couple hours."

14   So pulling the data down is, is not a burden. And the

15 burden is gonna be the same whether it's 10 percent or a

16 hundred percent or it's gonna be marginally different running

17 those queries. It is not gonna be anything material.

18   So burden, as you know, that's been identified is

19 redacting this PII that's found in the narrative fields. So

20 lots of ways we've gone about doing this.

21   We can go to the next slide.

22   The first way is the trust discovery order your Honor

23 entered and the multitude -- you've heard me refer to this as

24 the protective order on steroids. Because it is. It's the

25 most rigorous protective order I've ever been a part of in

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 1   terms of protecting this PII that may exist in the fields.  And

 2   Judge Silverstein also confronted that in Paddock and she

 3   ruled, she liked your Honor's trust discovery order.  She said

 4   this is how we deal with these things in litigation.  We trust

 5   that the Bates Whites of the world and the Jones Days of the

 6   world and the Evert Weathersbies of the world are gonna do what

 7   we signed up for in the protective orders.  And there's been no

 8   evidence that Bates White has ever misused any of this

 9   information that's been sent to them.

10          And so you have a, you have a protective order which,

11   your Honor, frankly, on its own should be sufficient to protect

12   the confidentiality info here.  But that's not all we did.

13          And then here's the chart as well that shows all of

14   the different things we included in that protective order, your

15   Honor.  And it covers a multitude of different categories in

16   terms of how you use the data, how you, how it's produced to

17   us.  We have the, the matching key and the anonymization

18   process in place, how, how it can be accessed and who can

19   access it, how it's gonna be stored and secured.  And then

20   ultimately, how it's gonna be deleted and removed when the case

21   is over.

22          So as I said, I think this is enough.  This is what we

23   usually use in litigation, these types of protective orders to

24   protect confidential information.  But your Honor did more here

25   and we agreed to do more here as well.
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 1   And this gets back to, your Honor, maybe part of --

 2   and you can blame us for this one, your Honor -- back to

 3   November 30th. Our trust discovery order includes the same

 4   process that your Honor implemented in DBMP back January of

 5   2022 and it was to allow specifically for the trust claims

 6   facilities to redact this information. Any PII that was found

 7   in the exposure fields, which DCPF indicated in DBMP could be

 8   there, your Honor put in, into the trust order they have a

 9   right to redact it and if they, and whether or not they choose

10   to exercise that right, we have an obligation to look for it

11   and redact it.

12   And so we have two additional steps in there and all

13   of this, regardless of who does it, we're paying for it. We,

14   the debtors, are paying for it. Whether it's the Trusts that

15   decide to do it, we owe them, we owe them the cost of doing so.

16   And that's the next slide. That's Paragraph 19 of the trust

17   discovery order here.

18   So then you heard, after all this, is there some risk?

19   And, and you'll hear the Objectors say that, that there

20   shouldn't be, we shouldn't permit any risk of disclosure of, of

21   PII, that, that any risk is, is too much risk. And you heard

22   Dr. Mullin testify about what that risk is and how we get, the

23   panoply of events that essentially have to happen for that risk

24   to come true.

25   So first off, DCPF and Verus, who've made very clear

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 1   they intend to do this redacting process, they have to miss

 2   stuff and based on the process DCPF used -- we don't know what

 3   Verus uses yet because they haven't done it -- based on what

 4   DCPF did in DBMP Dr. Mullin said that a double-blind analysis

 5   usually covers 99 percent.  Then you get Bates White to do it.

 6   That should cover 99 percent of the remaining 1 percent and

 7   that leaves you somewhere between zero and ten claims where you

 8   might have some scant PII that gets to Bates White.  In DCPF,

 9   Mr. Winner testified that most of -- in the DB -- in responding

10   to -- eeh.  Too many Ds -- in responding to the DBMP subpoena,

11   your Honor, DCPF said most of the non-claimant PII was

12   coworkers' names.

13          So if we assume the majority of the zero-to-ten are

14   coworkers' names that find their way into Bates White --

15   they're still secured at Bates White.  Bates White is still

16   under all the obligations of the protective order.  That

17   information is still stored with hundreds of thousands of other

18   claims -- and then there would need to be a data breach and

19   Bates White and Dr. Mullin's testimony is that Bates White

20   hasn't had a data breach and Bates White is subject to some of

21   the most stringent security protocols out there.  You heard

22   Dr. Mullin talk about being HITRUST and SOC 2 certified, which

23   are -- and he explained what, what exactly the, the, the

24   requirements are to get to those certifications.  They're

25   certifications concerning data protection by third party
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 1   outside entities on data protection and data security and Bates

 2   White has met those qualifications. And you'll read and you'll

 3   see in our briefs we asked DCPF and Verus both about these

 4   certifications. Neither of them have them. Verus is very

 5   interested in getting them, both SOC 2 and HITRUST. They just

 6   haven't done it yet. And so with due respect, there's an

 7   argument that this data is safer at Bates White than it is

 8   where it currently sits.

 9   Okay. Now a couple of quick points specific to,

10   first, DCPF and then to Verus. You know, we do believe what

11   happened to DBMP proves that the burden is not undue here. We

12   have this -- your Honor ordered a complete production in DBMP

13   and DCPF went about and did the redaction work pursuant to the

14   confidentiality order that they can do in this case. The data

15   was produced in 45 days. It was a cost of $86,000. Is that,

16   is that insignificant? Of course not. $86,000 is a lot of

17   money, but in the scope of these cases and when we're the ones

18   paying for it, your Honor, it really is fairly immaterial and

19   certainly doesn't constitute an undue burden. There's no

20   indication that any PII wasn't properly redacted.

21   And there is two items that, that come out of that

22   which should benefit us in this case and should reduce the

23   burden on DCPF in complying with the subpoena here. One, they,

24   they created the program for how they would do the redaction.

25   So it's done. Two -- and Dr. Mullin testified to this -- some

 1 of that data is gonna be overlapping. Some of the claimants on

 2 DBMP are gonna be claimants here. We don't know how many. We

 3 don't know how significant an amount, but there's gonna be some

 4 overlap. There's no reason the redaction they already did for

 5 Morgan Hirst in responding to the DBMP subpoena can't be done

 6 for Morgan Hirst in responding to the Aldrich subpoena.

 7   So next slide.

 8   I want to talk about Verus a little bit and this was

 9 something we raised in our reply brief and, and Mr. Eveland

10 testified to. But Verus, the ACC filed a motion in this case

11 back in March seeking to retain Verus to review the PIQ forms

12 in this case and compile the PIQ information and do an analysis

13 of the PIQ information. And that, that work, of course, that

14 Verus' seeking to do in this case is gonna be paid for by the

15 debtors. That work involves -- and your Honor knows the PIQ

16 form 'cause you approved it. The PIQ form asks for an

17 enormous amount of confidential information from both current

18 claimants and related parties to current claimants, including

19 Social Security numbers, including all the same types of PII

20 that we're hearing about here. Verus thinks that could

21 potentially take thousands of hours of work, this, this PIQ

22 work that they intend to do, that they're seeking to do in this

23 case.

24   So on the one hand, you have Verus saying, "Well,

25 we're just gonna hire new people to do that work. We're, it

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 1  won't be a problem and we're happy to have the debtors pay for

 2  it and we're happy to have these new people work with this very

 3  sensitive data," while on the other hand, they're refusing to

 4  respond to subpoenas seeking, frankly, not seeking PII, but

 5  that may contain some PII.  That would also be paid for by the

 6  debtors.  It, it undermines, your Honor, their entire claim of

 7  undue burden in this case when they're willing to do it on

 8  something they wanna do, but claiming undue burden on a very

 9  similar task paid for by the same entities when they don't

10  wanna do it.

11         Last point, your Honor.  Your Honor said -- and we

12  totally agree -- that this case and DBMP are two different

13  cases and your Honor's gonna have different rulings in those

14  cases and there are times those two cases are gonna take

15  different trajectories along the way and there's no doubt about

16  that.  But here, we have identical subpoenas to what we had in

17  DBMP.  They ask for the exact same thing.  We have the same

18  protections in place for them, the same redaction processes.

19  There is simply -- and for a similarly sized population.  DBMP

20  was 9,000.  We're 12,000 here in terms of the claimants.

21         This, in our view, is not one of those cases where it

22  makes sense to diverge from DBMP in your ruling here.  They're

23  identical issues and we think that the DBMP ruling that your

24  Honor made, reaffirmed after a motion to reconsider, is the

25  proper one.
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 1   So to conclude, your Honor, ultimately, we're gonna

 2   have to work with this data to estimate, to do claims

 3   formulation, to do, to do plan formulation, to do trust

 4   distribution formulations. We've heard how Dr. Mullin intends

 5   to use it. We've heard from him how he sees the drawbacks here

 6   and Dr. Mullin's somebody who's done this a number of times.

 7   There's no question as to the relevance of this data in light

 8   of Garlock and in light of your Honor's order.

 9   The Objectors, on the other hand, have gone to

 10 incredible efforts to try and demonstrate the other side, 11

 11 months of this to try and prevent us from getting this data.

 12 They spent tens of thousands of dollars on counsel. They've

 13 hired an expert. They've litigated motions to quash. We've

 14 had evidentiary hearings, all of it based on, according to

 15 them, their stated desire to ensure we don't get PII that we

 16 don't want and we probably already have.

 17   We deal with production of confidential information

 18 all the time. We deal with it through protective orders.

 19 We've dealt with it here with a even more robust protective

 20 order. The number of events that have to occur for this data

 21 to get invert, inadvertently and improperly disclosed -- and

 22 "this data" meaning the PII in question that may slip

 23 through -- is so unlikely to occur it's essentially a non-

 24 existent risk.

 25   So when you compare all the cost benefits, which we've

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 1 | talked about from Day 1, the benefits of us getting the

 2 | entirety of the data, and the minimal costs in doing so and the

 3 | fact that we're the ones bearing the costs, anyway, we think

 4 | the, the ties of the, that are so knotted up, frankly, untie

 5 | themselves. We don't think this is a particularly close call,

 6 | your Honor. We ask that you order for full compliance by DBMP,

 7 | by DCPF and Verus with the subpoenas as, as issued. And absent

 8 | any questions, I have nothing more, your Honor.

 9 | THE COURT: Thank you.

10 | Affiliates want to say anything by way of closing,

11 | Mr. Mascitti?

12 | MR. MASCITTI: No, thank you, your Honor. We join in

13 | the request.

14 | THE COURT: Okay.

15 | All right. Mr. Guy?

16 | MR. GUY: Thank you, your Honor.

17 | As everybody knows, I'm not technologically very

18 | competent and we might run out of battery. So I'm, I'm gonna

19 | hand out some hard copies.

20 | THE COURT: Okay.

21 | MR. GUY: And I, I don't know whether I'll have enough

22 | for everybody.

23 | May I approach, your Honor?

24 | THE COURT: You may.

25 | (Copies of FCR's presentation distributed)

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 1   THE COURT: Thank you.

 2   MR. HIRST: And your Honor, we realize we didn't hand

 3   up a copy of ours to you.

 4   THE COURT: All right. Thank you.

 5   MR. HIRST: May I approach?

 6   Yeah. We can give them to you as well. Sorry.

 7   THE COURT: Appreciate that.

 8   (Copies of debtors' presentation distributed)

 9   MS. MOSKOW-SCHNOLL: Thank you.

10   THE COURT: All right. Whenever you're ready.

11   MR. GUY: Yeah. Thank you, your Honor. This won't be

12   long.

13   Our favorite chart, fees. So yeah. The National

14   Stadium, they have the President's Run.

15   THE COURT: Uh-huh (indicating an affirmative

16   response).

17   MR. GUY: You've probably seen that and they have

18   these huge costumes and they fall over and everybody laughs.

19   It's kinda mean, actually.

20   So the one far ahead is Bestwall, 254 million. When I

21   first started practicing law I just couldn't imagine being in

22   the bankruptcy court and the legal fees being 254 million. And

23   it's not over.

24   Aldrich is racing ahead of DBMP. Right now, 83

25   million. In fairness to Aldrich, we go up through April '23.

 1   DBMP, 76 million.

 2   And I always put Paddock on here, your Honor, because

 3   it never changes because they actually did a deal for the "Big

 4   Dusty" and the FCR's fees in there, very impressive, $2

 5   million. $610 million, TDP, 100 percent payment percentage.

 6   We should be so lucky.

 7   So your Honor, we've done a, an analysis of how

 8   asbestos trusts have done and these include the Trusts that are

 9   actually here today, well, Verus and DC, DCPF on behalf of

10   those Trusts. And this isn't all the trusts, sure, but it's a

11   huge majority of them, your Honor, and they've all paid less

12   between the period of 2008 to '22. And some of them are real

13   doozies. DII, that goes from a hundred percent. That's the

14   trust that I believe Dr. Wyner worked on. That's down to 60

15   percent. That's like 40 percent less if you're a future.

16   That's not negligible. That's not the 100 to the 102. That's

17   a real impact. That's disparate treatment. That's failure,

18   failure to accurately estimate, forecast liabilities.

19   Keene Creditors Trust, your Honor. That's very

20   impressive. Starts off at 1.1 percent and now it goes all the

21   way down to .84. That's gonna run out of money. It's just a

22   question of time. How can I say that, your Honor? You're now

23   at the bottom. 1.1, shut down.

24   If you're a future claimant who was exposed to

25   asbestos made by UNR, you're getting nothing. And everybody

 1 says, "Oh, trust us. It's gonna be okay. A sample's good

 2 enough." It wasn't good enough for UNR.

 3   Lummus, your Honor, hundred percent, down to 11

 4 percent. That's a failure. That's a significant order of

 5 magnitude.

 6   You heard me ask Dr. Wyner, "Well, would more data

 7 have maybe helped? Would that have, perhaps, allowed these

 8 trusts with more data in their hands do a more accurate

 9 forecast?" And he didn't really want to answer, but we know

10 the answer. More data is always better.

11   Shook and Fletcher, your Honor, a hundred to 76.

12   And THAN, your Honor, that's one of the Trusts here,

13 starts at a hundred percent. And I asked Dr. Wyner. He said,

14 "Well, that's, that's the fault of Bates White." Actually,

15 they weren't in that case. And Bates White doesn't determine

16 what -- the trust determines what the payment percentage should

17 be. The ACC and the FCR negotiate that using their experts.

18 And Dr. Wyner was like, sorta criticizing the experts. "Well,

19 they're not really statisticians." And I think the ACC's

20 experts and my experts, for that matter, would disagree with

21 that.

22   But they can only do what they have with what they

23 have and if they don't have enough data, there's a really good

24 chance they're gonna get it wrong. I don't think for a second

25 that any one of those experts engaged in some sort of, "Well,

 1 let's sorta let, let's have a highly inflated number because

 2 that's gonna be great for the currents and we'll stick it to

 3 the futures." I don't believe that. They got it wrong and

 4 they got it wrong more than they got it right. And the reason

 5 is simple. They didn't have enough data. They didn't have a

 6 bar date, either, your Honor.

 7   So wanna go to the Garlock settlement page. I wanted

 8 to put a list of trusts that have actually really done a good

 9 job and it's a short list. There are some others, but this is

10 the one trust that's doubled what it's paying asbestos

11 creditors. Dr. Wyner sorta suggested, well, that's a bad

12 thing. That's a good thing 'cause we got it right.

13   Your Honor, I think the battery died.

14   So the evidence-of-suppression slide. I'm on that

15 one, your Honor. You, you'll remember what Judge Hodges said

16 and he said, you know, there was evidence of suppression in

17 half the cases, okay? And Ms. Ramsey, who may be on the phone,

18 she very candidly admitted the other day that she doesn't want

19 that to happen again on her watch. And you know, in our

20 filings we've said, well, it really doesn't impact the current

21 claimants because they haven't been paid. What it does impact

22 is the law firms. And she freely said, you know, Judge Hodges

23 was very critical of the tort lawyers.

24   So that brings us to the question of why are we all

25 here? Why are the Trusts trying so hard not to give

 1 information that they know will be useful, to keep it from a

 2 future Aldrich and Murray trust? These are all trusts that

 3 have failed to do their job because they didn't have data and

 4 they are fighting tooth and nail. Twenty plus filings -- I've

 5 never seen anything like it -- over a valid subpoena. Tooth

 6 and nail to keep information that the trustee in an

 7 Aldrich/Murray trust, if we ever get there, will be able to use

 8 to accurately forecast values, just as the trustee, by the way,

 9 did in Garlock.

10   Next page.

11   And the Garlock CRP, your Honor. Your Honor agreed,

12 approved this language. The ACC approved this language. The

13 tort law firms on the ACC approved this language. It was

14 negotiated by the FCR for the very purpose of what we're

15 talking about today:

16   "The trustee shall have access and may rely upon,

17   among other things, the debtor's various claim

18   databases, including information reported in response

19   to each asbestos claims bar date" -- that's key --

20   "settled claims bar date, the debtor's questionnaires,

21   and the forecasting models and estimates of the

22   debtors, the ACC, and the FCR."

23   We basically wanted the trustee, Lewis Sifford, to get

24 everything he could. And he did. And he uses Ankura to do

25 these analyses and we look at it every year and we are

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 1   conservative because that's our job, but it's working.

 2   So we're not talking about -- we -- our issue isn't on

 3   like evidence of suppression, but we do think that's motivating

 4   this more than burden. It's motivating it more than PII, but I

 5   don't understand that, either. Because the debtors have

 6   already said, "We're gonna have a sample of claim files.

 7   There's gonna be 1200 claim files." The data that we want,

 8   that we, the FCR, care about is the data in the 12,000 because

 9   that's what gives you the ability to have a much more accurate

10   forecast. And Dr. Wyner, Dr. Mullin, no one disagrees with

11   that basic principle. The more information you've got, the

12   better, the more accurate your forecasts are gonna be.

13   Thank you, your Honor.

14   THE COURT: Thank you.

15   All right. Objecting parties. Who wants to lead off?

16   MR. GUERKE: Good afternoon, your Honor. Kevin

17   Guerke, again from Young Conaway, on behalf of DCPF.

18   I think we need a level-set and to, to go back to the

19   original motion to quash. This motion to quash was heard under

20   Rule 45. Rule 45 requires application of a different standard

21   than the authority to issue a subpoena under Bankruptcy Rule

22   2004. That, that's the Rule that applied in Bestwall and DBMP.

23   That's not in play here. That was an important part of the

24   November 30th ruling. Your Honor was wearing a different hat

25   that day and properly viewed this dispute through the lens of a

 1 compliance court. Your Honor was right to order sampling based

 2 on the burden to nonparties, like DCPF and the Verus

 3 Facilities. And the, and the Court's sampling ruling was

 4 consistent with other compliance courts' ruling on similar

 5 issues. The Court heard the facts, the Court considered the

 6 information, and made the correct ruling November 30th.

 7   Fast forward four months, to March. After Bates White

 8 and the debtors already proposed a workable sample back in

 9 December, debtors filed this motion, or their motion to

10 reconsider, but there were no new facts, just repackaged old

11 arguments that you heard again today. The, the process that

12 we've had to go through since the Court ordered a 10 percent

13 sample is incredible. After the ruling, the debtors went out

14 and got a new expert. After the ruling, they said they wanted

15 to take depositions. After the ruling, they required live

16 testimony of our witnesses.

17   Under Rule 45(d), "A party or an attorney responsible

18 for issuing a subpoena must take reasonable steps to avoid

19 imposing undue burden or expense on the person subject to the

20 subpoena." The Court under Rule 45(d) must enforce that duty.

21 Rule 45 obligated the debtors' to minimize the burden on the

22 target of the subpoenas and the debtors have done the opposite

23 here. They've, they've maximized the burden with no regard for

24 the non-party targets of these third-party subpoenas and

25 they've utterly failed to meet their obligations under Rule 45.

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 1 In 11 months. -- your Honor, we've, we've proven burden on many

 2 levels and in 11 months the debtors still haven't explained

 3 with any clarity why they need a hundred percent of all 12,000

 4 claimants. All they can point to is an unknown, tiny loss of

 5 precision, but they can't quantify it and they won't quantify

 6 it.

 7   The, the facts matter. Back in November, the Court

 8 was presented with different facts than in DBMP. The Court

 9 agreed that it heard different facts on November 30th. Our

10 argument then was simple and it included hard evidence and a

11 detailed explanation of DCPF's burden. The information was

12 different than in DBMP. As a result, the ruling was different.

13 Perhaps, the demonstrative that I used on November 30th was

14 helpful. I said it back then. I didn't understand the

15 process. I didn't understand the redactions until I saw it on

16 paper. That's why we submitted it for your Honor's review.

17   The sample claim production, your Honor, has been

18 marked as Exhibit, DCPF Exhibit 2. I handed it up earlier.

19 And as you can see and as we discussed in November, it shows

20 the end result of the redaction process where name and Social

21 Security number of non-claimant coworker or spouse with

22 secondary exposure had information, the claimant added

23 information in the narrative fields and it had to be redacted.

24   The debtors' main argument is a lack of precision

25 using a sample, but Dr. Mullin was unable to tell us what the

     1   loss of precision actually is. Debtors have the burden here

     2   and they failed to meet that burden on the most fundamental

     3   point, the most fundamental piece of their argument.

     4   Dr. Mullin has already designed a sampling protocol that would

     5   be reliable, efficient, and representative. He excluded all

     6   this stuff that he says now is so important and he starts his

     7   sampling protocol in 2014 and focuses on the amount of

     8   settlements. His sampling protocol from December conflicts

     9   with his current argument that he needs to control for industry

    10   and occupation. Debtors' position on the sufficiency of a

    11   sample is not credible. Dr. Mullin's position or positions are

    12   not credible. He managed just fine with 10 percent in

    13   December, just like the debtors managed to come up with a, with

    14   a sample of their own historical claim files when it suited

    15   them.

    16   As we described last November, the burden on DCPF is

    17   real and it's significant. DCPF submitted burden evidence

    18   that, that has not been challenged, still hasn't been

    19   challenged. Richard Winner testified at his deposition

    20   describing the burden. It was, it was consistent with the

    21   declaration, consistent with everything I represented to the

    22   Court November 30th. The hard dollars, the hard-dollar costs

    23   do not reflect the true burden. The invoices from DBMP don't

    24   change the burden. It shows the burden and those are marked,

    25   your Honor -- I, I handed them up -- they're Exhibits 3 and 4.

 1   These invoices show the burden from the DBMP production. The

 2   invoices reflect nearly 1100 hours of DCPF time over several

 3   weeks. And these, these aren't temps. These are DCPF

 4   employees who are doing the review and redaction. Forty of 'em

 5   were involved in the DBMP production and not just low-level

 6   employees, the COO, managers, the entire operation was

 7   affected.

 8   DCPF is in the business of processing claims. It

 9   could not review claims from elderly, sick, and dying claimants

10   when it was bogged down responding to these subpoenas. Claim

11   processing was delayed. Production was hurt. That was

12   described in detail in Mr. Winner's deposition. It's one thing

13   to, to reimburse costs. It's very different when people are

14   being pulled from their job for an extended period of time.

15   It's an enormous distraction and it's detrimental to DCPF's

16   business. DCPF, as, as reflected in the two invoices, worked

17   on the DBMP production for, for nearly four months and -- I'm

18   sorry -- three months and there are 3,000 more claimants at

19   issue in this case than in DBMP. That's a 33 percent increase.

20   Almost 150,000 claims matched the 12,000 claimants at

21   issue in Aldrich and there can be multiple exposure records

22   associated with each one of those 150,000 claims. All of those

23   have to be reviewed. Sampling reduces that review burden, the

24   burden on DCPF, 90 percent, 135,000 fewer claims that DCPF

25   would have to review with a sample. And DCPF has to review the

 1   production. It, it has to protect the PII in its database.

 2   It's not a choice. It's not solely based on the language in

 3   the subpoena. It's a contract obligation. DCPF has a duty to

 4   protect and maintain the security of the confidential and

 5   highly sensitive information that it stores. Protecting that,

 6   that data is DCPF's highest operational priority. It's easy to

 7   say that DCPF had a choice. Any party to a contract has a

 8   choice not to comply with the contract, but that's a, a bad

 9   decision. That's a dangerous decision and not a prudent course

10   of action. It's our, it's our obligation and one that we take

11   seriously.

12   The subpoena here can't be viewed in isolation. In

13   fact, the debtors are encouraging the Court not to look at the

14   Aldrich Pump subpoena alone. The debtors and Bates White want

15   to group all these together as if it's one string or one case.

16   So let's look at it in that context.

17   The serial nature of these subpoenas. The serial

18   nature of these subpoenas magnifies the burden. Forcing DCPF

19   to repeatedly go through the same exercise does not -- does not

20   review -- does not reduce the burden. Running a marathon once

21   is difficult, but, but one is very different than running back-

22   to-back-to back marathons. The cumulative nature of these

23   subpoenas needs to be taken into account. The relentless

24   campaign of subpoenas directed at nonparties like DCPF should

25   stop. DCPF does not work for Jones Day. DCPF is not an arm of

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 1 Bates White. It's not a party to this case or any of the

 2 others.

 3   Debtors acknowledge sampling is generally accepted and

 4 admit that the sample Bates White designed was efficient,

 5 representative, and reliable. Why wouldn't an efficient,

 6 representative, and reliable sample work for estimation which,

 7 by definition, is not an exact calculation? Why wouldn't an

 8 efficient, representative, and reliable sample work for

 9 aggregate claim numbers? The Court has already pointed out

10 estimation does not require precision. And here, here, your

11 Honor, the, the debtors have simply failed to meet whatever

12 standard applies to reconsider the November 30th ruling. The

13 Court's November 30th ruling should not be reversed.

14   Estimation has not been completed in Bestwall or DBMP.

15 There's no telling at this point that the trust discovery

16 allowed in Bestwall and allowed in DBMP was appropriate or

17 useful. The Court's November 30th sample ruling resolves,

18 solves this dispute and it possibly resolves similar disputes

19 in the future. A sample could avoid a, a future fight with

20 nonparties like DCPF. This case could be a test balloon for a

21 better, less expensive, less intrusive, less burdensome

22 process.

23   We ask the Court to please deny the motion and uphold

24 your Honor's November 30th ruling.

25   Thank you.

 1 | THE COURT: Thank you, Mr. Guerke.

 2 | All right. Who's next?

 3 | MS. MOSKOW-SCHNOLL: Your Honor, I think I'll go next

 4 | and I'll do North Carolina way.

 5 | THE COURT: All right.

 6 | MS. MOSKOW-SCHNOLL: 'Cause I have blisters on my

 7 | feet.

 8 | THE COURT: Well, now, we argue standing. That's

 9 | different.

10 | MS. MOSKOW-SCHNOLL: Oh, sorry.

11 | THE COURT: Sorry.

12 | MS. MOSKOW-SCHNOLL: Got it.

13 | THE COURT: But you can do it from the counsel table.

14 | MS. MOSKOW-SCHNOLL: Okay. Thank you. 'Cause I may

15 | put up a slide or two.

16 | I first wanted to -- Mr. Guerke did the whole

17 | overview. So I'm gonna tailor what I say and not restate a lot

18 | of what he already said, which I completely agree with on

19 | behalf of the DCPF Trusts.

20 | And by the way, I'm Beth Moskow-Schnoll, Ballard

21 | Spahr.

22 | So Mr. Guy speaking for the FCR, he put up this chart

23 | showing asbestos trusts that reduced their payment percentages.

24 | THE COURT: Uh-huh (indicating an affirmative

25 | response).

 1   MS. MOSKOW-SCHNOLL: The problem is that we don't know

 2   which of those trusts had estimation proceedings where they

 3   used sampling or they used a full census of data, they didn't

 4   do any -- we have no idea. There's no record about any of

 5   that.

 6   THE COURT: Uh-huh (indicating an affirmative

 7   response).

 8   MS. MOSKOW-SCHNOLL: So really, that gives us no

 9   guidance, whatsoever. And him saying more data always means

10   better estimation, I don't know where that came from 'cause

11   again, there was no evidence to that effect. You know, he said

12   the reason they got it wrong is they didn't have enough data,

13   but who knows what data they did or didn't have.

14   And one point that I just learned. DII has actually

15   not gone down. It adjusted its values. The values went up.

16   So they instituted a payment percentage so that the values

17   being paid to the claimants actually went up even though the

18   payment percentage went down. So DII is not an example of,

19   where payments went down.

20   And then he also held up Garlock as and aspiring for

21   what we should all want because they're the only trust that's

22   doubled what it is paying. And Dr. Wyner properly pointed out

23   the fact that what you want is people to get paid what they

24   should get paid. So that actually isn't what anyone's aspiring

25   towards, but saying that they got it right when they're less

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 1   than five years old really doesn't tell us anything because

 2   it's, as Dr. Wyner testified, it's the uncertainty in the

 3   future, like the far future, that's really, really hard to

 4   figure out.  So five years out, it's great that they figured it

 5   out, but it's not necessary.  It doesn't mean that they're

 6   gonna be doing that well down the road.

 7          So next, you know, this, this rehearing, it started at

 8   the last hearing where the Court actually said, "What I wanna

 9   hear is why isn't a sampling sufficient, sample sufficient?"

10   That was your question and Dr. Wyner really is the only person

11   who answered that question directly.  What he said was, "A

12   random sample that is large, weighted, or stratified towards

13   larger settlement values would be particularly, practically,

14   and material no less accurate than a full census of 12,000

15   claimants in the targeted population and," you know, "for

16   determining the parameters of interest that Dr. Mullin

17   mentioned."

18          Now it's interesting, too, that Dr. Mullin in his

19   deposition, his declaration only cited two parameters of

20   interest.  Those were proportion of claimants who failed to

21   disclose alternative exposures and the effect of partial

22   information on average claim values.  Okay.  Well, that's good.

23   And then Dr. Wyner issued his expert report and all of a sudden

24   now Dr. Mullin's like, "Uh-oh.  I have to acknowledge that a

25   sample is fine for those two things that I put out there," and
```

 1 he said that repeatedly now. "Yeah, we can absolutely use

 2 sampling. It's sufficient for determining proportion of

 3 claimants who failed to disclose alternative exposures. It's

 4 sufficient to, for determining the effect of partial

 5 information on average claim values."

 6   So then in his deposition he comes up with this new

 7 thing, "I need to study these subpopulations," but he doesn't

 8 even explain in his deposition when, like, why he needs to

 9 explain these subpop, you know, study these subpopulations and

10 frankly, it's still unclear to me why exactly he needs to study

11 these subpopulations. Because as Dr. Wyner pointed out, he's

12 not doing an IR. He's not looking at every individual claim to

13 figure things out and he has to come up -- his main job is

14 determining estimation, which, which is, again, as Mr. Guerke

15 said, not, you know, it's something that's hard to do. It's

16 fraught with difficulty, but it's also uncertain in and of

17 itself.

18   So, so then he comes up with this, the need to study

19 small subpopulations and if he has a sample, maybe he won't

20 have enough in these small subpopulations for him to be able to

21 study. But again, he hasn't really explicitly stated why he

22 needs the data. He's not doing an IR. And generally, small

23 subpopulations aren't that relevant because, as I've learned in

24 working with Dr. Wyner, you know, if you have something that's

25 little, its impact on the greater population of things is going

 1 | to be very minor.

 2 | But here, they're interested in small subpopulation

 3 | with a large settlement value. Well, even Dr. Mullin

 4 | acknowledged that if there's any kind of error or sampling

 5 | error, I mean, you can mitigate issues with the sample you

 6 | choose. Knowing that they may want some information about,

 7 | they want the high-claims information, the sampling, the

 8 | stratified sampling that they've proposed and that they've done

 9 | in the other cases and in this one, they're taking --

10 | they're -- they've stratified by settlement value and then

11 | they're taking virtually everything in the top bucket, like all

12 | the most valuable claims.

13 | So they're gonna get that information if they're the

14 | big claims. I mean, they can stratify to get that information

15 | if that's really what they're interested in. So that's gonna

16 | be, they're all gonna be captured. So that's not actually an

17 | issue using a sample.

18 | Then, then we have -- I'll put this up again if I can

19 | figure it out. I think somebody has to turn off their thing so

20 | I can put mine on.

21 | MR. HART: We're off on this side.

22 | MS. MOSKOW-SCHNOLL: You're off?

23 | Are you controlling or no?

24 | (Setting up of demonstrative to be displayed)

25 | MS. MOSKOW-SCHNOLL: Okay. Now, you know, Dr. Wyner

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 1   was testifying based on principles of statistics.  Dr. Mullin

 2   was not.  He didn't ever talk, he didn't use formulas, he

 3   didn't refer to formulas, but he got back on the stand to talk

 4   about this formula that Dr. Wyner talked about, the Negligible

 5   Impact of Sampling on Overall Forecast Uncertainty.  And he

 6   said, "No, no, no.  This is wrong.  The irreducible uncertainty

 7   in forecasting is actually because of better, better methods of

 8   figuring out forecasting.  That's less than the sampling

 9   uncertainty."  Well, that's categorically wrong.  Sampling

10   uncertainty is based on a formula and that's how you can

11   determine it.  And if you even think of common sense, right, so

12   you have this formula that's used to determine sampling

13   uncertainty which, again, you can control for with making a

14   proper sample.  And I think we would all agree Dr. Mullin knows

15   how to make a sample and he's done it several times and said

16   that they're reliable and efficient and they're terrific.  How

17   can the, the uncertainty of the sample caused by sample be

18   greater than the uncertainty of trying to figure out how many

19   people may file a claim for mesothelioma in 40 years?  That,

20   that doesn't make any sense.  It just categorically is not

21   true.  It -- it -- it defies common sense.

22          So what are we down to?  We have the other issue about

23   the fact that, you know, he didn't, he didn't raise this

24   subpopulation issue until his deposition and then he didn't

25   really talk about it much in his deposition.  He didn't really
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 1   explain what he was gonna do. A little more came out today,

 2   but it really sounds like he presented this whole subpopulation

 3   thing because he realized that, yeah, sampling does work.

 4   Sampling is sufficient. And in fact, he's acknowledged the

 5   sufficiency of sampling. He's acknowledged he could do all his

 6   work with a sample. What he says is that the accuracy would

 7   be, would be less. There'd be more uncertainty. But again,

 8   with this formula that we showed you, that's just not true.

 9   The other thing is that if he was so focused on these

10   subpopulations and they are so important, then how come every

11   stratified sample he's done is all based on value, right? It's

12   all stratified on value. And even in picking out what they're

13   going to look at, they, they decided that they wanna only look

14   at mesothelio, mesothelioma claims because they're the most

15   valuable. So even that is kind of a stratification.

16   So what you have is their acknowledgment that what

17   really matters is value because, obviously, if you're gonna

18   strat, if you're gonna be figuring out, estimating future

19   liability, you need to know what value you have to work with

20   and that's their ultimate goal.

21   So now we're in this situation where, you know,

22   they've acknowledged that sampling works and they've been

23   acknowledging this for a long time.

24   You know, we'll go back to Jorge Gallardo-García. We

25   understand it'd already been said 10 percent, but basically, in

 1 his declaration he says, "I can work with 10 percent. I came

 2 up with a great sample. It is, it's representative. It's

 3 efficient. It can, it can provide a reliable characterization

 4 of Bestwall's mesothelioma claims history." And then in, in

 5 Bestwall, Jones Day wrote in its motion to approve resolved

 6 claim sample, they said:

 7   "Consistent with Rule 16, the use of an appropriate

 8   sample will provide an efficient mechanism by which

 9   the parties and the Court can address issues presented

10   by the estimation proceeding. The resolved claim

11   sample's random, representative sample that will

12   provide reliable information on the resolution history

13   of the Bestwall mesothelioma claims."

14   And in Bestwall, they also cited the Manual for

15 Complex Litigation for the proposition that, "Acceptable

16 sampling techniques in lieu of discovery and presentation of

17 voluminous data from the entire population can save substantial

18 time and expense."

19   And then in a December 19, '22, 2022 e-mail Morgan

20 Hirst wrote that the sample it was proposing "would be a

21 representative and efficient sample that can provide a reliable

22 cross-section of Aldrich/Murray mesothelioma claims settlement

23 history." This is them saying that, that it will present a

24 reliable cross-section.

25   And then Dr. Mullin acknowledged that if, that

  1 sampling will work here for estimating future liability and

  2 then he -- then he went back -- he started on the whole

  3 subpopulation thing.

  4   So even with this, their additional bite at the apple

  5 Aldrich still fails to answer the Court's explicit question, is

  6 sampling sufficient. Dr. Wyner has told you absolutely it is.

  7 Dr. Mullin has said, "Well, it presents more uncertainty," but

  8 he doesn't tell you how much uncertainty. Dr. Wyner showed you

  9 that if there is additional uncer -- well, there will be some

 10 additional uncertainty, but it's so minor that in the -- in the

 11 -- the outcome really won't be noticeably different. It's not

 12 gonna be material.

 13   So I'm just gonna get back to these slides that I

 14 have, that I've used before, if the Court will just -- if I --

 15 the Court will just indulge me for one second.

 16   THE COURT: Take a moment.

 17   (Pause)

 18   MS. MOSKOW-SCHNOLL: Okay. You have seen these slides

 19 before --

 20   THE COURT: Right.

 21   MS. MOSKOW-SCHNOLL: -- about the cast of characters.

 22   You know, the question is, you know, the ultimate

 23 question here was is a sample sufficient. I think we've proven

 24 that it is, but when you look at what they're asking for and

 25 you look at the history in this, in these cases you see how out

200

1   of control it's really become.

2   So we look at Bestwall, DBMP, and Aldrich Pump and

3   Murray Boiler. The trust subpoenas compel data of 36,000 trust

4   claimants. That's a lot of data from a lot of people. That's

5   19 different trusts that they've subpoenaed. And the issue's

6   this: That, you know, they started out in Bestwall seeking --

7   you know, they're saying here, they got up there and they

8   proudly said, "Look, we're not looking for PII. We're not

9   looking for settlement amounts. We're not looking for medical

10   info. We're not looking for financial data." Well, guess

11   what? That is what they were seeking in Bestwall and it wasn't

12   until the Trusts pushed back and said, "No, we're not giving

13   you that because we wanna protect our claimants' data," that

14   then they stood back and said, "Oh, you know what? We have

15   PII. We have all this other stuff." Well, why were they in

16   the first place asking for stuff they don't need? Our

17   contention is they're still asking for stuff they don't need,

18   just like they always have been. They want all the data, but

19   they don't need all the data.

20   And just another example of how much we're talking

21   about here, is we look at, you know, claims data, all, means

22   "all electronic information data contained in any claims

23   database within DBMP's possession." And you know, "all

24   electronic information and data contained in any claims

25   database."

 1   And we think, your Honor -- it's not think -- we just

 2   -- the Court should just stop this now. We should, we should

 3   just limit it to the 10 percent. And again, it's not so much

 4   the 10 percent. It's the fact that 1,200 is a lot of data that

 5   they can do everything they need with.

 6   Thank you.

 7   THE COURT: Thank you.

 8   Anyone else? Okay.

 9   MS. BENNETT: Good afternoon, your Honor. Lynda

10   Bennett from Lowenstein Sandler on behalf of the Verus Trusts.

11   On March 30th, your Honor posed two questions that was

12   supposed to be the purpose of hearing, the hearing today. One,

13   why sampling is not sufficient and would not work and two, why

14   sampling doesn't reduce the risk of even just human error in

15   disclosing PII. And as has already been mentioned, it is the

16   debtors' burden to answer both of those questions today. And

17   the debtors have used every means available to avoid answering

18   these questions directly. Instead, they've tried to reframe

19   the question into what is the burden or what is the cost, but

20   your Honor has already performed the balancing of those

21   interests when your Honor on November 30th concluded that 10

22   percent was reasonable, proportional, and fair to address the

23   burden issue.

24   So this hearing was supposed to be about why sampling

25   does not work, not why the debtors think that full production

 1   would be better, but the debtors have transformed the

 2   sufficiency analysis that you asked for into an analysis of

 3   what would yield ideal information.

 4   In the debtors' papers and the testimony that we heard

 5   from Dr. Mullins [sic] today, it's ladened with references to

 6   more complete information, enhanced reliability, avoidance of

 7   what the debtors characterize as unnecessary uncertainty. But

 8   importantly, your Honor, there's no quantification from the

 9   debtors or their expert as to what this alleged inaccuracy or

10   what, what the materiality would be of that perceived

11   inaccuracy if something less than 10 percent was produced.

12   And let's be, let's be clear, your Honor. The debtors

13   are not entitled to perfect information. Your Honor framed it

14   properly on March 30th when you asked how much does the debtor

15   need to satisfy, how much information do they need to satisfy

16   how they're going to use it. And when the debtor and

17   Dr. Mullin were pressed on that, they've conceded, as they

18   must, that, actually, 10 percent is sufficient, but they would

19   just prefer more. At best, what Dr. Mullins can tell you is

20   that that's a potential for inaccuracy. He didn't tell you

21   there will be. He said there's a potential for it. And our

22   expert, Dr. Wyner, has explained why more isn't needed and

23   that's because if more information is produced, it doesn't

24   materially alter the trend analysis that Bates White has stated

25   they will perform to estimate the debtors' future liability.

1   The debtors have responded to that reality of Dr. Wyner's

2   report and opinion by shifting the position of the target

3   again.

4   So initially, Bates White was conducting a macro

5   analysis looking for trends, particularly among the high-value

6   dollar claims which, as Dr. Wyner testified, can and is

7   accomplished through the very kind of stratification process

8   that Bates White endorsed and validated in Bestwall and

9   importantly, that the debtors in this case were negotiating for

10   months after the November 30th ruling and before they decided

11   to renege on compliance with that and seek reconsideration or

12   rehearing on that issue now.

13   And now that the debtors have to defend why the 10

14   percent sample is not enough, Dr. Mullins tries to pivot to a

15   more micro or granular analysis that's seemingly focused on,

16   as, as counsel for DCPF was just talking about, these

17   subpopulations, which were not disclosed anywhere in his

18   declaration, and sound more like an individualized review which

19   was, he did not disclose that he was performing and that he's

20   not qualified to perform. And Dr. Wyner has provided the Court

21   with the empirical, the empirical formula-based analysis that

22   directly contradicts what, Dr. Mullin's provocative statement

23   that 10 percent could more than triple the level of uncertainty

24   associated with the future estimates. It's simply not true and

25   you were given a specific example that demonstrated that.

 1   Your Honor, there's an obvious answer to the dilemma

 2   if you perceive this battle of the experts to be unclear in any

 3   way, although we strongly stand behind Dr. Wyner's position

 4   that 10 percent is more than enough for the stated purposes and

 5   needs, and that is to order the 10 percent production of the

 6   random sample and then if necessary, if at some point later the

 7   debtors and/or Dr. Mullins can come forward and show with good

 8   cause why additional information is needed, so be it. But 10

 9   percent is certainly more than enough and he cannot identify

10   for you today any information that he can't get from the 10

11   percent sample and, and be able to do his work.

12   And your Honor, as I mentioned, I represent the Verus

13   Truss and this is, ordering the 10 percent now is a

14   particularly elegant solution because the very reason that I'm

15   here in this beautiful State of North Carolina today and not in

16   New Jersey, the compliance court where these subpoenas would

17   have otherwise been litigated, was because the debtors agreed

18   that we would make our 10 percent production and they were

19   prepared to comply with your Honor's ruling on November 30th.

20   So in the interest of fairness and equity, your Honor

21   should require the debtors to honor that 10 percent sample,

22   certainly with respect to the Verus Trusts and comply there.

23   I wanna just touch briefly on the privacy and

24   confidentiality concerns, as Mr. Anselmi will address that more

25   directly on behalf of Verus.

1   But your Honor, at a very high level, common sense

2   level in terms of protecting PII, the less information that's

3   produced the less at risk it is. And it sounds very nice to

4   say that Bates White has never had a security breach before and

5   Jones Day hasn't had a security breach, but we all know what

6   can happen. That can happen tomorrow and in most instances and

7   most organizations face the question of when they will be

8   breached, not if they will be breached. And so your Honor was

9   correct in recognizing that unless there's a good reason to

10   produce more than the 10 percent and put more than 10 percent

11   of information at risk, why do so? And the debtors who had the

12   burden to answer that question have not answered it.

13   And we know that human -- and, and as Mr. Guerke

14   referenced, the information that's at stake is for uninterested

15   -- they're not claimants. What we're really talking about are

16   the dependents, the coworkers. And it is extremely

17   confidential information that relates to mental health issues

18   and, and things of that nature, family dynamic issues, that

19   don't belong out in the open for no good reason.

20   And so your Honor with that, I join in the arguments

21   that DCPF has made and we would respectfully request that your

22   Honor enforce the 10 percent sampling ruling.

23   Thank you.

24   THE COURT: Thank you, Ms. Bennett.

25   MR. ANSELMI: Good afternoon, your Honor. Andrew

 1 Anselmi from Anselmi & Carvelli on behalf of Verus Claims

 2 Services.

 3   I first wanna thank you for the privilege of arguing

 4 before this Court. It's my first time to this Court and North

 5 Car, and to Charlotte, as a matter of fact.

 6   THE COURT: Welcome.

 7   MR. ANSELMI: I think it's important to place into

 8 context why we're here, at least why the Verus Parties are

 9 here. We came here voluntarily. We consented to have our

10 motions from New Jersey transferred here on the basic

11 understanding that 1,200 rather than 12,000 claimants'

12 information was going to have to be produced. Now our

13 adversaries could shake their heads and they could parse words

14 over what we agreed to. That was clearly the understanding and

15 we came here with the understanding that that 1,200 claimants'

16 worth of information would be subject to the implementation by

17 your Honor.

18   I say that as a starting point because I think it

19 should be the ending point. Your Honor has since that time

20 heard a lot of testimony over why 1,200 claimant records should

21 not be insufficient. The debtors have not sustained their

22 burden. They have -- they say -- their expert said he provided

23 an opinion with a reasonable degree of scientific certainty,

24 but he did no such thing. Instead, he gave a nonexpert,

25 factually breadth opinion that there is no cost; so therefore,

1   more data has to be the appropriate answer. It fails.

2   Paragraph 16 of their reply brief, the debtors go so

3   far as to say that the costs that they're taking an over-

4   cramped view of are unnecessary and that to whatever extent

5   they're expended, they're be reim, being reimbursed, anyway.

6   So they're zero. Verus isn't choosing to review this critical

7   information in the same way that DCPF is not. They have to

8   review this information and why they have to review this

9   information is of critical importance. This isn't a one or

10 two-hour exercise. These subpoenas call for the reviewing of

11 narratives that contain a lot of sensitive information not only

12 about the claimants, not only about their families or

13 dependents, but it could be coworkers and other folks. These

14 are not jobs that can be delegated to new employees. As

15 Mr. Eveland has testified in his reply declaration, he needs

16 critical employees that are part of Verus to review this

17 information because they are familiar with the data.

18   They know what they're looking for. They've conceded

19 that they don't know what it goes into for a Verus review.

20 They conceded on direct -- and I give them credit for their

21 candor -- that whatever arguments they're making about DCPF and

22 what they might have done in another litigation on building

23 tools and berging redactions, you can't say that about Verus.

24 Verus hasn't done it. Verus has to start from scratch. This

25 is a time-intensive exercise to protect confidential

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 1  information from being breached, perhaps for the first time,

 2  but who wants that to happen in the absence of sustaining a

 3  burden as to why 1,200 is not sufficient and at the same time,

 4  as DCPF has pointed out, other people, other claimants are

 5  gonna have their claims delayed.  Why?  Because of speculations

 6  of what may be in these records.  We just don't know.  They've

 7  conceded it.  They conceded it several different ways.  They

 8  don't know what they're looking for.  They said it's unfair to

 9  ask them what they're looking for until they see it and at the

10  same time, as Mr. Eveland has testified through his

11  declaration, his proprietary information is being potentially

12  compromised.

13          So where are we?  The debtors have clearly not

14  sustained their burden.  You don't sustain your burden on

15  speculation.  Even an expert doesn't get that liberty.

16  Dr. Wyner, on the other hand, told you very simply on a very

17  complicated issue it's not about the percentage.  It's about

18  the number.  1,200 claims is plenty and he gave you the reasons

19  for that.  He not only gave you the reasons for it, he gave, he

20  gave you a formula.  He gave you several formulas and presented

21  in a way that we all understood it.

22          So what's the answer, your Honor?  The answer is what

23  Ms. Bennett just said.  The answer is what we understood was a

24  reason we were coming down here.  Let's start with a 10 percent

25  sample.  Let's see what it bears.  Let's, let's take away the
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 1   speculation, the doomsday scenarios that Mr. Guy was referring

 2   to without making a nexus to whether that was due to inadequate

 3   samples or not, whether that was due to not getting the

 4   information that's being sought on this hypothetical

 5   speculation.  Because if they can't find anything, then there

 6   will have been zero risk of compromising personal information

 7   from some 10,800 claimants.

 8             Thank you, your Honor.

 9             THE COURT:  Thank you.

10             Anyone else?  Mr. Hogan.

11             MR. HOGAN:  Good afternoon, your Honor.  Daniel Hogan

12   of Hogan McDaniel on behalf of the Non-Party Certain Matching

13   Claimants.

14             Your Honor, I rise to join in the objections that you

15   heard earlier.  I don't intend to repeat any of the arguments

16   that you've heard, but I did want to emphasize just a couple

17   points.

18             So at the end of the day, your Honor, the information

19   that's being sought is my clients' information.  It's their,

20   it's their information.  It's their private concerns, their

21   issues, their, their, their dirty laundry, for lack of a better

22   term, your Honor, and they're entitled to have that protected.

23   They, that was the expectation that they had when they

24   submitted this information to these Trusts.

25             And so your Honor, again, I don't want to repeat
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 1  what's been said, but I do wanna focus on burden just for a

 2  moment because in this Court with the benefit of your Honor, I

 3  realize that burden's a big issue.  It -- it -- it hung me out

 4  to dry on my motion with regard to anonymity in that you said I

 5  didn't meet my burden with regard to the ability to do that.

 6  And that's a separate issue.  We put that aside.  That's on

 7  appeal.  I get that.  But I do want to emphasize that the

 8  debtors have not made their burden.  They have not satisfied

 9  the requirements necessary under Rule 59(c) in that there

10  hasn't been a change in any sort of intervening law.  There

11  isn't any new evidence at trial that we've heard.  And so in

12  this instance, you know -- and the, the other thing is that

13  there hasn't been a clear error that would prevent manifest

14  injustice.

15        And so from our perspective, your Honor, we believe

16  that the debtors have failed to meet their burden with regard

17  to a need for this rehearing and that the Court should grant or

18  deny their ability to, to have the sample taken away.

19        And thank you, your Honor.

20        THE COURT:  Okay.

21        Mr. Wright.

22        MR. HIRST:  So your Honor, I'll just note the ACC

23  hasn't actually filed a brief here.  I always like hearing from

24  Mr. Wright, but I, I, I know the, the new thing here is that we

25  don't, if we don't file a brief in response to a motion, I
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 1 | believe oral argument's not supposed to be conducted.

 2 | MR. WRIGHT: Your Honor, we, we did file an objection

 3 | to the rehearing itself.

 4 | THE COURT: I recall that.

 5 | MR. WRIGHT: It did contain a substantive --

 6 | THE COURT: I'll listen. Go ahead.

 7 | MR. WRIGHT: Thank you, your Honor. I, I do promise

 8 | to be brief.

 9 | Your Honor, the ACC is now engaged in the estimation,

10 | the estimation proceeding that you ordered. One of the

11 | purposes for that estimation that you heard today, actually one

12 | of the purposes you heard today for needing this information is

13 | to develop the trust distribution procedures. Your Honor, I

14 | refer you back briefly to your oral ruling. That was not one

15 | of the purposes. So to the extent that their reliance today is

16 | needing 12,000 claimants for trust distribution procedures,

17 | that was not what estimation was ordered for. In fact, your

18 | Honor, it was -- estimation was -- the proper purposes,

19 | assisting in negotiating, formulating a plan, demonstrating

20 | confirmability of that plan, voting, and determining how many

21 | claims are out there and what their magnitude is, nothing about

22 | trust distribution procedures.

23 | The other aspect you've heard today, your Honor, is

24 | about the, the proposed sample that was earlier in the case.

25 | The Committee did work on that proposed sample. The Committee

 1 was prepared, subject to confirmation from the debtor of a

 2 couple of provisions, to agree to that sample. And the reason

 3 why we were willing to agree was because it would reduce the

 4 burden on all parties. It would reduce the analytical burden

 5 on the Committee and certainly the debtor from looking at

 6 12,000 claimants as opposed to 1200. The arguments you've

 7 heard today weigh almost in favor of the Committee going back

 8 and telling your Honor that we need to look at all 12,000. If

 9 the debtor needs to look at all 12,000 claims, so does the

10 Committee and that's what we deserve.

11   So your Honor, I, I, I would say that if, if it's a

12 choice between 12,000 or 1200, the Committee would support your

13 Honor's prior decision to limit this to 1200 claims.

14   Thank you, your Honor.

15   THE COURT: Anyone else?

16   (No response)

17   THE COURT: Rebuttal?

18   MR. HIRST: Thank you, your Honor. I usually like to

19 stick to my three points in rebuttal, but when you have seven

20 people arguing against you it might expand slightly beyond it.

21   THE COURT: But is it additive or is it a

22 multiplicative?

23   MR. HIRST: That's a good question, your Honor. I

24 think it's gonna be additive.

25   So we start with the fact that all of the Objectors

 1 and perhaps most noteworthy, the ACC, ignores the very document

 2 that started this entire thing, the subpoenas, and the

 3 Permitted Purposes for which your Honor ordered that we could

 4 issue these subpoenas. And those Permitted Purposes, indeed,

 5 did include the development and evaluation of trust

 6 distribution procedures for any plan of reorganization. We're

 7 not just talking about estimation here. We're talking about

 8 the purpose of these subpoenas. This is squarely within it and

 9 for all of the objections we heard during the last set of

10 arguments, none of them confronted that use. None of them

11 confronted the testimony Dr. Mullin gave about how he plans to

12 use it for trust distribution procedures, how he plans to use

13 it for plan confirmation.

14   The importance of this information was, or any

15 questions about the importance of this information were put

16 aside by Garlock and they were put aside by your Honor when you

17 ruled this was relevant. Your Honor may not necessarily adopt

18 the Garlock model, but from a question of discoverability and

19 relevance for discoverability purposes Garlock put an end to

20 the question of whether this information is relevant. It's

21 incredibly relevant, your Honor, and it was something that

22 Judge Hodges obviously relied on in great detail.

23   On the uncertainty, the -- I, I suspect I will never

24 say the word "subpopulation" again as many times as I have in

25 the last hour or so, but Dr. Mullin testified that the 1200-

 1 claimant sample does not mean you will get 1200 of all the

 2 things he's looking for or he's gonna be looking at, including

 3 things he identified in his first declaration that we issued

 4 with our motion for rehearing. We don't know what we're gonna

 5 get from that 1200 sample. And we keep being taken for task,

 6 or Dr. Mullin keeps being taken to task by the Objectors for

 7 not calculating the amount of uncertainty. 'Cause keep in

 8 mind, nobody disputes there is uncertainty created by the

 9 sample. They keep taking Dr. Mullin for task for not

10 calculating that, but how is he supposed to calculate that

11 without the data that they won't give us, which is the entire

12 fundamental basis for how you calculate the level of

13 uncertainty? We don't know because we, they won't give us the

14 data that would allow us to calculate it.

15   Dr. Wyner, on the other hand, while he was happy to

16 calculate it, used numbers that he essentially adopted for his

17 own benefit. They don't have any bearing in any evidence in

18 this case. He chose something that would get him to the

19 outcome he wanted. At least Dr. Mullin was able to admit that

20 without the data we couldn't do that calculation.

21   On, on data breach. We heard, again, about the risks

22 of data breach. If, if the possibility of data breach is the

23 standard by which we determine whether or not subpoenas are

24 gonna be answered, there will be no more subpoenas responded

25 to. Everybody is subject to the potential for a data breach.

 1 It hasn't happened to Bates White. It is not a basis to quash

 2 or limit the subpoenas that are otherwise valid.

 3   A couple of points raised specifically by Verus.

 4 First, I'm not gonna argue about how we got back here from New

 5 Jersey. Your Honor will remember the back and forth at the

 6 March hearing. The e-mails speak for themselves and you can

 7 read the e-mails, your Honor, and you can decide for yourself

 8 how we got here.

 9   Point Verus counsel made, Verus must have Verus

10 employees review this highly confidential information to do the

11 redactions. They cannot possibly allow outsiders to be hired

12 at our expense to review this highly confidential information

13 except that's exactly what Mr. Eveland wants to do in his work

14 for the ACC in reviewing the PIQs.

15   And if Mr. Evert can put up one of the PIQ, the blank

16 forms, your Honor, that's -- and these are on the docket -- and

17 included there in Part 3, Related Claimant Information, this

18 isn't the claimant themselves. This is nonclaimants that are

19 related parties and guess what information you see in that box

20 that's gonna be filled out in the PIQ forms, Name, Address,

21 Social Security Number, all the very PII that Mr. Eveland says

22 he can't possibly allow anybody outside of Verus to review,

23 except when it suits him to do so, except when he wants to do

24 it for his work for the ACC which, by the way, guess who's

25 paying for that work as well? Us. The entire notion that

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 1  Verus cannot hire someone from the outside to do this at our

 2  expense is completely unsupported and completely contradicted

 3  by their own papers.

 4          Last point, your Honor, is Rule 45(d), going back to

 5  Mr. Guerke's argument at the very beginning.  Our obligation as

 6  the subpoenaing party is to minimize the burden.  That's

 7  exactly what we did, your Honor.  We could have issued the

 8  Bestwall subpoenas.  We could have sought the PII and today, we

 9  may very well have all of it.  Bestwall does.  They have

10  everything.  We didn't do that.  We heard them and in fact,

11  DBMP heard them in front of your Honor when arguing the

12  subpoena motions there and they put in the procedure which we

13  adopted in this case to allow the Trust Parties to redact the

14  information.  Now they use the fact that we've limited what we

15  looked for, the fact that we're not looking for PII, the fact

16  that we've given them this ability to redact the PII, they use

17  it against us.  They say it's a burden, even though we're gonna

18  pay for it, and they say the subpoenas should be limited as a

19  result.

20          The burdensome nature of what has gone on here, Judge,

21  is not our subpoenas under Rule 45.  We did everything we could

22  to minimize that.  What's gone on here is the ceaseless

23  litigation to fight this, the ceaseless litigation to refuse to

24  give us anything, the refusal to ever meet and confer with us

25  in the first place, your Honor, after we issued the subpoenas.
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 1   They didn't, they didn't come to us and say, "Hey, is there a

 2   way we can narrow this?" All they did was file motions to

 3   quash. They don't want us to have this information. It

 4   doesn't have to do with burden. The Verus, the entire Verus

 5   PIQ notion completely undermines this. They don't want us to

 6   have this data because of the relevance it had in <u>Garlock</u> and

 7   the relevance they're worried in so many ways it may have here.

 8   Your Honor, we ask that you grant our subpoenas in

 9   full, you order compliance in full with the subpoenas as

10   stated.

11   And we thank you.

12   THE COURT: All right.

13   Mr. Guy.

14   MR. GUY: Thank you, your Honor.

15   Your Honor, I noticed that I was a little ahead of

16   myself in some of the papers we filed recently, I think on the

17   motion to dismiss, and I had said, well, DBMP has filed a

18   motion to dismiss for lack of subject matter jurisdiction, the

19   Committee, but I was wrong. They haven't done that and I'm

20   trying to think, well, why haven't they done that and maybe the

21   only difference is they have the Trust Data and that confers

22   subject matter jurisdiction in the Court.

23   Your Honor, we work with Verus a lot. They handle the

24   Garlock data and they do a really good job and they are highly

25   competent, very professional, very capable, and I have no doubt

 1 that they will be able to review this data quickly, pull the

 2 data out electronically with AI tools, and protect it. I have

 3 no doubt.

 4   Your Honor, a lot was said about why these party,

 5 parties are fighting so hard and Mr. Hogan said, I think he

 6 used the word "dirty laundry." That kinda struck me a little

 7 bit. He didn't say, "We don't want our confidential

 8 information come out." He said, "We don't want our dirty

 9 laundry come out." Enough on that.

10   Ms. Moskovitz [sic] said rightly, "We don't know what

11 happened in these trusts." We don't, we don't know, your

12 Honor. It's confidential. We only know what happens in

13 Garlock, but we do know the data. This is public. The

14 percentages are public and they can't be denied. She mentioned

15 DII, that it went, apparently it went up and then it went down

16 and went up again. That's the data that it shows. There's no

17 more we can say than that. My understanding of DII is they had

18 an initial contribution, then they had another one. We're very

19 happy for DII.

20   But the point is -- and no one has rebutted it -- the

21 vast majority of trusts and the trusts here -- let's just put

22 DII aside for a moment -- they've all reduced their payment

23 percentages. We don't know what happened, but we know it

24 happened. We know that in every instance they had highly

25 competent, specialized experts for both sides, the FCR and the

 1 ACC, do forecasts and in each instance they got it wrong to the

 2 detriment of the futures.

 3   And you heard Dr. Mullin talk about this information

 4 is helpful to the futures. Well, we know in Garlock it's

 5 helpful to the futures. Ms. Moskovitz said, "Well, that's a

 6 bad result, that you overpaid." It's never a bad result that

 7 you overpaid because you're can always make a stub payment, but

 8 you can never get the money back.

 9   Ms. Moskovitz also said, "Well, Garlock's only been

10 going on five years." Well, if you look at the posterchild for

11 bad estimates, THAN went from a hundred percent to 30 percent

12 in two years, two years. You heard Dr. Mullin say, "Well, if I

13 only have to predict it a year, I think I'm gonna get it

14 right." It's the 10 years, the 20 years that there's a chance

15 of getting it wrong. Well, they got it wrong in two years.

16 Clearly, something is amiss. I don't know what it is, but I do

17 know what is helping in Garlock. So that's why we want as much

18 data here.

19   Same thing with Lummus, hundred percent to 10 percent

20 in three years. How can you get it so wrong?

21   Your Honor, what was lost in a lot of the discussion

22 is that we are talking about encapsulated products and that

23 makes a huge difference. If we're talking about Paddock,

24 Paddock's a "Big Dusty." Its insulation, you walk by it. It's

25 in public buildings, hospitals, all over the place. You don't

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 1   need to show that you worked on that product.  If you can show

 2   that you were a insulator, as Dr. Mullin said, then, yeah,

 3   you've got a, you're right up there.  You've got the top claim,

 4   but you could also be "I worked in a factory and the insulation

 5   was there and I have mesothelioma."  That's a viable, provable

 6   claim.  But when you have an encapsulated product, like a

 7   gasket, as the Court found, Judge Hodges found, you have to

 8   abrade it.  You have to cut it.  You have to break it and

 9   there's only so many people who do those kinds of jobs.  Those

10   are the Tier 1 claimants.  Those are the people who should get

11   the maximum recovery and understanding how many people are

12   gonna be in those different tiers of occupations is heavily

13   critical by looking at the broad population data that

14   Dr. Mullin talked about, which is the census data and then

15   looking at the data from the Trusts of people who are making

16   claims.  That gives us more information.

17          We're not interested in trying to prove evidence

18   suppression.  We want to have a trust so that we have that data

19   so the trustee can have the benefit of it and they can use it.

20   And, and it was said earlier, well, this wasn't all about the

21   TDPs.  We're looking always ahead to the TDPs.  That, that's

22   exactly what we're looking to.  We don't want to negotiate any

23   of this at the end.  We wanna have all the information so that

24   we can give it to the trustee, just as we did in Garlock, and

25   say to the trustee, "You fix the values for a hundred percent
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 1 payment percentage using all the information that's available

 2 to you." And, and that's exactly what Mr. Sifford did and

 3 that's exactly why it's working.

 4   Thank you, your Honor.

 5   THE COURT: Thank you.

 6   This is the point in the proceeding where I say no

 7 premium in being the last speaker. But Mr. Davis [sic], got

 8 something else?

 9   MR. WRIGHT: I do, your Honor. And I apologize for

10 not taking you up on that premium.

11   To the extent Mr. Guy is speculating as to the reason

12 why the DBMP Committee has not filed a motion to dismiss, I,

13 I'm not gonna discuss it. I'm gonna say it's improper

14 speculation. And honestly, your Honor, I wouldn't interrupt

15 him, but I would ask that you strike that from his closing.

16   THE COURT: Well, it's not evidence. I'm not gonna

17 react to -- I'm trying to keep the cases safe, separate from

18 one another at the moment. So let's --

19   MR. GUY: It was an attempt at humor, your Honor.

20   THE COURT: Right.

21   MR. GUY: Maybe misplaced, but it was an attempt.

22   THE COURT: Okay. Are we done?

23   (No response)

24   THE COURT: I am tempted to try to give you a ruling

25 now, but the day is late and I am tired, if you are not.

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 1   I'm -- having contributed to some of the confusion earlier in

 2   announcing a ruling, I don't wanna add to it now, given all

 3   that has had to be done.  On the other hand, I really hate to

 4   wait a month to announce a ruling for this.

 5          Is there an available time in a couple weeks where I

 6   could get my thoughts together and give them to you by Zoom or

 7   telephonic hearing?  Y'all know --

 8          MR. EVERT:  Your Honor, I'm sure we can come up

 9   with --

10          THE COURT:  Well, I've got a, a couple of suggestions.

11          And if the clerk will backstop me and the law clerk as

12   well because we had talked to some parties about using some of

13   these dates.

14          The 14th, 15th of this month would, would be the ones

15   I had in mind.  Are y'all showing anything there?

16          Ms. Cooke, we had e-mailed some parties and offered

17   dates, but I don't think the 14th was accepted.

18      (Pause)

19          THE COURT:  I would assume these would be brief.

20   We'll send the --

21          MR. ERENS:  Would they be at 9:30, the standard time

22   your Honor?

23          THE COURT:  Well, that remains to be seen.

24          Are those good?

25          MS. COOKE:  Yes.
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 1            THE COURT:  Okay.  I'll try to -- right now, I'm open

 2   all day and I would envision an announcement that probably

 3   wouldn't take more than about 15 minutes, so.

 4            MR. GUY:  That works for us, your Honor, the morning.

 5            THE COURT:  Anyone got problems on those days?

 6            MR. WRIGHT:  Your Honor, if, if we do it by Teams,

 7   there's no problem from the Committee.

 8            THE COURT:  Okay.

 9            Well, why don't we, then, say, let's make it the 15th

10   and do it midmorning, 10:30 Eastern, okay?

11            MR. EVERT:  We certainly have enough people on our

12   team, your Honor.  We can get somebody on the phone at 10:30

13   on --

14            THE COURT:  Okay, very good.  Well, if not, CM-ECF

15   will have the recording available the next day, so.

16            Anything else?

17        (No response)

18            THE COURT:  I appreciate the quality of the

19   presentation.  I'm sorry it's taken us this long to get here.

20   Hopefully, we'll be able to make a call and get, get moving

21   again.  I do appreciate the effort that you put into this and

22   you've given me, as always, a lot to think about.  I'll try to

23   make some sense out of it, so.

24            We'll recess now.

25            Y'all travel safely.
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1   (Counsel thank the Court)

2   (Proceedings concluded at 3:45 p.m.)

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8   CERTIFICATE

9   I, court approved transcriber, certify that the

10   foregoing is a correct transcript from the official electronic

11   sound recording of the proceedings in the above-entitled

12   matter.

13   /s/ *Janice Russell*   June 12, 2023

14   Janice Russell, Transcriber   Date

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