Docket #2061 Date Filed: 1/11/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	)	
	)	Chapter 11
Aldrich Pump LLC,	)	
Murray Boiler LLC,	)	
	)	Case No. 20-30608 (JCW)
Debtors.	)	

REQUEST FOR CERTIFICATION OF DIRECT APPEAL TO THE COURT OF APPEALS OF ORDER DENYING MR. ROBERT SEMIAN AND FORTY-SIX OTHER MRHFM PLAINTIFFS' MOTION TO DISMISS

Appellants, Mr. Robert Semian and forty-six (46) other plaintiffs represented by Maune Raichle Hartley French & Mudd, LLC,[1] hereby request, pursuant to 28 U.S.C. § 158(d)(2)(A) and Rule 8006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), an order certifying for direct appeal to the United States Court of Appeals for the Fourth Circuit this Court's *Order Denying Motions To Dismiss* (Hon. J. Craig Whitley), entered December 28, 2023 (Dkt. No. 2047) (the "Dismissal Order").

In its thorough and thoughtful sixty-three-page opinion, this Court correctly recognized that "[u]ntil the propriety of the 'Texas Two-Step' and its use by solvent 'non-

[1] The Appellants in this matter are Robert Semian (who was not required to file a proof of claim) and forty-six clients of Maune Raichle Hartley French & Mudd, LLC ("MRHFM") who filed proofs of claim in this case. MRHFM only represents mesothelioma victims. MRHFM represents forty-seven mesothelioma victims who have filed proofs of claim in this case. MRHFM client Joseph Hamlin (deceased, now represented by his surviving spouse) is a member of the Official Committee. This Request is not made on behalf of Mr. Hamlin or on behalf of the Committee.

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distressed' corporations is determined by the higher courts, no progress will be made in these bankruptcy cases." Dismissal Order at 21.

The Fourth Circuit's consideration of the Dismissal Order, and by extension, the issues raised by the Appellants to this Court in the underlying Motion to Dismiss, is vitally important to and will materially advance the Debtors' bankruptcy case.

I. JURISDICTION AND VENUE

This Court has jurisdiction to consider this request pursuant to 28 U.S.C. §§ 158(d)(2)(A) and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. RELIEF REQUESTED

Appellants request entry of an order, pursuant to 28 U.S.C. § 158(d)(2)(A) and Bankruptcy Rule 8006, certifying their appeal of the Dismissal Order directly to the Fourth Circuit.

III. FACTUAL AND PROCEDURAL HISTORY

For a complete recitation of this matter's pertinent factual and procedural history, reference is made to Appellants' underlying Motion to Dismiss (Dkt. No. 1712), Reply in Support of Motion (Dkt. 1811 (as to Debtors) & Dkt. 1812 (as to the Future Claims Representative)), the Dismissal Order, and this Court's opinion on the preliminary injunction (Case No. 20-03041, Adv. Pro. Dkt. 308), which the Court adopted in its Dismissal Order.

Here, the Court has recognized the importance of immediate appellate review:

- "Whether New TTC or New Trane are legally entitled to [524(g)] relief is an open question." Dismissal Order at 15.

- "[R]uling on the merits of these dismissal motions is in the best interests of judicial economy and of the parties. Until the propriety of the 'Texas Two-Step' and its use by solvent 'non-distressed' corporations is determined by the higher courts, no progress will be made in these bankruptcy cases. None has been made in *Bestwall*, which was filed six years ago. None has been made in *DBMP*, filed four years ago. And none has been made here. These cases are simply spinning round and about, to the growing frustration of all." Dismissal Order at 21.

- After recognizing that several factors listed in *In re Premier Automotive Services, Inc.*, 492 F.3d 274 (4th Cir. 2007), to identify a lack of good faith "are present here," this Court noted: "These are persuasive arguments and if writing on a clean slate, I might well agree with the Movants. . . . And given the rarity of such non-distressed entities filing bankruptcy, particularly in 1989 when *Carolin* was decided, one wonders whether the *Carolin* majority contemplated that its test would be employed to the cases of solvent, non-distressed corporations." Dismissal Order at 50.

- "Read this way, arguably both *Carolin* prongs presuppose financial distress, just as the Movants say. And if one accepts the Movants' premise that [the Debtors] are not 'financially distressed,' these may in fact be bad faith filings. All of which I say simply for the Fourth Circuit's consideration, if it elects to reconsider the applicability of the *Carolin* Two-Prong Test in the case of a solvent, non-distressed Chapter 11 debtor. For now, *Carolin* is controlling precedent." Dismissal Order at 52.

- "The ACC and the claimant law firms will not 'go gentle into that good night [citation omitted].' . . . Obviously, using an artificially created subsidiary to obtain bankruptcy relief for a prosperous non-debtor corporate conglomerate is on the far reaches of the Congressional bankruptcy power, if within it at all. . . . A higher

court than this will ultimately determine which side is correct." Dismissal Order at 61.

- "Here we are—admittedly—three years into the case, but it is because the parties have heartfelt differences of opinion about the propriety of these cases and what should result from them." Dismissal Order at 62.

IV. ARGUMENT

28 U.S.C. § 158(d)(2) provides that an appeal must be certified for direct appeal to the court of appeals if the lower court determines that ***any*** one of the following criteria are met:

> (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;
>
> (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
>
> (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

28 U.S.C. § 158(d)(2)(A).

Congress determined that certification directly to the Court of Appeals would address "time and cost factors attendant to the [prior] appellate system" and the concern that "decisions rendered by a district court . . . are generally not binding and lack stare decisis value." H.R. Rep. No. 109-31, at 148 (2005), reprinted in 2005 U.S.C.C.A.N. 88, 206.

"Congress hoped that [direct appeals] would permit [courts of appeals] to resolve controlling legal questions expeditiously and might foster the development of coherent

bankruptcy-law precedent." *Weber v. United States Trustee*, 484 F.3d 154, 159 (2d Cir. 2007) (noting that unlike interlocutory appeals from a district court to a circuit court pursuant to 28 U.S.C. § 1292(b), direct appeals to the court of appeals under 28 U.S.C. § 158 "expressly provide[] that the lower court may certify that a decision is susceptible of direct appeal solely because there is no governing legal precedent."). "If the bankruptcy court [or] the district court . . . determines that a circumstance specified in clause (i), (ii), or (iii) . . . exists . . . then the . . . court . . . shall make the certification . . . ." 28 U.S.C. § 158(d)(2)(B).

Here, the "public importance," "no controlling law," and "material advancement" provisions of 28 U.S.C. § 158(d)(2)(A) are satisfied and direct certification is appropriate. Furthermore, bankruptcy courts in prior "Two-Step" bankruptcy cases have certified direct appeals of orders denying motions to dismiss. *See LTL Management, LLC*, Case No. 21-30589 (Bankr. D. N.J. April 4, 2022) (Dkt. 1955); *Bestwall, LLC*, Case No. 17-31795 (Bankr. W.D.N.C. Sept. 11, 2019) (Dkt. 987). In the case of *LTL Management*, the bankruptcy court's certification resulted in reversal and dismissal. With respect to *Bestwall*, the Fourth Circuit declined to review Judge Beyer's dismissal decision in 2019. *See* Dkt. 1827. Years later, however, in ruling on the ACC's appeal regarding the third-party preliminary injunctions, the Fourth Circuit specifically noted that it was not facing a Motion to Dismiss and, accordingly, avoided the central question raised by the Appellants. *See In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023).

Bankruptcy and district courts in this Circuit and others have regularly certified decisions for immediate appellate review. *See Lynch v. Jackson*, 853 F.3d 116, 119 (4th Cir. 2017) (accepting direct certification of bankruptcy court denial of chapter 7 motion to dismiss); *In re Qimonda AG*, 470 B.R. 374, 383 (E.D. Va. 2012) ("[A] lower court 'shall' certify a judgment, order or decree for direct appeal if, inter alia, the court, on its own motion or at the request of a party, determines that at least one of the statutory conditions exists."); *In re McLeod*, Case No. 12-00315-8-JRL, 2013 WL 950043, at *2 (Bankr. E.D.N.C. Mar. 8, 2013) (warranting certification directly to Fourth Circuit on basis of judicial economy); *In re Carroll*, Case No. 09-01177-8-JRL, 2012 WL 5960077, at *1, 3 (Bankr. E.D.N.C. Nov. 28, 2012); *In re AMR Corp.*, 730 F.3d 88, 91, 97 (2d Cir. 2013) (accepting certification of Chapter 11 appeal regarding contract dispute in part because of "the public importance of the matter").[2]

1. <u>The Dismissal Order Involves Matters of Public Importance.</u>

To satisfy the public importance prong of Section 158(d)(2)(A)(i), the "issue on appeal . . . [should] transcend the litigants and involve a legal question, the resolution of which will advance the cause of jurisprudence to a degree that is usually not the case."

[2] *See also In re IMMC Corp.*, Case No. 15-1043, 2016 WL 356026, at * 3 (D. Del. Jan. 28, 2016); *In re Adkins*, 517 B.R. 698, 699 (Bankr. N.D. Tex. 2014) ("If any of the four conditions precedent are met, the bankruptcy court shall make the certification per § 158(d)(2)(B)(ii)."); *In re Nortel Networks Corp.*, Case No. 09-10138, 2010 WL 1172642, at *1 (Bankr. D. Del. Mar. 18, 2010) ("[C]ertification is mandatory if the Court determines that any of the [enumerated circumstances] exist.").

Am. Home Mortgage Inv. Corp. v. Lehman Bros. and Lehman Commercial Paper Inc. (In re Am. Home Mortgage Inv. Corp.), 408 B.R. 42, 44 (D. Del. 2009); *see also Qimonda AG*, 470 B.R. at 387 (granting direct certification based in part on public importance of issue); *In re Sabine Oil & Gas Corp.*, 551 B.R. 132, 140 (Bankr. S.D.N.Y. 2016).

Matters of public importance include "the constitutionality of a provision of title 11, the applicability of non-bankruptcy law to matters arising in a bankruptcy case, the ability to change the venue of a title 11 case to an improper venue or any one of the important provisions governing consumer bankruptcy." *In re MPF Holdings U.S. LLC*, 444 B.R. 719, 726 (Bankr. S.D. Tex. 2011) (granting direct certification) (internal citations omitted). "Public importance" also includes "decisions affecting a large number of jobs or vital community interests." *Zewdie v. PNC Bank, N.A.*, Civ. No. PJM 15-2167, 2015 WL 6007410, at *2 (D. Md. Oct. 9, 2015). Notwithstanding the otherwise "narrow" interpretation of § 158(d)(2)(A)(i), *see In re Nortel Networks Corp.*, Case No. 09-10138 (KG), 2010 WL 1172642, at *2 (Bankr. D. Del. Mar. 18, 2010), direct certification of the Dismissal Order is appropriate and necessary.

Here, the issues raised by the Appellants are questions of vital importance. First, is a solvent, non-distressed corporation that has admittedly manipulated corporate and contract law entitled to bankruptcy relief simply because it wants such relief and not because it needs bankruptcy protection? Second, is it a proper use of bankruptcy as a court of equity to permit the continuation of a case that has been filed for the primary

goal of providing bankruptcy relief to a non-debtor? Third, did the Fourth Circuit, in articulating the two-pronged analysis in *Carolin*, intend to create a legal regime in which a putative debtor—that has massive liquid assets and is in no way financially distressed—is immune from bad-faith dismissal, notwithstanding subjective bad faith, because its massive wealth and liquidity, coupled with the *in terrorem* effect of the automatic stay on creditors, makes an eventual (albeit coerced) settlement possible (though unlikely)?

Furthermore, this case creates a substantial injustice for the claimants. Their rights are held hostage—"stranded in bankruptcy"—while New TTC and New Trane operate entirely free of bankruptcy obligations and, by extension of the automatic stay afforded to the Debtors, saves the millions of dollars Old IRNJ and Old Trane were annually paying in connection with the Debtors' asbestos liabilities. *See* Findings of Facts and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel, Adv. Pro. No. 20-3041 (Dkt. No. 308) (Aug. 23, 2021) (the "PI Order"), at 56-60. It is a matter of public importance as to whether this type of one-sided process should be condoned.

a. The Debtors' Efforts to Manufacture and Manipulate Jurisdiction Transcend the Litigants.

The Supreme Court of the United States has cautioned that "fraud will not prevail, [] substance will not give way to form, [and] technical considerations will not prevent

substantial justice from being done" in a bankruptcy proceeding. *See Pepper v. Litton*, 308 U.S. 295, 305 (1939). Moreover, "[s]ubject matter jurisdiction cannot be conferred upon a court by express language contained in a chapter 11 plan, consent of the parties, *or any other agreement*." *In re Parker*, 581 B.R. 468, 476 (Bankr. E.D.N.C. 2018) (citing *New Horizon of N.Y., LLC v. Jacobs*, 231 F.3d 143, 155 (4th Cir. 2000)) (noting that "[a] plan cannot confer jurisdiction upon a bankruptcy court or federal district court . . . rather, 28 U.S.C. § 1334 governs jurisdiction") (emphasis supplied); *see also In re Ohnmacht*, Case No. 09- 08106-8-DMW, 2017 WL 5125531, at *6 (Bankr. E.D.N.C. Nov. 3, 2017) ("A court's subject matter jurisdiction as defined in 28 U.S.C. § 1334 is absolute, and jurisdiction cannot be created by court order or agreement of the parties.").

Here, the May 2020 divisional merger as structured for Old IRNJ and Old Trane was expressly designed to manufacture bankruptcy court jurisdiction through the creation of two entities (the Debtors) that would seek the protections and remedies available only in bankruptcy for the purpose of resolving the legacy asbestos-related personal injury liabilities of non-debtors, Old IRNJ and Old Trane, without requiring Old IRNJ or Old Trane, or their primary successors, non-debtors New TTC and New Trane, to file for bankruptcy. "There is no dispute that the [May 2020] corporate restructuring was performed to isolate the asbestos liabilities from the rest of the Trane Enterprise." Dismissal Order at 10. "Nor is there any dispute that the sole purpose of these bankruptcy cases is to permit the Trane Enterprise to achieve 'a holistic and global

resolution' of those asbestos liabilities pursuant to an asbestos trust formed under Bankruptcy Code Section 524(g), without having to file bankruptcy themselves." *Id.*

The Debtors were created pursuant to divisional merger agreements as holding companies with limited assets while the vast operations and value of Old IRNJ and Old Trane went to New TTC and New Trane, the intended beneficiaries of the bankruptcy, which would use the agreements devised by Old IRNJ and Old Trane to avoid all of the creditor protections that are part of the careful balancing of the equities contained in the Bankruptcy Code. The Debtors' main assets, the Funding Agreements, are agreements that were specifically crafted ***to oppose dismissal*** as a bad faith filing, even in the face of subjective bad faith, and overcome the objective futility prong of the Fourth Circuit's jurisprudence. For this reason, the Funding Agreements should have been disregarded in connection with the Court's determination of objective futility.

While the Fourth Circuit has established a controlling test for dismissal when a petition is filed for the purpose of "resuscitating a financially troubled debtor," *Carolin*, 886 F.2d at 701, that test does ***not*** address dismissal where wealthy, profitable, fully-solvent and non-distressed corporations seek to access a tool of the Bankruptcy Code and manufacture jurisdiction in an attempt to do so while isolating one class of creditor from all others. The public importance of this issue cannot be overstated. If the bankruptcy courts are available to anyone who wants bankruptcy relief, no matter how wealthy,

profitable, liquid and non-distressed—no matter how ***not*** bankrupt they are—then the bankruptcy courts become the most powerful courts in the country.

If *Carolin* is to be construed as the Debtors urge, then: (1) Article I bankruptcy courts are free of all limitations on federal jurisdiction, including those which restrict access to Article III courts; (2) state law rights of action are eliminated against any party willing to file a petition; and (3) the foundational rules of bankruptcy that all creditors be treated equally and that equity eats last can be avoided by any corporation with the resources to manipulate its corporate structure via the "Texas Two-Step." Public confidence in the judicial system, particularly the bankruptcy system, will obviously and inevitably erode.

Finally, direct certification to the Fourth Circuit is appropriate because the implications and impact of the pre-petition activities of Old IRNJ, Old Trane, New TTC, New Trane, and the Debtors reach far beyond current and future asbestos claimants. If countenanced, the structure designed by Old IRNJ and Old Trane provides a playbook replicated by other businesses that could dramatically damage the creditor protections that are imbedded in bankruptcy process for years to come.

b. The Bankruptcy Relief Sought for the Benefit of Non-Debtors New TTC and New Trane Raises Critical Issues Regarding Fundamental Constitutional Rights.

As Section 524(g) offers extraordinary relief, it is critical that it be available only to financially troubled debtors that come to the court in good faith, and that submit their

entire enterprises to the jurisdiction of the bankruptcy court, making their assets and operations available to the scrutiny and oversight that accompanies the Chapter 11 process. So doing ensures all similarly situated creditors are treated equally and that equity holders' interests are subjugated to those of the creditors. Bankruptcy is designed to be a transparent process, one that balances the rights and remedies of the debtor with those of its creditors.

Here, by contrast, the Debtors did not file bankruptcy to rehabilitate. This Court rejected the Debtors' claims that they filed due to need or for the benefit of their asbestos creditors and, rather, determined that the overall purpose of these petitions was to "strand [the claimants] in bankruptcy." PI Order at 40. Moreover, the Dismissal Order set forth that, since filing these petitions, the financial wealth of the Debtors' parent companies—the companies that backstop the Debtors through the funding agreements—has massively increased. Dismissal Order at 14.

Under these circumstances, these proceedings bear no relation to the statutory objective of the Bankruptcy Code: "resuscitating a financially troubled debtor." This case was filed exclusively to obtain relief under Section 524(g) for the benefit of New TTC and New Trane, the parties with the ultimate financial responsibility. The restructuring was performed to isolate a single liability—the Debtors' liability for state-law personal injury claims related to asbestos, while all other creditors and the equity holders of the vastly profitable businesses remain completely ***un***affected by this proceeding. The sole purpose

of this case, as found by this Court, is to use the petition to "strand [the claimants] in bankruptcy" so as to force "a holistic and global resolution" of that liability, and, according to the Debtors, this "holistic" relief cannot be achieved absent the tools of Section 524(g). PI Order at 40; Dismiss Order at 10.

Moreover, the Debtors' asbestos liabilities were manageable (and being managed) without financial distress at the time of filing, and the Debtors' ability to pay those liabilities has improved in the intervening years. Dismissal Order at 14-15. The Debtors' asbestos liabilities—while substantial in the abstract—never put the Debtors in financial distress. 'Overcoming the tort system' as the principal architect of the "Two-Step" boasted publicly in 2022, is ***not*** a valid bankruptcy purpose nor does it further Chapter 11's "statutory objective of resuscitating a financially troubled debtor." *Carolin*, 886 F.2d at 701–02.

While remaining free of any limitations or oversight attendant to the bankruptcy process, New TTC and New Trane have benefited by orders extending the Debtors' stay of litigation. The Dismissal Order relates to a matter of public importance that "transcends the litigants" because the Debtors and/or New TTC and New Trane are defendants in thousands of asbestos-related personal injury actions pending throughout the country.

The importance of an injured party's right to his or her day in court is recognized and affirmed by the statutory scheme that governs the jurisdiction of bankruptcy courts

and provides, in pertinent part, that the district court "*shall* order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending." 28 U.SC. § 157(b)(5) (emphasis).

This Constitutional right to a trial by jury—including to pursue all remedies available under state law—may be modified or limited in only a very few circumstances. While the Bankruptcy Code automatically provides a debtor some relief to restructure and propose a plan to compensate its creditors, any modification of the right to immediate access to the courts necessarily must be carefully guarded when addressing claims against non-debtors. While the Debtors' bankruptcy case is pending (and the Section 105 injunction extending the Debtors' automatic stay is in place for New TTC, New Trane, and many other corporate affiliates), every single asbestos victim is prevented from continuing or bringing an action seeking compensation.

Article I, Section 8, of the Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies." *Id*. at art. I, § 8. Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, codified as Title 11 of the United States Code, is the uniform federal law that governs all bankruptcy cases. The appeal raises the question of uniform application of the Bankruptcy Code. Specifically, appeal of the Dismissal Order raises the critical issue of whether an entity

that seeks to use the extraordinary and unique protections and relief of bankruptcy for the benefit of non-debtor multi-billionaires who created a structure to avoid subjecting their company to bankruptcy should be permitted to use the bankruptcy process.

Neither the Fourth Circuit nor the U.S. Supreme Court has considered this type of subjective bad faith, where the debtor's purposes are outside its own restructuring and rehabilitation and where the Constitutional rights of thousands of individuals are at issue. For this reason, and because the issues presented by the instant appeal involve matters of public importance, direct certification is required. *See* 28 U.S.C. § 158(d)(2)(B).

2. <u>The Appeal Involves a Question of Law for Which There Is no Controlling Decision.</u>

As discussed, *supra*, the Fourth Circuit has not addressed whether the two-pronged *Carolin* standard that it has articulated for dismissing a bankruptcy filing for bad faith is the proper standard where, as here, a party is fully solvent, not financially distressed, not facing overwhelming asbestos liabilities and has manipulated its corporate form and assets and liabilities specifically to create subject matter jurisdiction in the bankruptcy court. The Supreme Court has yet to address the proper standard for bad faith dismissal, which varies among the Circuit Courts that have addressed the issue. As this Court recognized:

- "As to the Debtors' suggestion that there is a difference between the Third Circuit's 'financial distress' approach and that of the Fourth Circuit, the Movants point out that the *LTL* decision relied not just on *SGL Carbon,* but also cases from other circuits including the

> Fourth Circuit's *Carolin* decision . . . . In *LTL*, the congruity of the Circuit cases was so clear that Judge Ambro observed that the universality of this basic premise of bankruptcy law (the requirement of 'financial distress') provided him with reassurance of the correctness of his decision." Dismissal Order at 49 (citing *LTL Mgmt., LLC*, 64 F.4th 84, 103 (3d Cir. 2023)).

- "Even if there is a distinction between the tests employed by the Circuits, Movants recite factors identified in *Premier Auto*, 492 F.3d at 280, that courts use to identify a lack of good faith [citation omitted]. Several are present here . . . ." Dismissal Order at 50.

- "I am appreciative of what the Third Circuit has said [in *LTL Mgmt.*]. Frankly, I kind of hoped that would address head-on the question of the [Two-Step] for whatever information that might provide all of us. Perhaps, if *cert's* granted, the Supreme Court will talk about those issues as well as what we have. . . . Hopefully, in *Bestwall* some of these issues will be taken up sooner rather than later and we'll get some answers." Exhibit. A, Tr. 3/30/23 at 68:8-12, 69:9-11 (denying Mr. Semian's motion for relief from stay).

As the instant appeal involves questions of law for which there is no controlling decision, direct certification is required. *See* 28 U.S.C. § 158(d)(2)(B).

Moreover, as discussed above and in the Dismissal Order, there is a significant dispute regarding whether the two-pronged analysis of the *Carolin* decision has any application in a case, such as these cases, where the putative debtor is unquestionably not financially distressed, in no need of resuscitation, and has filed the petition as a litigation tactic. *Compare Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989), and *Premier Automotive Services, Inc.*, 492 F.3d 274 (4th Cir. 2007). While the Court concluded that it was bound to apply *Carolin*'s two-

pronged test, it specifically noted the significant arguments that the test does not and should not apply in these circumstances. Dismissal Order at 50.

3. Direct Appeal Will Materially Advance the Progress of the Case.

"The twin purposes of [Section 158(d)(2)] were to expedite appeals in significant cases and to generate binding appellate precedent in bankruptcy, whose caselaw [sic] has been plagued by indeterminacy." *In re The Pacific Lumber Co.*, 584 F.3d 229, 241-42 (5th Cir. 2009) (*citing* H.R. Rep. No. 109-31 pt. I, at 148 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 88, 206); *Weber v. U.S. Trustee*, 484 F.3d 154, 158, 161 (2d Cir. 2007) (certification proper "where a prompt, determinative ruling might avoid needless litigation"); *Qimonda*, 470 B.R. at 389 ("One of the primary goals of § 158(d)(2) is to provide a quicker and less costly route to resolve issues that will likely end up in the court of appeals, and this matter is surely destined for the Fourth Circuit."); *MPF Holdings*, 444 B.R. at 727 (granting direct certification, in part, because determining litigation trustee's standing would materially advance case).

Direct certification will materially advance the Debtors' bankruptcy case, even if that material advancement is the dismissal of the case, the dissolution of the automatic stay and the extension of the automatic stay to non-debtors pursuant to Section 105 of the Bankruptcy Code, and the return of the Debtors, New TTC, and New Trane to the state tort system.

Moreover, the Fourth Circuit will need to address whether the two-pronged dismissal standard announced in *Carolin* is the appropriate standard in the context set forth herein and the Dismissal Order. Given *Carolin*, appeal of the Dismissal Order is not the type of appeal that will benefit from "percolat[ing] through the district courts." *Weber*, 484 F.2d at 160-61.

Finally, as the Appellants argued in connection with the Dismissal Motion, the Fourth Circuit's decision in *Carolin*—which requires objective futility and subjective bad faith to dismiss a debtor's bankruptcy case as a bad faith filing pursuant to Section 1112(b)—conflicts with the standards required in the Third Circuit (*see In re SGL Carbon Corp.*, 200 F.3d 154 (3d Cir. 1999) ("After considering the language of § 1112(b), its legislative history, the decisions of other courts of appeals, the equitable nature of bankruptcy proceedings, and the purposes behind Chapter 11, we conclude a Chapter 11 petition is subject to dismissal for 'cause' under 11 U.S.C. §1112(b) unless it is filed in good faith")), the Eighth Circuit (*see In re Cedar Shore Resort, Inc.*, 235 F.3d 375 (8th Cir. 2000) ("After considering the purposes and policies underlying the Bankruptcy Code, we decline to adopt the *Carolin* test and hold that a Chapter 11 petition may be dismissed for bad faith alone where the circumstances warrant")), and the Eleventh Circuit (*In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393 (11th Cir. 1988) (holding that bad faith alone is sufficient to warrant dismissal, regardless of the possibility of reorganization as "the possibility of a successful reorganization cannot transform a bad faith filing into one

undertaken in good faith")). And while courts have held that inter-circuit splits are not a proper basis for seeking direct appeal under Section 158(d)(2)(A)(ii) (*see generally In re IMMC Corp.*, Civ. No. 15-1043 (GMS), 2016 WL 356026, at *7 (D. Del. Jan. 28, 2016) (concluding conflicting decisions within circuit proper basis for direct certification); *WestLB AG v. Kelley*, 514 B.R. 287, 294 (D. Minn. 2014) (noting that § 158(d)(2) references conflicting decisions within same circuit); *In re Millennium Lab Holdings II, LLC*, 543 B.R. 703, 714 (Bankr. D. Del 2016) (concluding "inter-circuit splits do not satisfy section 158(d)(2)"); *In re General Motors*, 409 B.R. 24, 29 (Bankr. S.D.N.Y. 2009) (decisions outside of circuit are not basis for § 158(d)(2)(A)(ii) review)), direct certification will materially advance this case by providing the Appellants with the ability to either seek (after an adverse ruling from the Fourth Circuit) *en banc* review of the propriety of the *Carolin* standard in the context set forth herein and the Dismissal Order or begin the process of seeking *certiorari* from the United States Supreme Court to resolve the circuit split on the standards for bad faith dismissal for cause under 11 U.S.C. § 1112(b).

Finally, application of the *Carolin* two-pronged test to this case, given the detailed factual findings of the Court, potentially conflicts with the analysis of the Fourth Circuit in *Premier Auto*.

V. CONCLUSION

Based upon the foregoing, it is evident that the issues raised by the Appellants' appeal of the Dismissal Order will ultimately have to be addressed by the Fourth Circuit;

intermediate appellate review by the District Court will only increase estate expenses and delay definitive resolution of the serious jurisdictional and Constitutional issues raised by the Appellants in the Dismissal Motion. The best time to resolve these issues is now, so as to allow those individuals dying and their estates to receive timely justice and compensation. Accordingly, for the reasons set forth above, the Appellants' appeal of the Dismissal Order should be certified for direct appeal to the United States Court of Appeal for the Fourth Circuit.

Dated: January 11, 2024

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Exhibit A

Transcript of March 30, 2023 Hearing

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, March 30, 2023 9:30 a.m.
	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	:	AP 22-03028 (JCW)
Plaintiff,	:	
v.	:	
INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, et al.,	:	
Defendants,	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	:	AP 22-03029 (JCW)
Plaintiff,	:	
v.	:	
TRANE TECHNOLOGIES PLC, et al.,	:	
Defendants,	:	

ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 22-00303 (JCW) (Transferred from District of Delaware)
Plaintiffs,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Defendants,	:	
AC&S ASBESTOS SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 23-00300 (JCW) (Transferred from District New Jersey)
Petitioners,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Respondents,	:	
VERUS CLAIM SERVICES, LLC,	:	
Interested Party,	:	
NON-PARTY CERTAIN MATCHING CLAIMANTS,	:	
Interested Party.	:	

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

APPEARANCES:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Have a seat, all. Good morning.

(Counsel greet the Court)

THE COURT: Okay. It looks like we've got a bit of business to do this morning. So we'll try to do that with dispatch.

Let's go ahead and get appearances. If we can start with the major constituencies and have the lead attorney announce as many of his people as possible, I'd appreciate that.

Mr. Erens?

MR. ERENS: Thank you, your Honor.

Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors. Also for Jones Day here today, Morgan Hirst and David Torberg. From North Carolina co-counsel Rayburn Cooper, we have Rick Rayburn, Jack Miller, and Matt Tomsic. Special counsel for the debtor the Evert Weathersby firm, we have Michael Evert and Clare Maisano, and from the debtors themselves we have Allan Tananbaum and Robert Sands.

THE COURT: Okay.

How about from the Committee?

MS. RAMSEY: Thank you, your Honor.

Natalie Ramsey, Robinson & Cole, on behalf of the Asbestos Claimants' Committee, and we have quite a number of

people here today with us, Davis Lee Wright and Andrew DePeau, also from Robinson & Cole; Serafina Concannon from Caplin & Drysdale; David Neier and Cristina Calvar from Winston & Strawn; and Rob Cox from Hamilton Stephens.

THE COURT: Okay.

FCR?

MR. GUY: Good morning, your Honor. Jonathan Guy for the FCR. Mr. Grier is here with me in the courtroom. And my colleague, Mr. Danny Barefoot. Thank you for granting his recent *pro hac* request.

THE COURT: Sure.

MR. GUY: Thank you.

THE COURT: How about the Affiliates?

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter & English, on behalf of Trane Technologies Company LLC and Trane U.S. Inc., as well as the Non-Debtor Defendants in the active adver, adversary proceedings. And I'm joined by our local counsel, Brad Kutrow and Stacy Cordes.

THE COURT: Okay.

Others in the courtroom that have not previously announced? Anyone?

MR. PHILLIPS: Your Honor, Jim Phillips and Jeff Oleynik on behalf of the Individual Fiduciary Duty Defendants.

THE COURT: Okay.

MR. MARTIN: Good morning, your Honor. Lance Martin

and Beth Moskow-Schnoll on behalf of the Asbestos Trusts.

THE COURT: Okay.

Mr. Roten?

MR. ROTEN: Morning, your Honor. Russell Roten, Duane Morris, for Certain Insurers.

THE COURT: Mr. Houston.

MR. HOUSTON: Good morning, your Honor. I'm Andy Houston on behalf of the eight Verus Trusts. My co-counsel, Lynda Bennett from the Lowenstein Sandler firm, is here, too. She's been recently admitted *pro hac vice*.

THE COURT: Okay. Welcome.

MS. BENNETT: Thank you, your Honor.

THE COURT: All right.

MS. HOBSON: Your Honor, Anna-Bryce Hobson here for Verus Claims Services. I'm joined with my co-counsel, Zachary Wellbrock, who's also been recently admitted *pro hac*.

THE COURT: Okay. Welcome.

MR. WELLBROCK: Good morning, your Honor.

MR. THOMPSON: Good morning. Clay Thompson, Maune Raichle Hartley French & Mudd, on behalf of Robert and Marcella Semian. I'm here with my co-counsel from North Carolina, Jim Lanik, with Waldrep & Wall.

THE COURT: Okay.

MR. GUERKE: Good morning, your Honor. Kevin Guerke from Young Conaway, here on behalf of the Delaware Claims

Processing Facility. I'm here with local counsel, Felton Parrish.

THE COURT: Okay.

MS. SANTOS JOHNSON: Good morning, your Honor. Diana Santos Johnson with Waldrep Wall Babcock & Bailey. We're local counsel to Dan Hogan, who's in the courtroom today. He is lead counsel for the Non-Party Certain Matching Claimants in that Miscellaneous Proceeding that was transferred from Delaware.

We are also local counsel to Joseph Lemkin, who is on the phone, and he is lead counsel for the Non-Party Certain Matching Claimants in the Miscellaneous Proceeding that was transferred from New Jersey.

THE COURT: Okay.

Anyone else in the courtroom?

(No response)

THE COURT: Are there those on the telephone who have not either, that need to announce and have not been previously announced by, by your co-counsel? Star 6 gets you unmuted.

Anyone?

MR. TAYLOR: Good, good morning, your Honor. Joshua Taylor from Steptoe & Johnson on behalf of the Travelers Insurance Companies.

THE COURT: Anyone else?

MR. ANSELMI: Good morning, your Honor. Andrew, Andrew Anselmi from Anselmi & Carvelli on behalf of Verus.

THE COURT: All right.

Anyone else?

(No response)

THE COURT: Anyone else?

(No response)

THE COURT: Please, on, those who are on the phone, if you would, keep your receivers muted until it's time to speak.

Given the number of people involved today and the number that are on the telephone, it would be helpful to all if, if you reannounced your, your name before you spoke this morning.

Quite a bit of business to, to do this morning. Have the parties had any occasion to talk about a batting order and how they'd like to approach this?

MR. ERENS: Your Honor, yeah, we thought about this in putting together the agenda. There are a number of parties here who are only here for one item --

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

MR. ERENS: -- but we didn't really want to play favorites or make it look like we're strategically putting the agenda in any particular order. So we listed it simply in the order chronologically that, I think, is the default rule for the agenda. We're happy to go in that order. If parties want to go in a different order, we can discuss that as well, or

whatever your Honor would prefer.

THE COURT: Does anyone have a different way of, proposed way of approaching this?

Mr. Houston?

MR. HOUSTON: Yes, sir, your Honor. Andy Houston for Verus Trusts.

I'm not going to comment broadly on everything that's on the agenda, but I will point out a few things --

THE AUDIO OPERATOR: Mr. Houston?

MR. HOUSTON: -- which are -- I'm not sure that I have the most recent version, but --

THE AUDIO OPERATOR: Mr. Houston?

THE COURT: Better go over here, Mr. Houston, so we get a good recording.

THE AUDIO OPERATOR: Yes, thank you.

MR. ERENS: Your Honor, if I may before, just so we're all looking at the same agenda, we did file a final agenda this morning at about 8:15 at Docket 1677. There were some filings that came in on the last day or two. So those have been added. Otherwise, you know, it's the same as was filed previously.

THE COURT: Mr. Houston, what'd you have to say?

MR. HOUSTON: Yes, your Honor. I am just looking to cross-reference the numbers. It looks like they are probably the same. Just to point out a few matters.

Matters -- I only represent the Verus Trusts, who are

the matter, in Matter No. 3 and that case was transferred from New Jersey. There's also Matters 4 and 5, which are related to protective order motions.

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

MR. HOUSTON: From our standpoint, those matters are not properly on for hearing today. They weren't noticed for hearing. The first time that we knew that these were going forward was when we got whatever the first iteration of this agenda was. We certainly did not notice them for hearing. Without arguing the point, we believe they're moot because we believe there is an agreement between the Verus Trusts and the debtors related to your Honor's 10 percent sampling ruling. So we did not think that those were properly going forward today.

Just in terms of commentary, we filed a motion to adjourn in the --

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

MR. HOUSTON: -- other --

THE COURT: Right, in the Delaware action.

MR. HOUSTON: -- Miscellaneous Proceeding that is Matter No. 7 on the calendar, Docket No. 58. Those matters are related, even though they cross different cases on some level.

So we would only ask, really, that our motion to

adjourn be heard before any of those other matters.

That's it.

THE COURT: Mr. Hirst.

MR. EVERT: Your Honor, Michael Evert on behalf of the debtors. And I'm only rising instead of Mr. Erens 'cause this was sort of my bailiwick.

THE COURT: Okay.

MR. EVERT: So I think there are a couple of things here. There, there are a lot of filings in regard to the Trusts and we were going to try to tackle those before the Court in a, in a coordinated order.

I think what Mr. Erens is referring to is there's a, there's a Non-Debtor Affiliates' motion that's out there. That's the only thing, I think, some people are here for and there's a, there's a lift stay motion that, I think, some people are here only for that.

So I -- I real -- I think, really, the open question is whether either of those parties would like to try to expedite their, their particular item so that they can get out of here early. I'm sure no one would like to get out earlier than your Honor, but there, there may be some --

THE COURT: I think I'm here for the duration, or better be.

MR. EVERT: But I think that's really the issue.

THE COURT: Okay.

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

Your Honor, we're dead last on the agenda. So of course, we have, we have an issue with it, but I would just point out that there are some motions from the base case that involve estate, people who are billing the estate.

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

MR. NEIER: And then there's us at the very bottom, but we're fine with the agenda as it is. We have no objection. We just, you know, if there, if there's a way that the, the trust discovery is going to be handled in a coordinated fashion or an expeditious fashion, that might make things easier.

THE COURT: I understand that these overlap a lot.

Does -- from the debtors' perspective -- I guess y'all were the party responding and -- is there a belief that 3, 4, and 5 are a go today?

MR. EVERT: Yes, your Honor.

THE COURT: Okay.

All right. Here's the way I'd like to look at it. I'd like to get as many of you on your way as I can and, and so your clients don't have to suffer from that.

With that in mind, I agree. I'd like to get the single-shot matters that don't get into the flowing morass of, of reconsideration motions and quash motions out of the way as

possible. So my thinking would be we, we take up the status in No. 1, then we pick up the Semian motion for relief from stay in No. 2; briefly step over 3, 4, and 5 and see where we are on that as well as the, the matters to strike pleadings in the two Miscellaneous Proceedings that have been removed to this Court, the motions to strike pleadings, continue hearings, and the like; and instead, go over, and the motion for rehearing by the debtor itself.

My reason for doing that is if we don't reach this afternoon, all those motions to continue are kind of moot because we'll have to continue, anyway. So let's save that time until we see whether it's really necessary and then I want to pick up with the discovery procedures and then we'll circle back around and see where we are, okay? Let's do it that way.

So let's start with No. 1. We were talking about Mr. Guy's motion for sampling and we've been discussing that and we're back again.

MR. ERENS: Your Honor, if, if I may, we also had a brief status, although we can do that at the end or we can do it at the beginning. It's not very long.

THE COURT: Anyone opposed to hearing a status from the parties?

(No response)

THE COURT: Mr. Erens, lead off.

MR. ERENS: Okay. Thank you, your Honor. Yeah, just

a couple of points.

So want to let the Court know that on mediation, we do have an initial mediation date of May 15th. We've notified all the parties. It will be virtual. So the parties will not be getting together. We'll see how that one goes. We do believe based on scheduling of the parties or the schedules of the parties that we're probably not likely to meet again for several weeks, call it late June or early July, but we'll be discussing that in more detail at the May 15th initial kickoff for mediation.

THE COURT: Okay.

MR. ERENS: Secondly, proofs of claim and PIQs. You may recall, your Honor, you entered an order, I believe, at the last hearing allowing the debtors to file omnibus proof of claim objections, mostly to the extent that the objection was that prior to the bankruptcy the claim was paid and released --

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

MR. ERENS: -- but that was with the condition that the debtors meet and confer with claimants or their counsel prior to filing the omnibus objection.

So we are now in the process -- we just started -- of meeting, or reaching out to plaintiffs' counsel for meet, firms. That's where that stands.

On PIQs, you may recall the PIQs had a deadline of

late December for arrival. We have been reviewing the PIQs since then, probably since the beginning of the year. I believe there are, roughly, 5,000 of them. So a good amount of, of detail. We are in the, I think, final stages, or close to the final stages of fully reviewing those PIQs to the extent necessary to move to the next step. Our intent next is to reach out to counsel who we believe filed deficient or incomplete PIQs to start that discussion. Our hope and intent is to not burden the Court with any disputes of that matter, or at least certainly narrow any disputes or discussions.

So we'll be starting that process soon and you may be hearing about that again down the road.

Finally, on estimation, you may recall the ACC sent us a document request, discovery request some time ago. We've already produced some time ago about 160,000 documents in response to that request. The ACC and the debtors a couple of weeks ago agreed on search terms for electronic searches. We're in the process of our initial review of about 20,000 documents, first-level review, and we expect in the, the next few weeks, whatever that means, we will start production on a rolling basis with documents to follow.

So that's pretty much the update on the estimation document discovery.

I think that's pretty much it unless your Honor has questions.

THE COURT: Not at the moment.

MR. ERENS: Okay. Thank you.

THE COURT: Anything from the ACC either by way of comment to that or other update?

MS. RAMSEY: No, your Honor. Thank you.

THE COURT: How about the FCR?

MR. GUY: No, sir.

THE COURT: Affiliates? Anyone else got anything to say?

(No response)

THE COURT: Okay. Let's go back to the docket, then, and pick up with No. 1. This is the FCR's motion to establish a protocol for sampling.

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

It's tradition for me to put up the fee chart and there is relevance to it. You can see that Aldrich is catching up with DBMP at 74 million total and DBMP is 75. And Bestwall is way ahead, $227 million. The one that hasn't changed, of course, is Paddock because that case went effective in '22.

And the fees are relevant to the update, your Honor. It's not a shortage of lawyers and professionals that is stopping the sampling protocol getting agreed to. We filed our sampling motion back in September of '22 and you'll remember then that it was in response to the Court's concerns about the

claims files and privilege issues and the burden that would be addressed in reviewing too many of those files. The relief sought was very modest. We simply asked that the parties be ordered to negotiate and if they couldn't do it within 90 days, then come back to the Court. At the time both the ACC and the debtors said, "Trust us. We'll get it done. We don't need an order. We're talking and we'll get back to you and tell you when we've got it done." So we're now, you know, nearly in April and I can tell you that -- and I want the debtors and the ACC to confirm this because they're the ones who've been in direct discussion. They've kept the FCR informed, but it's really their agreement to make and ours to, you know, say, "Yes, that seems to work," but after talking to our experts.

Both the debtors and the ACC acknowledged back in October that, "If we couldn't get it done, then we should come back to the Court and, and an order might be appropriate." The debtors said:

> "If it appears the parties are unable to reach agreement, the parties and the Court can later revisit settling guidelines, setting deadlines to ensure that the sampling issue is properly resolved at the appropriate time."

The ACC took the same tact:

> "Should the parties at some point reach an impasse in the discovery process and discussions regarding

sampling, the Committee or another party will seek guidance from the Court."

So we've been very patient, your Honor. I can tell you that there is no agreement. I can tell you that there was what we thought was an agreement fairly recently and I don't want to characterize those discussions in any way. So I'm going to ask both Ms. Ramsey and Mr. Erens to clarify, but my understanding is that the ACC and the debtors were very close on the key details of a sampling protocol which would obviate the problems that we saw in Bestwall, but when the debtor have revisited the issue of the trust discovery the ACC's response was, "Well, that put," as my mother would say, "The cat among the pigeons," "and we're not really sure we want to agree to sampling a'tall." And I'll let Ms. Ramsey clarify if I've misstated that in any way.

So we have a bit of a problem with that, your Honor, for obvious reasons. We don't think they should be linked, but we'll let the ACC talk to that. For sure, the ACC didn't say back in October, "We'll never agree to a sampling protocol for the claims files if we cannot get an agreement on the trust discovery." That wasn't the issue a'tall. But now they seem to be linked.

So I, I will leave it at that and I would just like to return to the Court once we've heard from the, the, the debtors and the ACC with what I think might be an appropriate remedy in

light of the impasse.

Thank you, your Honor.

THE COURT: Okay.

Debtor? ACC? Ms. Ramsey.

MS. RAMSEY: Thank you, your Honor. Natalie Ramsey for the record.

Your Honor, we -- we are -- we have made substantial progress. I think we had reported that to the Court on February 14th. There has been, there's been an impediment that has been created to the precise sample that, that we were talking about by the debtors' motion because the sampling protocol and the strata and even the number was informed by the background that there was a limitation on trust discovery. And so we have not said we're walking away from sample discussions if the debtor is successful in connection with its motion for rehearing. What we have said is that would change some of the bases upon which we were discussing a sample.

There's also an additional issue that came up in communications. I think Mr. Evert sort of forecasted at the last hearing that there was a feature of our proposal that the debtor had some concerns about. We've had some preliminary further dialogue about that. That is also unresolved and it, it's a question, again, of, of proportionality.

Some of this, I don't want to get into 'cause I don't want to start the argument right now on the motion for

rehearing, but a lot of this has to do with, fundamentally, the question of the goal of, we understood the FCR's motion, was to create a universe that would enable the parties to all be working on what I'll call a level playing field and that is still our goal. We still think that a sample makes sense, but there are a couple of issues that are, right now, preventing us from having reached agreement and one of them is awaiting the Court's determination on the motion for rehearing.

Thank you.

THE COURT: Okay.

Mr. Evert.

MR. EVERT: Your Honor, Michael Evert for the debtors. I, I don't have a whole lot to add.

The -- the -- we were -- we don't think the two issues are linked. We don't think they should be linked. From our perspective, they've, they've never been linked, but, you know, obviously, these are, these are negotiations and people can take the position that they want to take. But from our perspective, what we're talking about here are two different issues. We've said many, many times that the trust discovery, in our view, is analogous to our claims database, which we produced in its entirety, and, and the claims file discovery is a whole different kettle of fish. It's -- it's -- it's paper files. It's tens of thousands of e-mails. It's, it's lawyers. It's everywhere.

THE COURT: Right.

MR. EVERT: So we don't think the two issues are related. If -- if -- I think if we can get over that, then we could get back to our negotiations on the two remaining issues Ms. Ramsey identified. And I agree with her. It's not appropriate to get in with you about where we are and all that.

But we -- we were -- we don't think they're linked and don't think they should be linked.

MS. RAMSEY: May --

THE COURT: As I --

MS. RAMSEY: May I respond very, very briefly, your Honor, just, just because -- and I said -- I, I really am not trying to accelerate the motion for rehearing, but I think it's relevant to this discussion.

There's a declaration that, that Dr. Mullins [sic] filed. Part of that declaration indicates that the goal of the use of trust discovery is to compare it with information in the claim files and if that is going to be a, a universe of a hundred percent and the Committee, on the other hand, is limited to a universe of a portion of that, whatever percentage that turns out to be, to us, that is a, that is an unfair, unequal access to information that, that does present us a problem.

And, and as Mr. Evert said, we, we, we'll continue to have this dialogue. A lot will be informed by what happens,

but we feel fairly strongly that our concern has always been that the debtor came in to court. It sought out this process. It sought out estimation. It has taken the position it has taken with respect to how estimation, how it wants to approach estimation, and to deny the Committee sufficient access to the information that would inform the Committee's defense meanwhile allowing the debtor to have a hundred percent information, would, would put the parties at a disadvantage.

THE COURT: To what extent do you think a ruling today on the motion for reconsideration would move this along? I would assume there'd be some lag time no matter what I do.

MS. RAMSEY: Yes. I believe that's correct, your Honor, but we, we've come a long way. Our experts have developed their own views of what would be necessary.

So I would think it would accelerate the process of us being able to determine whether we can reach agreement or whether we need for the Court to --

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

MS. RAMSEY: -- decide the issue.

THE COURT: And Mr. Guy, as I recall, your motion didn't really advance the protocol itself. It just encouraged the other two parties to, to come to an agreement.

MR. GUY: Exactly right, your Honor. We weren't taking it upon ourselves to tell them what was the exact

sampling protocol. I can say, without getting into the details of all the discussion, is we really thought that they were, if not 98 percent done, 95 percent done, and then we've got this new issue that's being teed up.

From the FCR's perspective, we want to get this case focused on what's really important and try to --

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

MR. GUY: -- put to the side these, what we see as ancillary disputes, discovery disputes, which can be streamlined. That's why we did this. We wanted to avoid like the three or four years of Bestwall arguing about privilege issues. And you know, that's what we still want. I think it will be appropriate at this time -- the Court's been patient. We've been patient. There's been a lot of talk. The goalposts seem to be moving. I think at this point it should be clear, regardless of how the Court rules on the motion for rehearing, that the debtors and the ACC have 30 days to figure out whether they can agree to a sampling protocol and then, if they can't, to present their differences to the Court and then we get a decision on it. And the benefit of that decision will be assisting the Court in the claim file privilege issues. That was the genesis of the motion in the first instance. I defer to Ms. Ramsey and her arguments about the Trusts and sampling on that.

But our motion was to eliminate the privilege -- not eliminate 'cause we won't be able to do that -- but to minimize the privilege disputes that we've presented to the Court.

THE COURT: Have you considered amending your motion and, and proposing your own protocol?

MR. GUY: We could propose a protocol, but to be honest, your Honor, it's, the data that the debtors have, the data that the debtors want is the data that the ACC have and the data that the ACC wants.

So we didn't want to force feed them with anything.

THE COURT: I agree, but if they are not in a position to agree --

MR. GUY: If, if they're not in a position, we would certainly have --

THE COURT: You've got a foot in both boats here.

MR. GUY: We would certainly be prepared to put forward something that we think is fair and reasonable, your Honor, and our expert's prepared to do that.

THE COURT: Okay.

MR. GUY: Thank you, your Honor.

MR. EVERT: And your Honor, to that point, just to respond briefly about what Ms. Ramsey said.

The issue that she described, it was controlled for by agreement in Bestwall. They found a way to -- and, and we think we could get to that agreement here in this case. And

in, in Bestwall, they got a hundred percent of the trust data, but they, nevertheless, controlled for this issue in Bestwall. So we, we think we can get there.

So yes, I believe that a court's decision on the rehearing would be helpful in moving us along.

THE COURT: Okay.

So -- well, we can do it a variety of ways. All I've got today is status, but I also have a live motion and the, the motion needs to be decided at some point. We've took what was going to be a 30-day negotiation and turned it into 6 months and, I mean, a 3-month negotiation turned it into 6 months. I feel like we need to get moving on this. At the same time I understand the rehearing also feeds into it.

So for now, I'm just going to carry the status hearing over to next month and at the end of the calendar today, depending on what happens otherwise, I might be in a position to say we're going to have a substantive hearing if you don't agree in April, okay?

So we'll see where we go on that later on, but otherwise, we will at least touch base on status in, at the April date, which is, what, the 27th?

MR. EVERT: Yes, your Honor.

THE COURT: All right.

MS. RAMSEY: Yes.

MR. GUY: Thank you, your Honor.

THE COURT: Okay.

No. 2 on the matter is the Semian motion for, if I'm saying that correctly -- I hope I am -- Robert Semian's motion for relief from stay.

May need to make room.

MR. THOMPSON: Thank you, your Honor.

THE COURT: Looking at all of you looking for space reminds me of conversations we had with, with the architects who designed this Annex about seating and they thought three counsel tables would be great and I was thinking, well, we might need four or five if there was some way to get it. And we took what we could get. We at least got you a podium, so.

All right. If you would reannounce your appearances.

MR. THOMPSON: Morning, your Honor. Clay Thompson with Maune Raichle Hartley French & Mudd.

MR. LANIK: Your Honor, Jim Lanik with Waldrep Wall Babcock & Bailey.

THE COURT: All right.

MR. THOMPSON: So my law firm represents --

THE COURT: Hang on a second.

Mr. Rayburn, you're going to be arguing this for the, for the debtors' side?

MR. RAYBURN: I'm afraid to have to tell you so. Yes, your Honor.

THE COURT: All right.

MR. RAYBURN: I'll be arguing this for the debtor, but also Mr. Mascitti has filed papers, also.

THE COURT: Okay.

Go ahead, Mr. Thompson.

MR. THOMPSON: Okay.

So, so my law firm represents several mesothelioma claimants in this case. We represent one of the committee members. I'm not speaking on behalf of that committee member or the Committee.

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

MR. THOMPSON: The Semians are asking you to lift the stay so that they can amend their complaint that's pending in the Philadelphia Court of Common Pleas --

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

MR. THOMPSON: -- to add Murray Boiler.

Mr. Semian has a particularly unique claim in that he worked for Trane for 26 -- I guess to use the, the naming nomenclature that you used in your opinion of the ad --

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

MR. THOMPSON: -- preliminary injunction -- he worked for Old Trane in Dunmore, Pennsylvania for 26 years. So his claim, as I see it, would be against Murray Boiler that's

protected by the automatic stay. And so his claim against Murray Boiler that derives from his exposures to asbestos at Old Trane are based on a unique law in Pennsylvania that requires him to sue his employer in the tort system.

So Pennsylvania, unlike most states, does not provide a workers' compensation remedy for someone with mesothelioma. So if Mr. Semian was exposed at a Trane facility in New York as an employee --

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

MR. THOMPSON: -- I wouldn't be able to sue Trane. I would have a remedy for him in the workers' compensation system. And interestingly in this proceeding, in your preliminary injunction opinion of last August you noted that workers' compensation remedies are outside of this case.

So if he had been a Trane employee in New York or New Jersey where my firm has many cases, he would not be affected by this, by this bankruptcy.

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

MR. THOMPSON: So he has a unique state where because the Pennsylvania compensation system does not provide a remedy under Tooey v. AK Steel, which is a Supreme Court case from about ten years ago in Pennsylvania, he has to sue his employer in the tort system, which would be Murray. And so what he's

asking for is to lift the stay so that he can amend his complaint in the Philadelphia Court of Common Pleas and add Murray to that tomorrow.

And I'll go through sort of the Philadelphia practice, but essentially, he was exposed to asbestos at Trane from a variety of products. And so he worked with insulation materials that were made by Johns Manville and Owens Corning. There was insulation on pipelines that he worked on as, in the Maintenance Department. He also has asbestos exposures to products defendants, not necessarily at Trane, from other work that he did. And so his lawsuit is pending against, in strict liability, is pending against certain defendants like General Electric and Westinghouse. He's also filed trust claims with the companies that he was exposed to at Trane and elsewhere. And so what he's asking to lift the stay to accomplish is so that he has the opportunity to try to agree with Murray about the value of his liquidated claim.

So he's not suggesting that he requires a jury verdict, but what he is asking for is the opportunity to try to negotiate on what the value of his specific claim is and what he's trying to do is quantify the value of his claim. It's my understanding that this is commonly done in other bankruptcies when you have a car accident case or a workers' compensation case.

So I'm not asking you to allow whatever the amount of

money is to flow out of the estate. You'll decide when to do that, but to quantify it is incredibly important in this case because Murray is a significant defendant in this proceeding. A substantial amount of his exposure occurred there. And there's two ways that a claim can be quantified. It can be quantified by agreement, which I'm happy to try to do, but if not, it can be quantified by a jury. And so I'm asking you to lift the stay so that I can add Murray to the case in Philadelphia so that Murray can join the proceeding as well as the strict liability defendants that he's already named and they can proceed in one proceeding.

So the applicable case here is Robbins, obviously, its three factors. I think everyone agrees on Robbins. We also believe that Curtis applies. We think that Curtis is a more onerous standard and we meet those, that as well.

Robbins has three factors. The first is whether issues pending in litigation involve only state law. So expertise of the bankruptcy court is unnecessary. Second factor is whether issues pending in litigation involve -- I'm sorry. I copied and pasted No. 2 twice. I've got to scroll down so I get the second factor.

The second factor is whether modifying the stay will promote judicial economy and whether there would be greater inter, interference with the bankruptcy court if, case if the stay were lifted, not lifted, because matters would have to be

litigated in the bankruptcy court and then the third factor is --

THE COURT: Whether the estate can be protected.

MR. THOMPSON: Yes, yeah. You're, you're more familiar with Robbins than I am, obviously.

And so speaking to the first factor, just to kind of give you an overview of what's happened here. So Mr. Semian was officially diagnosed with mesothelioma of the tunica vaginalis in September of 2022. He underwent what's called a radical orchiectormy in the spring that removed one of his testicles. They did a biopsy on it. It was sent out and eventually, it came back as a confirmed diagnosis of mesothelioma. It's a rare form of mesothelioma. It's only caused by asbestos exposure.

So he filed the lawsuit in the Philadelphia Court of Common Pleas against the other defendants, not Murray, in the fall and what that means in Pennsylvania is that he will have an early 2024 trial date. And so I attached one of the dockets to my reply brief that sets that out. Essentially, it's two years from the date you file your case.

And so if you were to lift the stay today and I added Murray tomorrow, what would happen is they would be able to hire counsel to litigate the claim. They would be able to retain experts. I've sent them his deposition transcripts. I've sent them his interrogatory answers. I will send them all

the proof of claims that he filed in his, with the Trusts and they would be an active participant in the proceeding.

As you know from the Robbins case, that was a complicated marital dispute where Judge Wooten sent it out to have that issue resolved in state court and then the matter of allowance came back to bankruptcy.

So what's indisputed, what's undisputed here is that he has mesothelioma. What's undisputed here is that Old Trane estimated that its total liabilities were $547 million, all in, future and current, total. New Trane, this year 2023, is going to take $600 million and they're going to give it away to equity.

So this is a full-pay case. This is a non-distressed debtor. They can pay everybody in full and you've heard repeatedly in this case and I've heard repeatedly in all these cases that the funding agreement can be depended upon and the funding agreement can be honored and, therefore, Murray with the funding agreement should not be looked at any differently in terms of paying Mr. Semian's claim or the prejudice to anybody else because they have the same capacity to pay as New Trane.

And this is outside the specific issue today, but what the Third Circuit did in J&J was they took LTL at its word. "You say you have a funding agreement. You're worth at least 61 billion. You can pay everybody in full. You're not in

distress." And so ultimately, there's not any distress to, there's not any prejudice to anyone in this proceeding. There's not prejudice to other claimants. None of them have objected to Mr. Semian's motion. There's no, there's no prejudice to the debtor or the affiliates because everyone can be paid in full.

Mr. Semian has a complicated, unique state law claim. So if the stay were lifted, he would proceed in strict liability against the General Electrics and Westinghouses of the world. He's filed his trust claims and his remedy, as I mentioned, is, is against Trane in, in negligence.

Significantly in 2020, there was a Pennsylvania case called Roverano v. John Crane. And so what Roverano decided before the Pennsylvania Supreme Court was that if a plaintiff goes to trial against five strict liability defendants and, let's say, four trusts -- I'm sorry -- settles with five strict liability defendants, settles with four trusts, and he goes to trial against the tenth entity, what Roverano held was that the jury, upon appropriate proof of exposure to those other entities, the jury can assign liability to all the settled defendants so that the trial defendant --

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

MR. THOMPSON: -- can point to the other parties, okay? And so Roverano held that trusts, asbestos trusts can go

on the verdict sheet, assuming that they can show exposure and that that was a cause of the disease.

And so that makes Mr. Semian's case particularly complicated and involving significant issues of state law because he has a negligence claim against Murray. He's got strict liability claims against General Electric and others and then he's got trust claims. And so those determinations, candidly, about what's the interplay between the Tooey defendant, which is what I'm would refer to as Murray --

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

MR. THOMPSON: -- and the strict liability defendants and candidly, that's not been assessed by Pennsylvania. They need to be the ones to decide that issue, if it goes to trial, and if it has to be brought up on appeal, a Pennsylvania trial court judge, Pennsylvania appellate court, Pennsylvania law.

And so in, in response to these complicated state issues Murray says that, "Congress enacted 524(g) because it contemplated having the bankruptcy court, not individual state courts, address and facilitate the comprehensive resolution of asbestos claims." And they cite the legislative history. The legislative history of 524(g) supports Mr. Semian's position because it uses words like "overwhelming liability" and "subjecting itself to the jurisdiction of the bankruptcy court," none of which apply here.

New Trane and Murray, together with the funding agreement, are billionaires. They're not entitled to 524(g). It doesn't apply to them. This Court has jurisdiction to estimate for purposes of allowance under 11 U.S.C. 502(c), but under 28 U.S.C. 157(b), you lack jurisdiction to liquidate individual personal injury claims like Mr. Semian's. If he passes away, the same would apply to a wrongful death claim. Mr. Semian does not consent to having others negotiate on his behalf, including the Committee or as part of a group. Essentially, what, what New Trane is attempting here is a mass removal of state law claims, especially complicated ones like Mr. Semian, into a single proceeding in federal court, but using the bankruptcy process as a sword to minimize Mr. Semian's ability to make, to be made whole instead of a shield to protect against financial distress.

The second factor under Robbins is whether modifying the stay will promote judicial economy. If you lift the stay and I add Murray, he's going to have one proceeding. So that proceeding's going to go forward either way. So the judge is going to have to work on that case. The jury, if it comes to that, is going to have to work on the case. And I should back up and explain a little bit what happens procedurally.

So we don't have a precise trial date for him yet. That will be determined this summer, but based on prior practice I anticipate it's going to be early 2024, first half.

THE COURT: Right.

MR. THOMPSON: Before summary judgment motions are ruled upon in Philadelphia, there's mandatory mediation. I want Murray to participate in mandatory mediation. What's going to happen in mandatory mediation, if they're in it, is that Murray's going to try to blame General Electric and General Electric's going to blame Murray and they're both going to blame Manville and that's fine, but it's going to be mediated in one proceeding and 90 percent of the time those cases resolve. We represent a lot of plaintiffs in Philadelphia with these Tooey claims. If it doesn't resolve, then summary judgment motions are ruled upon by the presiding judge. There's one judge that presides over all asbestos cases in Philadelphia. She rules on all summary judgment motions. If the case doesn't settle in mediation, then whichever defendants are denied summary judgment, which Murray will be able to make. Mr. Semian, because there, it's not a workers' comp claim, he's got to meet the negligence factors. He's got to meet the Pennsylvania causation factors. If he meets his burden at summary judgment, summary judgment's denied. If the case doesn't resolve, then Judge Fletman, who's the judge in charge of all the Philadelphia asbestos cases, will send the case out to be, you know, in this parlance, liquidated before a jury and if the jury says that the liability is zero, then it's zero and we've eliminated a claim. If the jury says it's ten

million or if it says, whatever the number is, whatever the quantification is, it won't be paid from the estate until you allow it. And it's, it's critically important to him and my other clients if they at least know that their case is resolved. Even if it's not actually paid, he wants to know that his wife is taken care of. If you deny -- and -- and -- but in any event, it's one case. If you deny the motion to lift stay, I'm going to move to liquidate his claim against Murray in the United States District Court. I think it's unclear where that trial would take place. It would be before a jury. It would either be, I suspect, in this District, which is where we're going to file the motion, or it would be in the Eastern District of Pennsylvania. But in any event, we got two cases, instead of one.

The debtor notes at, at Paragraph 13 of its opposition "Mr. Semian will need to prove his case in state court, anyway, against the named defendants if and when he ever gets to trial, which appears to be a significant time away." Right, exactly. He's got to prove his case against all the defendants and I want to add Trane so I don't have to do it twice and that he doesn't have to do it twice.

Some of their concerns are there's going to be a tidal wave or a spate of, you know, if, if you lift the stay for Mr. Semian, who's got a unique case, there's going to be thousands of, of requests and I think that is purely

speculation. This is the first request in any of these North Carolina bankruptcy cases, first one, and I think there were four or five in LTL Management and you recall the Vanklive case, probably, when you had the case before you. That was a completely different situation where you were, you were transferring the case to New Jersey and you were extending the injunction to J&J for thousands of plaintiffs and you weren't keeping the case. Here, you're keeping the case. This case isn't going anywhere. You're going to control allowance and you're going to also be able to, to let him liquidate it.

The FCR, I'm surprised, has an opposition. It doesn't affect future claimants because all of them can be paid in full. Interestingly, the FCR cites a Law Review article by Mark Behrens, who I'm sure is a nice enough guy, but he and I view the world a little differently. But the article that's cited was advocating for disclosure of trust claims before the trial date in the tort system, which is exactly what's happened here. Murray's entitled to point to all the other shares in this case and I want to do that in one proceeding.

The FCR cited Federal-Mogul in 2012. Federal-Mogul did cover in detail all of the intractable pathologies of asbestos litigation. It went through all the history that I went through in my motion and I won't bore you with now, but they also concluded that Congress has to decide if anything is to be done with asbestos litigation. 524(g) is not 28 U.S.C.

524(g). It's not available to billionaires. If companies are in financial distress and overwhelmed by asbestos liabilities, that's where you get 11:524(g) and neither Ortiz nor Federal-Mogul, and as recently as J&J, Panel of 11 judges declined rehearing because they're not in financial distress. You have to be in financial distress to invoke 524(g) and they, and Murray and the FCR seem to act like it's a menu choice. Tortfeasors with billions of dollars can just decide "We'd rather pay less. So we'd rather litigate in bankruptcy court and stop and stay everyone's cases from proceeding."

Curtis, I'll cover briefly. The movants sought relief from stay -- that's a Utah District Court case that's been cited as persuasive authority by bankruptcy courts in this District and others. We think that -- I'll, I'll cover the Curtis factors that I think are most relevant:

1. Whether relief will result in a partial or complete resolution of issues. It will result in relief of all issues.

No interference with the bankruptcy case. It will not interfere with the bankruptcy case. Murray's going to hire different lawyers. Murray's well represented. They've got 30 lawyers on this case. They got the Trane affiliates that are, obviously, well represented. What Murray's going to do tomorrow, if you lift the stay, is they're going to call Marshall Dennehey in Philadelphia, who represented Trane for

decades, and who's already involved in his case. Marshall Dennehey's already got lawyers representing other defendants in Mr. Semian's case. It's going to be different lawyers, completely unaffecting this proceeding. And again, there's no burden to pay those lawyers because they can pay everybody in full. They're not in financial distress. They're giving away $600 million a year.

Whether a specialized tribunal has been established to hear the particular cause of action. That's the Philadelphia Court of Common Pleas. Thousands of cases are, have been filed in Philadelphia and thousands have been resolved. It's specifically set up. Pennsylvania, essentially, has divided itself in two. Pennsylvania has a well-established history of asbestos litigation. They have two large asbestos dockets, one in Pittsburgh, one in Philadelphia. Mr. Semian lives in Scranton. He was exposed near Scranton. He filed the case in Philadelphia. There's a process for this case to be processed efficiently.

Whether -- bankruptcy courts and federal courts are of limited jurisdiction.

Whether litigation -- No. 7 is whether litigation in another forum would prejudice the interests of other creditors and the answer is no. The ACC doesn't oppose this request. No other creditor opposes this request other than the FCR. And again, liquidating, quantifying Mr. Semian's claim does not

reduce what's available to pay everybody else. Doesn't. Merely quantifies what is owed to him specifically and he cannot do worse in a chapter 11 reorganization than he can do in a chapter 7 liquidation and he's entitled to know what he's owed in a liquidation before he can vote on a plan.

Judicial economy, we've referenced that.

Whether the foreign proceeding has progressed to the point where the parties are prepared for trial. So if I was bringing this motion in December, what I'd hear from Murray is, "It's too late," you know. "Your case is in two months," right? So I'm moving, I'm doing it now because if they get added now, it's March. The trial is likely in April of next year. They got plenty of time to hire their experts, to review the medicals, to digest all the information. That's why I'm moving for this now.

No. 12, the impact on the stay on the parties and the "balance of hurt." Mr. Semian has a constitutional right under the Seventh Amendment to a jury determination of his claims. He has a right under the Pennsylvania Constitution to a jury determination of his claims, especially under Pennsylvania law. He has a Pennsylvania-based claim against Murray that's unique and only available. He's entitled to have uncapped damages against a non-distressed billionaire defendant. So ultimately, when you're balancing the harms, we have a debtor who wants to overcome the tort system without the obligations of a

bankruptcy filing, which is what Jones Day's partner said at the ABI Conference, who gives away 600 million to shareholders or Mr. Semian, whose case can be quantified and paid in full when you decide it to be paid and all he's asking is the opportunity to try to agree to the quantification of his claim.

And with that, I'll sit down.

Thank you, your Honor.

THE COURT: All right.

Mr. Rayburn?

MR. RAYBURN: Good morning, your Honor. Rick Rayburn for the debtors in connection with the motion for relief from stay filed by the Semian Parties.

First, your Honor, let me make clear. This is not just the motion for relief from stay. It is, in part, a motion for relief from stay. The first part is to prosecute a claim against the debtor, Murray, which you heard a lot about from learned counsel on the other table. It is also a motion to prosecute a successor liability claim against Trane and a motion, in addition, buried within it, is a motion to dissolve the preliminary injunction prohibiting the claim against New Trane as a protected party. You haven't heard anything about that.

The claim against New Trane has been assigned to the ACC. It's a successor liability claim. Derivative standing has been granted to the ACC. The claim is being prosecuted.

The plaintiff cannot go forward on that claim for multiple reasons, including the injunction.

The motion to dissolve is not supported by any unique facts. Now we've heard all kinds of arguments today about the uniqueness of the claim, but in a motion to dissolve an injunction what matters is changed circumstances in this case that would justify dissolving the injunction. We'll talk about the legal standard in a moment. And there is no attack in the plaintiff's papers, nor should there be, in, on this Court's order, Findings of Fact, Conclusions of Law on the PI Order. Those stand and they are recited in our response for what they are and what they mean about the fate of having multiple claims prosecuted by individual claimants.

The standard for granting relief from a preliminary injunction in the Fourth Circuit is a common-sense standard. It is -- back in 1995 in a case none of us cite, it's a non, non-reported decision called Multi-Channel TV Cable Company v. Charlottesville Quality Cable Operating Company -- it's 1995 U.S. Appeal LEXIS 16798 (July 15, 1995) -- where it adopted, uh-oh, a Third Circuit decision for the standard for modifying a preliminary injunction from a case called Favia v. Indiana University of Pennsylvania, which is 7 F.3d 332 (3rd Cir. 1993), and has recently been picked up by a case from the District of Maryland in 2020 at 505 F. Supp. 3d 328. That case is the American College of Obstetricians and Gynecologists v.

United States Food & Drug Administration.

Now this, perhaps, this is much about, ado about nothing, but the precise standard for relief from an existing preliminary injunction is a change in circumstances that makes the original injunction inequitable under the circumstances. Well, the changes that the movant seeks to argue to you are changes in the law of cases developed in other circuits and originally, the citation to the 3M case, the developments there, and then in the reply, which we heard a lot about in opening argument here, the new-found imposition of a test of financial distress as a precondition to the granting of the ability to create a chapter 11 case. Well, this chapter 11 case is in the Fourth Circuit. It is not subject to the distress test yet. The Supreme Court, we don't know whether the Supreme Court will take *cert* in LTL. We have no idea.

But as the law stands in this Circuit, what's happening in the circumstances of this case are there's a plan on the table. There's a plan on the table put forward by the FCR. There's a plan on the table in which the plaintiffs are going, the, the debtor and the FCR are moving the case as fast as we can move it. We are in estimation trying to get to resolution and the, the, the hard thing to say here is we don't know whether we can get to a 524(g) plan and pay this plaintiff pursuant to a trust before he can ever recover in Pennsylvania. We don't know the answer to that question. We don't -- you can

predict whether we're going to have a confirmation before next April when he would try his case, but, you know, there, as he points out, there are multiple defendants and any number of appeals that could be filed, etc., etc.

So we really don't know on the facts that are pled whether the plaintiff is going to actually achieve payment of, more rapidly, if he liquidates his claim in the Pennsylvania case than if he liquidates it here.

So what's left, really, after looking at what's pled is a motion for relief from stay under 362(d) for cause, which is what has been argued here today. As opposing counsel pointed out, it's not A. H. Robins, which is miscited in some brief. It's the Harry Robbins case, which involved, as he said, a dispute over the valuation of stock of Tweetsie Railroad in connection with a Harry and Revalle divorce many years ago in this Court in front of Judge Wooten and the test that was developed there was the three-prong test that we still apply here for relief from stay for cause.

And that test starts off, is, is there a need for bankruptcy expertise? As we say in our, as we say in our papers, absolutely. This is an estimation matter. It, we do not need a jury verdict in order to determine how much liability the debtor has if, in fact, we can pay in full trust claims pursuant to a negotiated settlement and presumably, a negotiated plan.

The, the second question was judicial economy and I cannot, I will give credit to the other side for their argument that there's somehow judicial economy achieved by turning loose their plaintiff to go try his case in, in the Court of Common Pleas against 21, 22, 23 defendants -- I can't tell for sure -- if you include the trust claimants in his papers. But we say and the key judicial economy issue is the barndoor problem, that if, if the Court were to grant relief from stay for this claimant -- and he has done an excellent job today of trying to argue the uniqueness of his claim -- he is, in fact, a claimant with multiple tort defendants who he is suing from whom he can recover without any restraint from this Court who, from whom he can recover 20 plus shares of the liability and be paid without any further work from this Court as opposed to what would clearly happen here, that is, if you granted relief from stay for one plaintiff to go forward, you can expect that the next time we have an omnibus hearing you'll be hearing 20, 30, 40, 50 relief from stay motions. We don't know, but it's not speculation. It happened in LTL. I mean, as opposing counsel already talked about, plaintiffs' firms were very quick in LTL to move for relief from stay for, for cases and granting relief from stay for one defendant here, one plaintiff here, looks, to us, as if it would, in fact, destroy the judicial economy we've achieved by having them all before you in an estimation proceeding.

And then finally, whether the estate can be protected, as you noted, in the third statement. I'm not so, I'm not sure. How's the estate supposed to be protected against having to defend and also having to defend in a context where the plaintiff is seeking to liquidate his claim against New Trane, which, of course, in liquidating an estate claim which is already being litigated.

The Curtis factors, we responded in our papers, we agree. The Curtis factors are more stringent, we think, than the three factors here. We covered them in the brief. I won't repeat the brief. I do want to make clear that the, the plaintiff in this case has filed -- and the record is clear as opposing counsel has argued -- that the plaintiff has identified 17 sources of exposure in his Exhibit B. In his motion to add plaintiffs, he's up somewhere in the low 20s, as he's articulated, if he goes forward in Pennsylvania. It sounds to me like he's going to have one empty chair out of 20, somewhere between 20 and 25 chairs. That doesn't result, that doesn't create the kind of inequity that would cause the Court to turn around and undo its preliminary injunction on the one hand. And secondly, it doesn't contemplate any "cause" that would give rise to granting this plaintiff relief from stay.

If you have no further questions, I will, blessingly, sit down.

THE COURT: Okay.

Were there any other responses to this motion?

Mr. Guy.

MR. GUY: Yes, your Honor. Your Honor, Jonathan Guy for the FCR.

Your Honor, Mr. Semian is an asbestos creditor and as the movant told you, he's asking the Court to lift the stay to liquidate, not pay, his claim in the Court of Common Pleas in 2024, maybe later, but that's the earliest date. And the reason why he wants that is he wants to avoid the harm of waiting on the creation of an asbestos trust and he's very candid about that. Doesn't want to wait.

The movant's lawyers are from the Maune Raichle firm. I just want to put up this chart that's been seen before. The Maune Raichle firm represents a creditor on the ACC in this case. They represent, as counsel said, I think 37 or 47 creditors in this case, asbestos creditors. They also represent the Asbestos Creditors' Committee in the DBMP case, a creditor on the Committee, and they represent a creditor on the Committee in Bestwall. And critically, your Honor -- and this is why I put the chart up that's been before you before -- is they also represent a creditor on the Paddock case. It won't be lost on the Court and it isn't lost on the FCR that asbestos creditors like Mr. Semian in Paddock -- and he may well have a claim there, given what we heard about his exposure to insulation products. And you'll remember, your Honor, that

Paddock's asbestos liabilities arise from O-I Glass and they made a very dirty, dusty product --

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

MR. GUY: -- friable product -- he may well have a claim there, given his work history. Be able to get, to liquidate his claim in that case and get paid on his claim in that case this year. Why? Because that case has a fully funded asbestos trust with $610 million approved by the ACC on which the Maune Raichle firm sat.

Remember, also, your Honor, that that $610 million came after a divisive merger, substantially identical to the divisive merger that led to this case and the Bestwall cases and the DBMP cases. O-I Glass, your Honor, is the ultimate parent of Paddock. It's a publicly traded company. In the words of movant's counsel, it is a "non-distressed billionaire defendant." Its market cap as of yesterday was $3.39 billion and that's after its contribution to the asbestos trust. That is a "non-distressed billionaire defendant." You can tell I'm frustrated, your Honor, and I know you know why.

The ACC there on which the Maune Raichle firm sat had no problem with divisive mergers, a'tall. No problem with non-distressed billionaire debtors addressing their asbestos liabilities in bankruptcy quickly, promptly, and fairly. There is no substantive difference between this case and the Paddock

case except for the fact that O-I Glass made a really dirty, dusty, horrible product that had really toxic asbestos in it.

In this case, your Honor, there's only one party that's standing away from a much better result in this case than occurred in Paddock and I say a much better result because we have $545 million on the table for an encapsulated product, which is more than the Court and the ACC approved in Garlock years ago. The only party that's standing in the way of that is the ACC on which the Maune Raichle firm sits.

Your Honor, the ACC -- movant said no creditor has opposed it. He did add the FCR, thankfully for that, but in his papers he said no paper, no creditor has opposed it. The largest creditor constituency opposes it by many, many multiples. No creditor supports it, not one. The silence from the ACC is fairly informative. The ACC, like the FCR, is charged with protecting the class of people who've been diagnosed with claims, the class, not individual claimants like Mr. Semian, and ensuring that the class is treated fairly and equally and paid promptly and that's, I think, why they don't support this motion. I applaud them for that. I would have liked them to have opposed it, but silence is better than nothing.

Your Honor, I want to turn to the papers on the lift stay motion and address some, how can I say, inaccuracies.

Your Honor, the movant says no twostep has ever

resulted in a confirmed plan. It is true no Texas twostep has, but a Delaware twostep has, Paddock, of course. That, too, was a divisive merger. That, too, concerned a non-distressed billionaire, solvent parent company.

Movant says companies with asbestos liabilities only file for bankruptcy or should only be allowed to file for bankruptcy when they've effectively run out of money. That's -- I'm paraphrasing, of course, your Honor. That's not true. This Court knows that. Garlock and Coltec, Coltec wasn't running out of money. There was an asbestos trust created to pay those claims and that asbestos trust has worked exactly as -- as in -- was intended to. Claims are being paid and the payment percentages actually doubled since it was created.

The movant says there's no plan on file. That's not true. The debtors filed a plan back in 9/24/21. It's modeled on the same plan that the ACC and this Court approved in Garlock. The main difference is there's more money on the table, but we get no assistance from the ACC. We don't even know what they think the right number is after three years. Three years, and we still don't have a number from the ACC.

Movant says standard TDPs don't protect jury trial rights.

Put it up.

What I'm going to put on the screen, your Honor, is a

section of the Paddock TDP, which the ACC agreed to and approved in Paddock, and Maune Raichle sat on that ACC. There's the language, your Honor. It says, and this is very standard language and it is designed to protect jury trial rights. I don't need to read it to, into the record, your Honor, but you have it there.

But the bottom line is it allows any claimant who is unhappy with the liquidation of his claim in the trust to go back to the tort system. If Mr. Semian has a claim in Paddock, he's going to file it against the trust and he, like -- he may well have one -- he'll file it against the trust. The class will, trust will process it the same as everybody else. He'll be treated the same as everybody else. And I concur with counsel for the movant, that his case is an unusual one. There aren't so many of these workers' comp claims that can go forward outside of workers' comp. If he wants extraordinary claims review, he can ask for it. If he's unhappy with that, then he can go through a jury trial. He has those rights. The only reason that isn't happening in this case -- the plan was filed in 2021. It could have been confirmed in '22 -- it's the ACC and the law firms that control it who are preventing that from happening.

The movant says the stay should be lifted because the claim doesn't want to be, claimant doesn't want to be harmed by waiting for the creation of the asbestos trust. As I've said,

your Honor, if we had gone the same path as Paddock, we would already be done by now. It's noteworthy that Mr. Semian doesn't want to go to the asbestos trust route, even though he does, doesn't even know what his recovery would be. So logically, the only reason he wants to liquidate his claim now is because he thinks he will get more, liquidated at a higher value, jumping the queue for everybody else. I have a real problem reconciling that with the fact that the same law firm that is representing Mr. Semian is representing a creditor on the Asbestos Creditors' Committee who has a fiduciary duty to ensure that everybody in that class is treated the same, fairly and equally.

Your Honor, I want to note with all the clamor about jury trial rights and the whole history of Aldrich and Murray, as far as I know -- and Mr. Evert can correct me -- there's been one claim that went to trial, one out of tens of thousands. And that's the -- all the others settled and that's exactly what an asbestos trust provides. It provides offers of settlement and if claimants are unhappy with it, they can go to trial preserving their jury trial rights.

Your Honor, I, I would say the movant, I think, may be confused about who the defendant is because as I understand it, Murray stopped making asbestos blankets for their boilers in the fifties. So maybe he thinks -- maybe it should be Aldrich. I don't know. I just throw that out as a gift.

The movant says 524(g) doesn't apply to current plaintiffs. That's actually in the papers. That misunderstands the Bankruptcy Code. Of course it applies to current plaintiffs and there's 60 asbestos cases that have been confirmed that have asbestos trusts that channel the claims of current claimants to those trusts. Of course it applies to current claimants. If, if it doesn't, that's good because then I get to vote.

Your Honor says that allowing him, the movant says that allowing him to pursue his claims will effectuate judicial economy. Aside from the clear risk of disparate treatment, your Honor, the only way granting relief from the stay would effectuate judicial economy would be if no other case followed this one. If the movant could guarantee that, okay, but obviously, he can't.

The movant says the plaintiff will never vote for, for a billionaire defendant if they're forced to negotiate in a group without first liquidating their claims before a jury. Well, that's curious because that's exactly what the Maune Raichle creditors voted for in Paddock, exactly that.

Movant says, rather colorfully, that 524(g) is not a menu choice for non-distressed billionaire tortfeasors. There's nothing in the Bankruptcy Code that talks about solvency before you file for bankruptcy and there's nothing in 542(g) that talks about that, nothing. I'm a big, plain

language fan and I did read the Third Circuit ruling, your Honor. What was curious about that is it didn't talk about 524(g) a'tall, even though it was a 524(g) case. But regardless, the movant makes no attempt to distinguish O-I Glass from what it considers to be the billionaire, non-distressed tortfeasors in North Carolina.

Your Honor, we talk about the fact that, obviously, creditors do oppose the motion, even though in their papers they said none did. Then it, movant says -- and we get into the FCR now. You -- I'm sure you read the reply. I read it closely, little surprised. It says "no authority for the FCR to bind future claimants in a full-pay case." Well, Jim Patton, who was the FCR in Paddock, a gentleman that we have a great deal of respect for, did exactly that and the Maune Raichle firm signed off on it.

Says the 524(g) only exists for companies who are insolvent and that's a good thing for futures. I want to focus on that, your Honor, because there seems to be a misconception about what's good for the futures and I feel that the FCR is the best person to talk about what's good for the futures.

As the Supreme Court has noted, your Honor, current plaintiffs, like Mr. Semian, want to be paid as much as possible, as quickly as possible, and that tugs against the interests of future claimants who want to be paid no less. So the plaintiffs' firms are saying, you know, "We have to wait

until you run out of money before you file for bankruptcy." The result of that is a guaranteed disparate treatment for future claimants. They're looking at a much smaller corpus and they're okay with that because that's consistent with their own economic incentive. It's not consistent with the FCR's. Our, we want our clients, the people we have a fiduciary duty to, to be paid the same. We don't want a limited cash pool. We want solvent companies to address their problems in bankruptcy and create a fully funded trust because that's the only way you can guarantee the futures are getting paid the same and everybody's going to be treated equally under the procedures that do just that. If you wait until they run out of cash, the futures get a very sharp end of the stick, your Honor, and it's worse than that, worse than that.

You'll remember the number of times the FCR had said to you, "Look what happens to these trusts when they're created. Look where the money goes. Look how it gets sucked out in the first two years to the current claimants and then the futures are left holding the bag," over and over and over. The majority of trusts end up lowering their payment percentages. So not only do they have a limited corpus, they get the, the bag at the end of it. Many of them run out of money completely, your Honor. You've heard me talk about the THAN case. That's a posterchild for how not to create an asbestos trust. Garlock is an exception. Thank you, your

Honor. That one works.

THE COURT: Thought you'd like that one.

MR. GUY: Your Honor, not only is it a problem waiting till the companies run out of money and try to achieve the policy objectives of 524(g), which is to treat everybody the same, and fairly, not only is that, but in the tort system it's not fair, either. You saw in our filings way back in '21, your Honor, and I'm not going to get into the details of individuals, but I can tell you from the settlement database of the debtors you have one lung cancer claimant and gets hundreds of dollars, same job, could even be the same state, and another one who gets hundreds of thousands. You have the same massive difference with meso claimants, hundreds, up to millions, and those are people who have the same diseases, many who had the exact same jobs, many of whom are the same age, and the difference depends on your lawyer. Mr. Semian's got a great lawyer and I applaud him for fighting for his client. I really do, but its inconsistent with the interests of the class of creditors in this case and what we're trying to achieve in this case. And there's a remedy for his client. Tell his colleagues on the ACC, "Do a deal." He's laughing, but it's not funny for the people who aren't getting paid.

Your Honor, the movant also threw out a number of remarks about the ACC, about his, the FCR's opinion not mattering. Obviously it does, that he's not zealously

protecting the rights of future claimants. Well, I think your Honor will be the judge of that. And is -- this is the doozey -- "only advancing the agenda of the Chamber of Commerce," whatever agenda that might be. I'm not going to respond to that, your Honor. We've been before you many times, as has the FCR.

The bottom line is the FCR, alone, negotiated a plan for futures and creditors, all creditors in this case, with the debtors, alone. We invited the ACC. They chose not to participate in those discussions. That plan compared very favorable to the same plan that was approved by Judge Silverstein in Paddock, approved by the ACC in Paddock on which the Maune Raichle firm sits. It's a better plan than that plan because it concerns a very, very different product.

Your Honor, as you know, a mediation order's been entered and you heard the update from Mr. Erens about we're going to have initial conversations. To get Mr. Semian the relief he wants, the ACC needs to come to the table and negotiate a confirmable plan. That will get him the relief he wants.

Thank you, your Honor.

THE COURT: Thank you.

Who else did we have?

MR. MASCITTI: Your Honor, just briefly. The Non-Debtor Affiliates join the opposition to the motion --

THE COURT: Right.

MR. MASCITTI: -- on the grounds stated on the record.

THE COURT: Okay.

MS. RAMSEY: Your Honor, thank you. Natalie Ramsey for the Committee.

Your Honor, I hadn't intended to speak, but I think that I feel compelled to just for the record state that the Committee disagrees with many, maybe most, of the arguments made today by FCR counsel.

We disagree with the characterization of the Paddock case.

We disagree with many of the statements that were made about the plan.

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

MS. RAMSEY: We disagree that the FCR can vote on a plan.

We disagree about the interpretation and proper use of Section 524(g) of the Code. The Court may recall with respect to the plan that the Committee had specifically asked in connection with the debtors' motion for estimation that the estimation be held within the context of a plan process so that the other objections that we have to the plan could be raised at the same time. So we have not attempted to stand in the way of, of addressing that plan.

We disagree with the proposition that there is any record support that Aldrich or Murray are at a financial risk of not being able to pay timely and fully all of their asbestos claimants.

We disagree that the Garlock Trust has worked in the perspective of the claimants against that trust.

We disagree that the FCR speaks for the best interests of the current claimants.

And finally, your Honor, I will add that the Committee does not oppose Mr. Semian's motion, which is a motion that is specifically the proper procedure for individual claimants to bring their individual requests before this Court.

Thank you.

THE COURT: Okay.

Reply?

MR. THOMPSON: Yeah.

So the suggestion that the Fourth Circuit does not have a financial distress requirement is not true. Both the Carolin and Premier Automotive cases make clear that financial distress is the starting point for any analysis. Carolin, quoting Coastal Cable, specifically states that the entire purpose of objective futility is to ensure that the petition furthers the purpose of the Code which is the resuscitation of a financially troubled debtor, which is not this case.

Financial distress. There's no financial distress and

the argument that's being made by Murray is you don't need to be in financial distress to file for bankruptcy. The Third Circuit didn't reach 524(g) 'cause it didn't need to. Company's not in distress. Before you get to 524(g), you got to be in chapter 11 and to be in chapter 11 you got to be in financial distress.

The policy arguments that Mr. Guy makes were made 20 years ago and they failed in Congress. Justice Rehnquist invited Congress to pass laws in the Ortiz case. Congress -- I briefed all this. I don't need to regurgitate it. I know you read everything.

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

MR. THOMPSON: But these are policy arguments that failed and to suggest that Mr. Semian -- Mr. Semian cannot control thousands of other claimants. Mr. Semian was not on Paddock. My law firm may have had a client on Paddock, but Mr. Semian was not on Paddock, who, by the way, did not seek a preliminary injunction and hasn't made an asbestos product since 1958. Mr. Semian's remedy here is to quantify his claim and you can, you control the barn door. And so what it seems to be is that I'm supposed to get Mr. Semian to convince all other claimants to not file motions to lift the stay so I can guarantee this will be the only one, you know. That's ridiculous. And/or to go and lean on everybody else to agree

to a plan.

And so the problem here in all these two-step cases is that they, they require, New Trane and Murray acting in concert, and will only accept a global resolution. Your Honor spoke to this last March about, you know, I recall it was after the, Judge Kaplan's LTL ruling and you had said there's going to be appeals in all these cases. Is this one that we can't work out, meaning, meaning Aldrich.

THE COURT: This case, uh-huh.

MR. THOMPSON: You recall, you recall saying that.

And I appreciate you saying that and I, I relate to that and I, as, as the FCR noted, most of these cases in the tort system settle before the -- and that's all we're trying to do, is the opportunity to quantify his claim. The problem is and the reason why there's not a settlement is because Murray and New Trane require and will only accept a global resolution that caps damages and bars access or limits access to the tort system. The plan that's proposed does not provide for optouts. Therefore, it's unconstitutional.

So Mr. Semian is not going to negotiate with his hands behind his back or going to go try and argue with other claimants about, "Let's vote for a plan that caps our state remedies." That's not what he needs to do. He has a right to a jury trial and we ask you to lift the stay.

Thank you.

THE COURT: All right.

That got it?

It will not, probably, surprise anyone that I feel compelled to deny the motion basically for the reasons stated by the debtor and, and the FCR, if not going back to the preliminary injunction and the reasons I stated then. I have no doubt, I don't think anyone could have any reasonable doubt that if I grant relief from stay to one creditor to liquidate the claim, all of the claimants will -- not all -- but a substantial number of the claimants, enough to wreck the bankruptcy case, will seek like measure and that effectively precipitates a *de facto* dismissal of the case. It will be unable to go forward and even more so than at the time of the preliminary injunction, now we've got some of these claims that are estate claims under the first-crack doctrine that would be asserted by individual claimants elsewhere as against New Trane and the new entities, the "good" companies, if you will, and it's even stronger in this case because now I have the ACC bringing those causes of action. And so we would be undermining our own lawsuits if we did that.

I don't think anything's really changed. I'm appreciative of the fact that, that the underlying claim here may be somewhat different than the norm, but the circumstance of the case and the relationship of the claimants to the reorganization has not changed in any material way.

So rather than belabor this and go through all the points, I go back to the Findings of Fact and Conclusions of Law that were entered, I guess, August 23rd of '21 and particularly picking up around the last third of the, of the ruling, Pages 56 and on, both with regard to relief from stay and with regard to the preliminary injunction. I don't think anything has, has changed in that scenario.

I am appreciative of what the Third Circuit has said. Frankly, I kind of hoped that would address head-on the question of the twostep for whatever information that might provide all of us. Perhaps, if *cert's* granted, the Supreme Court will talk about those issues as well as what we have. But the reality is this, if, if I were, in fact, the Wizard of Oz and had the ability to decide all things for you, we would have long ago decided on the propriety of the, of the twostep, but we're trying to get there and we're going through the procedural mechanisms that would take us there. If there were some way to do a grand motion *in limine* to decide if you're going to use 524(g), how much of your entity you have to bring in, and how much pre-bankruptcy planning you can do to get there, that would be swell.

But the reality is I think the Fourth Circuit ruling in Carolin, even with Premier following it, has not really changed. The balance has been struck in this Circuit against dismissals of cases early on until the cases play out. That

was a policy choice that was made there. We have the, the fact that what we're doing here and even now -- and once we did at the time of the original preliminary injunction hearing -- what we're effectively doing is indirectly seeking a dismissal of the case without addressing those matters head-on.

I have not had a motion to dismiss filed in these cases. I'm not encouraging that, but as I opined before, there's a good reason to think that they would be unsuccessful given where the Circuit is on this. Hopefully, in Bestwall some of these issues will be taken up sooner rather than later and we'll get some answers.

But in the meantime, I think I have to, if I'm going to maintain the case and I feel I'm obliged to do so at present, then I have to keep the stay in effect for the claimants. I am very sympathetic and I share a lot of Mr. Guy's feelings, frustration here. I wonder if we got all the claimants or their representatives in a room whether they'd feel quite as strongly about the principles, but I do understand the law firms and why they feel strongly about the principles and whether the divisive merger procedure works or not.

It does bother me a little bit that Judge Silverstein seems to be able to get these types of cases confirmed and, and Judge Beyer and I have not been able to. Maybe I won't send her the Christmas card this year, but -- or perhaps, I should

ask her whether she's got any free time to come to North Carolina and iron out your differences.

But the point is I, I understand why there's a difference between Paddock and here and we've got some heartfelt differences of opinion, but on the current motion the bottom line is that I cannot find cause. I don't think the Robbins test, Robbins with one "b," and the, and the Tweetsie Railroad connection, I don't think those criteria are met. I can't protect the estate. That was one domestic case and in an area where the court, federal courts are beholden to the state court to grant a great deal of deference to their, their procedures and rulings in the field of domestic relations and that's not us. We've got thousands of claims.

So regrettably, I will have to say no. I will just ask the debtors to draw an order consistent with those remarks and what's been previously stated. I think that should give you enough between the adoption of the briefs, brief arguments, and the reference back to the reasoning that's in the preliminary injunction findings to keep it short.

But at the same time, if, if there's a desire to seek review on appeal on that, then I understand where you're coming from and I, I'd love to be enlightened by a higher court. So for now, no, okay?

All right.

MR. THOMPSON: Thank you, Judge.

THE COURT: Thank you.

We'll take about a ten-minute recess and then we'll come back. I think what I'd like to do next is to, is to clear out that last matter on the docket, if it works for all of you, on the Plaintiffs' Motion on Discovery Procedures, and get that out of the way, okay?

All right.

(Recess from 10:58 a.m., until 11:11 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat.

Okay. Ready to pick up with No., what I have as No. 11, Plaintiffs' Motion on Discovery Procedures.

Okay.

MS. CALVAR: Morning. Cristina Calvar on behalf of the Committee.

THE COURT: All right, Ms. Calvar.

MS. CALVAR: And we have another exciting and fun day of discovery for you. So we are here on -- I thought that would follow -- we are here on the Committee's motion on discovery procedures.

THE COURT: Right.

MS. CALVAR: This motion is raised in the context of the parties' joint discovery plan --

THE COURT: Right.

MS. CALVAR: -- which will govern the discovery in the two active adversary proceedings, the substantive consolidation proceeding, and the fraudulent transfer proceeding. And for further context, the proposed discovery plan is based on the very same plan that was negotiated and entered in DBMP.

And if I may approach, I'd provide, I'd like to provide you a copy of our --

THE COURT: Sure.

MS. CALVAR: -- proposed discovery plan. That's also highlighted and tabbed with the disputed issues.

THE COURT: You may.

(Document presented to the Court)

THE COURT: Thank you.

MS. CALVAR: So after extensive negotiations we've agreed on all issues except two. The two issues are (1) the number of depositions that the Committee should be able to take across two adversary proceedings and (2) whether defendant should provide very basic employment information about their own officers, directors, and employees identified on their own privilege logs and for the very limited time period that's covered in those privilege logs.

And so turning to the first issue, the number of depositions. As I'm sure your Honor will recall, these cases involve numerous defendants, more than double the number in DBMP; complex financial transactions, once again double the

number in DBMP; claims sounding in fraud and fraudulent intent that's going to require a fact-intensive inquiry, information that is exclusively within the control of the defendants, including the two debtors; and billions of dollars. And given these factors and circumstances that are present in these two proceedings, the Committee as plaintiff in both of the two adversary proceedings are seeking to take collectively 30 depositions across both proceedings. As a matter of right, we are entitled to 20 depositions and that's 10 depositions for each proceeding. And to be clear, the fact that these two cases are proceeding on the very same discovery track does not mean that our discovery is somehow limited to ten depositions.

So what we're really arguing about here is the additional ten depositions and in practical terms, that's five additional depositions in the fraudulent transfer proceeding and five additional depositions in the substantive consolidation proceeding. And this request, as we'll talk about, is reasonable, necessary, and proportional to the needs of these two cases.

So as for need, we think 30 depositions is the bare minimum that we will need and even then we're taking a risk because we're only relying on the information that we got from the preliminary injunction proceeding. But just looking at the information that we were able to gather from that earlier preliminary injunction proceeding, we've identified 36

individual fact witnesses in our -- and we -- we've served it in our Rule 26(a) disclosures.

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

MS. CALVAR: In addition to those 36 individual fact witnesses, there are 9 corporate defendants that we would also want to depose. So that brings our total to 45. We've identified 45 potential deponents and for the purposes of our motion we are only requesting 30, which is more than a reasonable compromise.

Now courts routinely hold that there's no need to exhaust the default deposition limit, which here is 20, when the facts and legal issues are complex and multiple parties are involved and that's exactly what we have here and no one disputes that. So let's talk quickly about each of those considerations in assessing the reasonableness and proportionality of our request.

The complexity of the facts. These cases involve complicated and novel financial transactions. There's not, there's one corporate restructuring that includes not one divisional merger like we have in DBMP, but two. As part of that, there are also numerous agreements that entities within the Trane organization entered into for the purposes of effectuating the corporate restructuring that we would also want to depose. So we're -- those agreements include the

funding and support agreements.

The number of parties is also a relevant consideration. This is not a single plaintiff-single defendant case. There are, as I mentioned before, nine corporate defendants. There are also other affiliates, again within the Trane organization, that we would want to depose, given their involvement in these transactions. And assuming, let's say for argument's sake, we take nine 30(b)(6) depositions of each of the corporate defendants. That eats up a significant chunk of our requested number of depositions. That's one-third and we're only left with about 21 individual fact witness depositions.

The claims here also sound in fraud and fraudulent intent.

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

MS. CALVAR: And intent is an essential element of the Committee's asserted claims, for example, the fraudulent transfer claims. And for discovery purposes this is going to be a very fact-intensive inquiry which is, again, further compounded by the fact that we have nine corporate defendants. All of the information that we're seeking is within the purview and control and custody of the defendants, including the two debtors.

And finally on this issue, this is not a single

damages case. The amount of controversy is significant. We're talking about billions of dollars and if the Committee is successful, then the avoidance of those complex financial transactions.

So when cases are this complex and sophisticated, involve complicated and legal issues, numerous parties, fact-intensive inquiries focused on a party's intent, and the amount of controversy is significant and the party has demonstrated a need for the depositions, courts routinely grant additional depositions. We have not located a single case in this Circuit and neither have defendants that when all of these factors are present a court should not grant a request for additional depositions.

The request is especially reasonable when you're looking at it comparing to the facts of DBMP. And again, in DBMP we negotiated 30 depositions. When you look at the facts in Aldrich and you compare them to DBMP, you have twice as many defendants, twice as many financial transactions, and twice as many debtors. And so the inquiry here is based on, and focused on, reasonableness and proportionality and that's exactly what's driving the Committee's request.

Now defendants try to paint a picture that we are seeking what they call overlapping or duplicative discovery from what was obtained in the preliminary injunction proceeding. We have said it before and I'm happy to say it

again. We are not. And to the extent that this was a concern, we've already addressed it in the proposed discovery plan.

So in the first tab, your Honor, there's actually a provision in Paragraph 6(c)(3) which says, "Prior to the commencement of any depositions, the parties will agree to meet and confer to discuss the parameters of a deposition protocol." So to the extent there really are concerns about overlapping or duplicative discovery, they can be addressed then or at a time that the Rules contemplated.

Defendants also argue that the number of depositions requested by the Committee here should take into account the number of depositions that occurred in the preliminary injunction proceeding, but there's three problems with that argument because it fails to take into account three critical facts.

One, the preliminary injunction proceeding is an earlier and separate proceeding. That proceeding was limited to the relief in that proceeding, which was preliminary. The discovery was, therefore, targeted to that limited relief and the parties during that process made compromises to enable a speedier process and none of that should prejudice --

THE COURT: That may be the first time I've heard that referred to as a "speedy" process.

MS. CALVAR: I'll take it. I'll take it.

THE COURT: That's great optimism.

MS. CALVAR: But none of that should prejudice the defendants in these two adversary proceedings.

The substantive consolidation proceeding and the fraudulent transfer proceeding were also filed months after the Court entered its, you know, Findings of Fact, Conclusions of Law in the preliminary injunction proceeding. Those complaints involve distinct causes of action. It -- during the preliminary injunction proceeding there were also numerous privilege challenges and instructions not to answer that limited the Committee's lines of inquiry. In these two proceedings discovery has not yet commenced. When it does, new documents will be produced, new evidence will be obtained, and there's going to also be a need to redepose some of the individuals that were deposed in the preliminary injunction proceeding.

So the mere fact that depositions occurred in the preliminary injunction proceeding should not carry the day. It should not deprive the Committee of its right to seek the necessary discovery that it needs.

And from an efficiency standpoint, your Honor, the Committee's request of an additional ten depositions for two proceedings is going to minimize the need for future disputes before this Court. While I am sure your Honor loves a good discovery dispute, as we can tell from today's agenda, we do not want to waste the Court's time and resources seeking court

relief every time we need a deposition above the default deposition limit, particularly when there's a need for it now. It's only going to incur arbitrary delay and our request for additional depositions will also inform our litigation strategy as we move forward. With these additional depositions, we'll be able to make informed decisions on who we need to depose.

So on balance, the request for 30 depositions, which is really a request for 10 depositions, while reserving our right is reasonable, proportional, and necessary to the efficiency of this case.

Now the second issue before you, your Honor, concerns basic employment information about the defendants' officers, directors, and employees identified on the defendants' privilege logs. And that's the second tab, your Honor, on Page 13.

For context, the parties have agreed that the defendants will create a document called the Players' List. The purpose -- that document is part and parcel of the privilege log and the purpose of that Players' List is to provide basic employment information about the individuals that appear on their own log so we can meaningfully evaluate the defendants' privilege assertions. As part of that Players' List and similar to what DBMP negotiated, we're just asking the defendants to provide information about their own folks.

This is not an all-encompassing request. This request

is limited to the time period on the privilege log which, based on our review of the communications in those logs, spans only a few years. The request is limited, again to just the defendants' officers, directors, and employees. We do not ask for information about every Trane organization employee. And again, the requested information is limited to simply the titles of those defendant employees and the dates of those positions. Now defendants have proposed to offer only the current titles and roles of their own officers, directors, and employees and we're talking about 2023. And your Honor, respectfully, that's useless to our analysis. So as I mentioned before, the Players' List is part and parcel of the privilege log.

So the privilege log concerns an earlier time period around the corporate restructuring which occurred years ago. When reviewing the privilege log, we need to know who these individuals are and what titles they had at the time these purportedly privileged communications were made. Someone's title in 2023 is just not going to help us with respect to privilege assertions concerning a document that's created earlier in time, for example, 2019. And apart from the time period gap, the reality is that the defendants either engaged in or were a product of the corporate restructuring which involved the formation of new entities and many of their employees also held or continue to hold dual or multiple roles

across the defendant entities.

So to assess their privilege claims, it's vital to know what the titles and dates that they had of, of what those individuals are.

You know, again, defendants claim that the requested information is burdensome because they've identified more than 250 Trane organization employees. That overstates our position. We're not asking for every employee within the Trane organization, only those that have a relationship or affiliation with the defendants. It is black letter law that when a party asserts a claim for privilege each element of privilege must be met. Given the complicated facts in these proceedings, the time period, the numerous parties involved, and the scope, the scope of empliment -- sorry -- the scope of employment at that time of the transactions is critical in assessing their privilege assertions. And the fact that hundreds of employees received confidential or privileged information, your Honor, is worrisome as it suggests that confidentiality and privilege assertions may not be valid. In the corporate context, confidentiality is usually on a need-to-know basis. The involvement of hundreds of employees suggest that that is not the case.

And as to defendants' burden argument, we have yet to receive a logical explanation as to why this exercise -- again, it's very basic employment information for a limited and recent

time period -- will be so burdensome. But giving the, the defendants the benefit of the doubt and assuming it is somehow burdensome, the need and reasonableness of our request outweighs the burden.

Defendants also argue that the Committee's request is premature. It is not. We have reviewed the privilege logs produced in the preliminary injunction proceeding. Those logs are, from our perspective, deficient and we have communicated those concerns, including the lack of information regarding employment. Those privilege logs are also admissible in these proceedings. And I'm talking about the privilege logs from the --

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

MS. CALVAR: -- preliminary injunction proceeding. Because in the Case Management Order that the parties agree to, any prior discovery that was conducted in that prior proceeding is now deemed to have been conducted in these proceedings. So this is very much a ripe issue.

And finally, from an efficiency perspective, there's no need to entertain another arbitrary delay for information that we know now will be critical and necessary to meaningfully evaluate the privilege logs, particularly given the defendants' statement that, you know, it's burdensome and may take some time to gather.

So we respectfully request that our motion be granted.

THE COURT: Okay. Thank you, Ms. Calvar.

Who's got it for the debtor? Mr. Hirst.

MR. MASCITTI: Morning, your Honor. Greg Mascitti, McCarter & English, on behalf of the Non-Debtor Defendants in the adversary proceedings.

As you've heard, your Honor, despite reaching an agreement on nearly all of the terms of the discovery plan, two issues remain, (1) the initial number of depositions each side will be able to conduct and (2) the initial level of detail that the parties will be required to include as part of a privilege log. I think you've heard me say this before, your Honor, but in my experience courts generally seek the answers to three questions in determining how to resolve a discovery dispute: What does the party want, why don't they have it, and do they need it?

But before providing the answers to those questions in this context, I think it's important and critical, in fact, to respond to the Committee's assertions that the discovery taken in the preliminary injunction adversary proceeding was somehow limited to different issues. As the Court may recall, one of the primary arguments the Committee made in opposition to the preliminary injunction was its argument that the corporate restructuring was a fraudulent transfer. As a result, the vast majority of the discovery obtained by the Committee in that

adversary proceeding centered on its contention. The Committee and its special counsel, litigation counsel, engaged in a lengthy, wide-ranging discovery process in an effort to support its contention that the transactions at issue were fraudulent.

The discovery process in the preliminary injunction proceeding -- I'm not sure what compromises counsel refers to -- but it occurred over an eight-month period between August of 2020 through April of '21 and included multiple requests for documents, interrogatories, and depositions. The document requests served by the Committee in the preliminary injunction adversary proceeding included broad requests for the following documents. And I'm going to go through this. I'm going to paraphrase some of them, your Honor, but, your Honor, it is in the details of these discovery requests and given counsel's representation that these were different issues and limited and narrow in scope, I think it's important for us to make the record clear.

First request:

"Any versions of the funding agreements not attached to the first day declaration, organizational charts for each of Old Trane and its subsidiaries, Old IRNJ and its subsidiaries, the debtors, TTHI," which is a holding company, "New Trane and its subsidiaries, New Trane Technologies and its subsidiaries, all prior to and after the corporate restructuring.

All documents relating to the statement that the debtors became solely responsible for the Aldrich-Murray asbestos claims pursuant to the corporate restructurings.

All documents that are in or part of the closing binder for the corporate restructuring.

All board materials and documents pertaining to the corporate restructuring.

All documents related to the transfer of any rights, obligations, claims, funds, or assets as a result of the corporate restructuring.

All documents relating to the purpose of, rationale for, motivation for, or reason behind the transfer or distribution of any rights in connection with the corporate restructuring.

Documents sufficient to identify all decisionmakers and professionals that participated in the corporate restructuring.

All documents evidencing any transfer of assets or liabilities of New Trane or New Trane Technologies exceeding a hundred million dollars.

All documents purporting to substantiate the assertion that the debtors' aggregate value is approximately 70 to $75 million.

All documents pertaining to or substantiate the

assertions as to the value of 200 Park and ClimateLabs.

Documents pertaining to all paid, planned, or future dividend distributions or repurchases of stock or similar equity interests.

All documents related to the debtors' decision to seek bankruptcy relief.

All documents that reflect the debtors' plans, objectives, or goals for its bankruptcy reorganization.

All documents regarding any and all assets held by the debtors.

Any and all documents that relate to the funding of the debtors' bankruptcy case.

Any and all documents that refer or relate to the valuation of Aldrich or the valuation of Murray, the valuation of 200 Park, or ClimateLabs.

All documents related to any intercompany financial transactions.

Any documents reflecting or relating to the cost methodology and detailed estimates of projections under each of the services agreements.

All documents that refer to or include any appraisals or valuations of Old Trane, Old IRNJ, New Trane, or New Trane Technologies in 2015 to present.

Any and all documents that refer to or include any fairness or solvency opinions, appraisals, or valuations.

Documents sufficient to identify any restructuring involving the debtors, New Trane, or New Trane Technologies other than the corporate restructuring.

All documents reflecting secured indebtedness.

All documents reflecting the net profit.

All documents reflecting tax-sharing agreements.

All documents that refer or relate to federal tax returns.

Documents that evidence the basis of the asbestos insurance receivable.

Documents that establish the basis for any intercompany receivables."

Your Honor, that's not all of them, but I think that makes the point.

In response to the Committee's document requests, the debtors and the non-debtor affiliates conducted an extensive review of hard-copy documents and electronically stored information and produced over 92,000 pages of documents in response. After the document production was complete, the Committee and its special litigation counsel conducted 22 depositions over a three-month period between February '21 and April '21.

The Committee deposed Heather Howlett in her position as Vice President and Chief Accounting Officer for Trane PLC. She was deposed for 6-1/2 hours.

And I'm going to give times, your Honor, but those are approximate. I didn't try to break out any times that were taken for breaks, things like that.

Manlio Valdes was deposed in his position as member of both the debtors' Boards of Managers. Now he was the debtors' President. He was the President and Director of 200 Park and ClimateLabs. He's President, Vice President of project management, The Americas for Trane Commercial HVAC. He was deposed for over eight hours.

Robert Zafari in his position as a member of Aldrich's Board of Managers was deposed for over five hours.

Marc Dufour in his position as a member of Murray's Board of Managers was deposed for over 5-1/2 hours.

Cathy Bowen in her position as Global Legal Controller for Trane Technologies was deposed for over six hours.

Richard Daudelin in his position as Vice President and Treasurer for Trane PLC was deposed for eight hours.

Robert Sands in his position as Associate General Counsel, Product Litigation was deposed for 5-1/2 hours.

David Regnery in his position as President and Chief Operating Officer for Trane PLC and New TTC was deposed for over six hours.

Amy Roeder in her position as a member and officer of both debtors and Finance Director of Information and Technology and Legal at Trane Technologies and as a director of 200 Park and ClimateLabs and as Chief Financial Officer and Treasurer for both of the debtors was deposed for over 6-1/2 hours.

Ray Pittard in his position as Vice President and Chief Restructuring Officer of the debtors was deposed for over 8-1/2 hours.

Mark Majocha as, in his position as Vice President, Finance for Commercial HVAC Americas was deposed for over seven hours.

Chris Kuehn in his position as Senior Vice President and Chief Financial Officer was deposed for over eight hours and Mr. Kuehn was deposed again as a 30(b)(6) witness for over six hours.

Allan Tananbaum as a fact witness in his position as Chief Legal Officer and Secretary of debtors and Deputy General Counsel was deposed for over 8-1/2 hours. Mr. Tananbaum was again deposed as a 30(b)(6) fact witness for over nine hours.

Sara Brown as a fact witness and 30(b)(6) witness in her position as Vice President and Deputy General Counsel was deposed for over seven hours.

Evan Turtz as a fact witness and a 30(b)(6) witness in his position as Senior Vice President and General Counsel was deposed for 7-1/2 hours.

In total, your Honor, the Committee and special litigation counsel obtained approximately 119 hours of deposition testimony from 20 fact witnesses with over 4800 pages of deposition transcripts and conducted an additional 2 depositions of the expert witnesses, Charlie Mullin for Bates White and Laureen Ryan for Alvarez & Marsal.

I participated in a majority of those depositions and the general format for each of the fact witness depositions was essentially the same. Those depositions covered the deponents' background; prior experience; dates of employment; title and role with the company; the origin of Project Omega; the purpose of Project Omega; the Project Omega team; Project Omega meetings, including who attended, when they occurred, where they occurred, how many occurred, and topics discussed; the decision to implement the corporate restructuring; the execution and structure of the corporate restructuring; the decision by the debtors to file bankruptcy; and multiple questions related to the documents that had been produced.

Committee's 30(b)(6) notices served in the preliminary injunction adversary proceeding further evidence the broad scope of the subject matters covered by the Committee and its special litigation counsel. Those topics included the genesis, planning, and implementation of the corporate restructuring; the genesis, planning, and implementation of Project Omega; the plans of divisional merger; the negotiation and operation of

the funding agreements; the negotiation and operation of the support agreements; the negotiation and operation of the services agreements; the negotiation and operation of the secondment agreement; all documents included in the corporate restructuring binder; the purpose, rationale, motivation for, and reason behind any transfer in connection with the corporate restructuring; the role, job description, and responsibilities of key personnel and the organization and management of the non-debtor affiliates and the debtors; the debtors' decision to file for chapter 11; the decision of New Trane Technologies Company and New Trane to not file for chapter 11; treatment or payment of the non-debtor affiliates' creditors in the ordinary course of business; any dividend or distribution made; any purchase or redemption made; any loans or extensions of credit; any dividends or distributions to be made; any loans or extensions of credit to be obtained; any transfers or transactions outside of the ordinary course of business; compensation of officers, managers, management team, and key employees; current operations, activities, assets and liabilities of the new entities and each of their direct and indirect subs; the financial performance of the new entities and the old entities for the five years immediately preceding the corporate restructuring; financial statements pertaining to the old entities for the five years immediately preceding the corporate restructuring; financial statements, books, and

records, general ledgers, and trial balances related to the new entities and each of their direct and indirect subs; financial projections, forecasts, plans, budgets applicable to the new entities and each of their direct and indirect subs; any secured indebtedness of the new subs; any funded debt of the new entities; any estimates, projections, or forecasts of the estimated liability for asbestos claims; and indemnification obligations, insurance coverage, coverage-in-place agreements.

I know that was a long list, your Honor, but again, I think it's important that the Court understand the scope of discovery that's previously occurred. This factual background provides the important context for assessing the Committee's current requests and in particular, your Honor, I think you'll recognize the overlap between what has previously occurred and what the Committee now seeks in connection with the discovery plan that has been proposed.

In this case, with respect to the initial disclosures that have been filed and the discovery plan that's been proposed by the Committee, the Committee now seeks to conduct 30 additional depositions on the following subjects:

The facts and circumstances surrounding the decision to engage in the corporate restructuring; the planning and implementation of the corporate restructuring; the facts and circumstances surrounding debtors' decision to file bankruptcy; the drafting, execution, and amendment of the funding

agreements and other intercompany agreements relevant to the corporate restructuring; the asbestos litigation history; the formation and corporate history of the defendants, their predecessor entities, and other entities within the Trane organization; corporate business and financial records of the defendants; the upstreaming of cash to affiliates; the payment of ordinary course creditors; communications with ordinary course creditors; and other matters relating to the allegations in the subcon complaint and defendants' defenses.

As the Court may recognize, there's a pretty substantial overlap between what has occurred and what the Committee now seeks as disclosed in the initial disclosures. Of the 30 witnesses that are identified by the Committee in its initial disclosures, 16 have already been deposed by the Committee, more than half, and the remaining individuals include the General Counsel's administrative assistant, former General Counsels who had left the company prior to the corporate restructuring, employees who the Committee knows had only limited involvement in the corporate restructuring based on ancillary issues such as tax or accounting or licensing issues, and debtors' expert witness.

In summary, your Honor, the, the discovery conducted by the Committee in the, in the preliminary injunction adversary proceeding was not narrow, it was not limited, and covered most, if not all, of the same subjects identified by

the Committee in its initial disclosure. I wanted to take the time to present that background to the Court in order to rebut the Committee's characterization of discovery that's occurred and to provide what I believe is the context that the Court needs in order to assess the Committee's request today. To be clear, your Honor, we're not seeking to limit discovery and although there's duplication, this is not an effort at this time to ask the Court to, to rule on any duplication issues. We think those issues will arise in the future. We hope they don't, but we expect based on our prior conversations with the Committee that they will. Today, your Honor, we're here to oppose the Committee's request to prematurely expand the scope of discovery in the discovery plan.

So starting with the first issue, your Honor, the initial number of depositions each party will be allowed to take. And looking at the three questions that I posed earlier, what does the Committee want? Committee has requested authority to conduct 30 depositions, in addition to the 22 depositions Committee has already taken. That'd be a total of 52 depositions, your Honor.

Why doesn't the Committee have what they want? Well, in the first instance, the Rules don't allow for it. First, Federal Rule of Civil Procedure 30 establishes a limit of ten depositions for each proceeding. Given the two proceedings, the Rule establishes an initial deposition limit of 20.

Defendants proposed what the Rules provide, 20 depositions, and we agreed to meet and confer in the future if, for whatever reason the Committee at that point, after they completed those 20 depositions, thought that additional depositions would be necessary, and agreed that all parties would reserve their rights to seek relief from the Court if they couldn't reach an agreement. The purpose of that Rule, your Honor, is for the parties to be thoughtful as to who they depose and to try to be efficient. The mere fact that a party may have discoverable information does not mean that a party should be entitled to depose that particular witness.

Second reason why the Committee does not have what it wants is that in order to exceed the limit established by Rule 30 party is generally required to exhaust the allowed depositions before seeking additional depositions and as part of that request for additional depositions in excess of what's allowed by the Rule, party must make a particularized showing to justify the need to exceed that number.

In the initial motion filed by the Committee the Committee argued that defendants were trying to limit Committee's discovery. In the Committee's reply, though, the Committee for the first time requests leave to exceed the number of depositions established by Rule 30, but has not yet exhausted any of the depositions provided by the Rule and made, has made no particularized showing today as to why the Court

should grant such relief.

In the absence of exhausting the Rule, the limit provided by the Rule, and in the absence of a particularized showing, the Committee should not be authorized to expand the limit under Rule 30, particularly where the Committee has already conducted 22 depositions on the same or substantially similar topics.

Does the Committee need 30 depositions? Well, your Honor, the question is really does the 30 -- does the -- does the Committee need the Court to decide today that it needs 30 depositions? Committee doesn't make a particularized showing today as to why it needs an additional 30 depositions on top of the 22 it previously took. First, your Honor, with respect to the 45 witnesses that the Committee identified, 9 of those corporate defendants, many of them are holding companies. The Committee knows this from the discovery it obtained in the preliminary injunction proceeding. Six of those individuals are attorneys for Jones Day, typically would not be deposed, and the list, as I had previously indicated, includes the General Counsel's administrative assistant, a former, former General Counsel who left before the corporate restructuring, and 16 individuals who had previously been deposed.

Committee argues, in part, that the Court should grant the relief today because this is a complex case, but the basic facts of this case are not complex. Two entities underwent a

divisional merger that resulted in the creation of four new companies with an allocation of assets and liabilities between them and two of them filed bankruptcy to resolve their asbestos liability under a 524(g) plan. The transactions were disclosed and detailed in first day pleadings and public filings and in any event, even if one were to consider the case complex, the discovery the Committee and its litigation counsel obtained in the prior adversary proceeding, the 92,000 pages of documents and the 22 depositions, provided a complete understanding of whatever complexities may exist, as is evident from the 25-page factual background in the Committee's opposition to the preliminary injunction, its 19-page factual background in the substantive consolidation complaint, and its 45-page factual background in the fraudulent transfer complaint. The Committee has not today identified any area of complexity where its knowledge is purportedly lacking or any new ground that has yet to be covered or could be covered by the proposed 20 additional depositions.

In addition, your Honor, the Committee has argued that it should be allowed to exceed the Rule 30 limit because this case involves intent. Committee again ignores that it's already conducted 20 depositions of fact witnesses and thoroughly explored the motive and intent behind the corporate restructuring with respect to each of those witnesses. With the additional 20 depositions under Rule 30, Committee will

have the benefit of over 40 depositions to explore intent and motive issues, to the extent they haven't already. Committee has not identified any reason why those 40 depositions will not provide a sufficient opportunity to fully explore the motive and intent issues or how additional depositions would in any way be beneficial.

Your Honor, the Committee also argued that there were two divisional mergers so there's twice the work. As the Court knows, the transactions were done simultaneously by the same individuals as part of the same process. So this litigation doesn't require twice work, twice the amount of work because there were two divisional mergers.

Third, your Honor, the Committee argues that this case involves billions of dollars without offering any explanation as to how it arrived at this conclusion. Despite nearing the three-year anniversary of this case, the Committee has not once offered any allegation, much less any evidence, as to what the Committee believes is the amount of the debtors' estimated asbestos liability. Further, the subcon and fraudulent transfer complaints, despite conclusory allegations of insolvency, are devoid of any allegation as to the amount of the estimated asbestos liability. The only evidence of estimated asbestos liability that has been presented to the Court is the estimated asbestos liability contained in Trane's SEC reporting of approximately $540 million. And as the

Committee has previously acknowledged, its constituency, the current asbestos claimants, represents approximately 20 percent of the asbestos liability. Thus, based on the only estimate that's ever been presented to the Court the Committee represents holders of approximately $108 million of claims, not billions, and it holds those claims against entities that currently have at least $540 million of assets and an uncapped funding agreement.

Your Honor, the, in short, the Committee has not at this time established any need to take an additional 10 depositions or any need to conduct a total of 52 depositions in these proceedings. We respectfully request that the Court approve the discovery plan as modified by the defendants to establish the initial limit of 20 depositions for each party with an obligation to meet and confer if a party thinks additional depositions are necessary and with a reservation of rights to seek authority from the Court for additional depositions if that need arises.

Turning to the second remaining open issue, your Honor, the Players' List to accompany a privilege log. The Players' List, your Honor, is a, a list of names of individuals who are listed in the privilege log and it's designed to provide some basic information so that parties can assess the privilege. That basic information generally is a person's name, e-mail address, company, and whether or not the person

was an attorney or paralegal. That's the type of Players' List that we provided in connection with the preliminary injunction proceeding and the Committee having received that list never complained that the Players' List was insufficient, never requested additional information as to the individuals identified on that list, and never moved to challenge that the Players' List didn't provide sufficient information to assess the assertions of privilege.

In an effort to reach an agreement, the defendants agreed to provide, in addition to the information that had previously been provided, dates of current, dates of employment -- I'm sorry -- current employment titles for each of the employees and with respect to professionals, the date that they were engaged and the parties they represented. Despite our willingness to provide this information, the Committee has insisted, though, on further detail for each employee identified on the Players' List.

So what does the Committee want? The Committee asks the Court to direct the defendants to include for each employee on the, on the Players' List the dates of employment and/or affiliation to each defendant and the relationships, titles and/or roles to each defendant. I'll just note in passing the ambiguity of affiliation and relationships and will assume that we may at some point be able to figure out what those mean.

Why don't they have it? Well, first, the Rules and

the case law don't require that information in a privilege log. The typical information that's required in the privilege log would satisfy the standards under Federal Rule 26. If, even if it's not detailed, it identifies the nature of each document, the date of its transmission or creation, the author and recipients, the subject, and the privilege asserted.

So in the first instance, your Honor, it's just not required by the Rules. Secondly, your Honor, the information's not readily available. If we could push a button and provide that information, we wouldn't be here today. The fundamental problem in complying with this request, your Honor, is that it requires a manual search through employment records and corporate records to obtain that information with respect to each employee and if there's any indication, we're talking about 250 employees based on the privilege log and the Players' List that was provided in connection with the prior proceeding.

THE COURT: Why can't you just send an e-mail to the employees and say, "What were your titles at these times, points in time?" Wouldn't that give you half the information right out of the gate?

MR. MASCITTI: Your Honor, I -- I -- it may. I don't know about the accuracy of that information, but --

THE COURT: Double check it, but in terms of searching all the records is, it seems to me there would be some easier ways to obtain that information than, than a top-to-bottom

review of all employment records.

MR. MASCITTI: Well, your Honor, in the first instance, the Committee already has this information with respect to the individuals that have already been deposed.

THE COURT: Okay.

MR. MASCITTI: So, so to the extent they're looking for dates of employment, roles, and positions and the key players, they have that. It was provided as part of the preliminary injunction proceeding and the depositions they conducted. And, and, your Honor, in addition, the Committee hasn't identified any need for this information.

So the third issue as to whether or not the Committee needs it, it's well settled, your Honor, that a corporate client includes not only the corporation for whom the attorney is employed or retained, but also the parent, sub, and affiliates of that corporation. So whether a employee at issue was in one particular role for, for Subsidiary ABC and in a different role for B, DEF and sat in a different position for XYZ Corporation under the corporate umbella, umbrella doesn't in any way impact the assessment of the privilege.

So that information that, that they're asking for doesn't help the assessment of the privilege. It's not relevant until there's a privilege log that identifies a specific document that's been withheld --

THE COURT: Uh-huh (indicating an affirmative

response).

MR. MASCITTI: -- identifies the particular employees at issue, and then maybe in that context whether or not a particular individual held a particular title could be relevant, but it's certainly not in the first instance at, at the stage we're at.

So requesting that information now, your Honor, is, is premature, we contend it's burdensome, and most definitely, your Honor, it doesn't provide any benefit to the Committee's assessment of the privilege.

THE COURT: What do you say about Ms. Calvar's argument that they need to know because there was such a wide dissemination of information to, to the various employees? If you don't know the capacity of that particular employee at the time, how do you evaluate whether it got out to people who had no need to know?

MR. MASCITTI: Well, that was -- that was -- there's two issues there, your Honor. One, this, this idea that there were documents disseminated to 250 employees. I don't believe -- I think that's how counsel characterized that. I don't believe that there was any document in the privilege log that was disseminated to 250 people. I think what counsel is conflating is there's 250 people on the Players' List --

THE COURT: Right.

MR. MASCITTI: -- who in the course of their

employment received a confidential --

THE COURT: A document.

MR. MASCITTI: -- a document, but doesn't mean that there was -- and if there was a document that was disseminated to 250, it would be that document that is at issue and which we could discuss.

But I don't think any such document exists and again, the fact that there were 250 people that may have received a confidential document that's protected by the privilege doesn't, doesn't impute a waiver.

Secondly, your Honor, on the need to know, that may become an issue in, in terms of did a particular employee need to know the information that's at issue, but again, we're not there today. That information isn't required to, to satisfy the, the obligation that we have in the first instance to make a *prima facie* case for the assertion of privilege. It may become an issue down the road and as we've proposed in our discovery plan, if the Committee identifies a specific document that's been withheld and they, they contend that they need that employment information for that, for the individuals who are part of that dissemination of that document, we can have that discussion and if we can't reach an agreement, they can seek relief. But we're just not there today, your Honor. And, and again, given what we perceive to be the burden and given the little benefit that the Committee would get from it at this

stage, we don't think it's appropriate, your Honor, for, for that relief to be granted.

In closing, your Honor, I wanted to emphasize the current context that the Committee has not yet taken the additional 20 depositions provided by the Rules and no privilege log asserting any privilege has been produced in the fraudulent transfer or subcon proceedings. As your Honor may recall in connection with the Case Management Order hearing, your Honor agreed with the Committee and denied the inclusion of defendants' proposed non-duplication language because your Honor did not want to preemptively limit discovery by trying to articulate a ruling on what would be duplicative. By the same token, your Honor, defendants now ask that your Honor not preemptively expand discovery unless and until the time arises in the future where the facts establish a need for such expansion.

For those reasons, your Honor, defendants respectfully request that the Court approve the modified form of the discovery plan as proposed by defendants.

THE COURT: Thank you.

The debtor had joined. Do you wish to be heard as well?

MR. TORBERG: Yes, your Honor. If, if I may.

THE COURT: Please.

MR. TORBERG: Good afternoon. David Torberg from

Jones Day on behalf of the debtors.

We join, again, in the arguments made by Mr. Mascitti on both issues. We have a long agenda. I'll try to be brief and I'm going to focus just on the deposition issue. I think Mr. Mascitti covered sort of the facts that play into the Court's issue pretty exhaustively. So I'm going to focus on, on the legal precedent that's out there on this issue, including some of the cases that were dropped by the Committee a couple of days ago that I spent most of yesterday taking a look at, but I want to talk first about this issue of whether they, a requesting party seeking more depositions has to exhaust all their depositions first, okay?

Most courts that have considered that question, including all the, the trial courts in this Circuit cited in our briefs, have said that courts generally or ordinarily will not authorize additional depositions until a party uses the initial presumptive limit, even the cases cited by the Committee, Premier, Daily Gazette, Aerojet, and a name I can't pronounce, but it starts with T-H-Y. It has a lot more consonants than vowels. There are, there are prudent rules, there are prudent reasons for that Rule and we think they apply here, particularly given the prior discovery that's already occurred.

Now I'm not saying that there are no cases out there where a court has authorized depositions at the outset,

authorized additional depositions at the outset of the case or required the taking of all ten depositions before additional ones were granted. There are some cases, but those cases are not this case. They are not this situation. Most importantly, those cases involve situations where the party seeking additional depositions made a particularized showing of why specific people needed to be deposed. For example, in both Aerojet and Lawson, the court went through each of the proposed deponents individually and evaluated whether cause had been made. None of that has been done here. The Committee hasn't even told us which 30 people it wants to depose. We haven't talked about a single individual today and that's telling.

Now as we said in our brief, there are, they were digging deep to find 30 people. I mean, there -- there -- there -- they've got accountants who were involved in the implementation of, of this. They've got an administrative assistant. They've got General Counsels who've been, who've been gone. The fact that we don't have specifics is telling.

Moreover, we have to consider the prior discovery that's been taken here. The cases they cited didn't have, you know, 22 depositions where the party got to learn about the facts in the case, already. As the Archer Daniels Midland case said, you know, it was definitely influenced by the prior discovery in deciding how many depositions were needed. And I think that's the case here. I, I think that's, that shouldn't

be controversial. Yeah, you should look at what happened before in deciding what depositions are needed today and the Committee claims that we're making a legally untenable argument, which I don't think that's tenable.

Now it's worth noting, you know, one of the Committee's cases that they cited, the Laryngeal Mask case, that, that said, yeah, you might not always have to exhaust the depositions. Well, in that case the party had already taken nine of the ten depositions and the court actually said, "The more depositions that remain untaken, the harder it will be for a party to show that additional depositions would not be cumulative." Here, the Committee hasn't taken any of the depositions in these adversary proceedings.

And another case, the Premier case, a case that we cite, we, we like that case. And I would say, just as an aside, you know, we encourage your law clerk to read all these cases because I think we come out on top on all of these --

THE COURT: Be careful.

MR. TORBERG: -- even the ones they cited.

THE COURT: Ms. Cook is within striking distance.

MR. TORBERG: Yeah. I'm sorry, Ms. Cook. So I should probably sit down right now.

So in that case, this is another case that, that recognized, oh, it's possible. Maybe you don't have to exhaust all them. But in that case, the committee, the requesting

party had taken five of the ten depositions already and the court denied the motion saying:

> "Plaintiffs have not met their burden of establishing a particularized showing of the need for compelling depositions of numerous similarly situated deponents, especially in light of the fact that the testimony of the additional five witnesses has yet to be evaluated."

So in the Corey Airport case, well, there were, there were 20 named defendants all with, you know, individualized issues. The nine defendants here, they haven't identified any unique facts and need to question the nine corporate defendants on, most of which are holding companies, as Mr. Mascitti said. The court only allowed one deposition of a non-party witness in that case.

And just to respond, you know, they had made the reference that the cases we've, we cited for the exhaustion requirement were all run-of-the-mill, small cases. That, that's not true. The Archer Daniel, the Archer Daniels Midland case, it's a large insurance case. They wanted to take 47 depositions. The Laskin Electrical Pension Fund case, a complex securities case, the requesting party wanted to take 80 depositions. Both cases, the court said, "No, not yet. It's premature." Classic Soft Trim, a complex case involving the sealing of a plaintiff's confidential business information.

And then finally, I want to touch on the DBMP issue, you know. That, that seems to be kind of their No. 1 argument. Well, you allowed in -- you know, they agreed to it in DBMP. Why won't you agree to it here? Why are you being so stubborn? Well, you know, I wasn't involved -- I'm, I'm involved in that case, but I wasn't involved in this issue, but, you know, the firm's involved in the case. I know what's going on in that case and that case has got, you know, a lot of people who have not been deposed, some in France, okay? That does not satisfy the particularized showing of why you're taking more additional depositions at the outset of the case here.

So unless the, unless you have any questions, that's all I've got.

THE COURT: Thank you.

Any rebuttal?

MR. PHILLIPS: Your Honor?

THE COURT: Mr. Phillips.

MR. PHILLIPS: May I be heard very briefly?

THE COURT: Go ahead.

MR. PHILLIPS: Thank you.

MR. NEIER: Your Honor, I, I do this all the time and I'm going to do it again. I object to anybody speaking who has not filed a pleading on a particular issue. We've had this before. The Court has instructed Mr. Guy and he, and it's instructed others not to make speeches when they have not filed

a pleading. It is unfair to the parties that have filed pleadings, taken the time to examine the issues.

So to stand up just on a whim and expand wastes the court time and is unfair to the parties that are the movants and the respondents.

Thank you, your Honor.

THE COURT: What have you got in mind, Mr. Phillips?

MR. PHILLIPS: Your Honor, while we're not a party to these proceedings, my clients are the people who got deposed at the preliminary injunction stage and are at risk of being deposed again here.

THE COURT: Hang on a second.

Mr. Neier, I agree with your concept.

If you want the right to be assured the chance to be heard, you should file something, but under the circumstances I want to hear what you say.

So go ahead.

MR. PHILLIPS: Your Honor, the nut of our position is reflected in a case that's cited by the non-debtor defendants in their brief at, I think, Page 8. It's SF Health Plan v. McKesson Corp. where the court was faced with a similar issue and the court said:

"The purpose of the limitation and the Rule is to force counsel to think long and hard about who they want to depose and to depose only those who are really

important so as to stay within the limit of the rule."

That's what I want to see happen here, that the -- that the -- that the ACC and the plaintiffs will think long and hard, particularly in light of the fact that we asked for and they refused to include in the discovery plan a sentence that said that the parties would seek to avoid duplication in discovery. In a worst-case scenario, I am very concerned that my clients are going to be subjected to a series of questions designed to create a "gotcha" moment and I want them to have to think about whether they use those depositions for that and for that reason we support the non-debtor defendants' opposition.

Thank you, your Honor.

THE COURT: Thank you.

We ready to go back to rebuttal? Okay. Whenever you're ready, Ms. Calvar.

MR. NEIER: We're ready.

MS. CALVAR: Just a few points, your Honor.

THE COURT: Do you need a moment? Whenever you're ready.

MS. CALVAR: As an initial matter, the cases in our reply brief -- and again, there's none that defendants have been able to cite that when all these factors are present -- we'll talk about them and I will quickly run through them again -- that there shouldn't be a request for additional depositions granted.

Mr. Mascitti tried to argue that these transactions are not complex, then I really don't know why we have so many lawyers here and the bills are high, but we also have numerous parties --

THE COURT: Bankruptcy work is pretty slow right now.

MS. CALVAR: There's numerous parties involved in this, in this case. Even if they're holding companies, the intent of, of each corporate defendant is critical for our claims.

With respect to billions of dollars, again these are complicated financial transactions and the avoidance of those transactions are, in fact, billion-dollar transactions. When -- you know, it's, it's separation of assets. Again --

THE COURT: Should I read anything into that of what the ACC thinks the aggregate liability is in this case?

MS. CALVAR: I -- you should not.

The fraudulent intent, again, is clear and, because our claims, that's, again, where, where they are, and the information, all of which we seek, is within the defendants' control.

Again, there hasn't been one issue, one case where all of those factors are present and a court has not granted a request for additional depositions.

Mr. Mascitti read into the record a series of document requests that were issued in the preliminary injunction

proceeding and again, those are discovery document requests, not depositions, and what he didn't read to you is what, in fact, they produced and what compromises were made or what the responses were to each of those discovery requests. Again, we're talking about depositions.

And, you know, there's an inherent tension between the two issues. The defendants like to focus for purposes of the depositions a lookback to everything that happened in the preliminary injunction proceeding which, again, is an earlier, separate proceeding. And then on the second issue, which we'll talk about in a second, "No, Judge. Don't look at anything we did with respect to privilege logs in that context." So you can't have it both ways. It's one or the other.

But again, the, we're not saying that there's no overlap between the proceedings. What we're saying is there's going to be new, new discovery. Discovery, again, has not commenced. They made the very same argument in connection with the Case Management Order. They wanted to include a provision to not have any duplicative discovery and I'm paraphrasing, of course, your Honor, but I, I think where we came out on that is let, issue the document requests, let discovery commence, and as the Rules contemplate, you can object accordingly.

But we're not trying to seek the very, exact same information that we sought in the preliminary injunction proceeding. You know, I, I think we're better lawyers than

that and I think we are going to be very careful in, in what we ask during the course of, you know, these discovery requests, negotiations, and getting the information that we really need.

So you know, much of the arguments that Mr. Mascitti is making is, is really a premature protective order, cutting us off, again, before discovery has commenced. Again, for this Court and for the parties here, this is in the context of a joint discovery plan. We're just trying to start discovery.

On this same issue, I'll also turn to what Mr. Phillips said with respect to the Fiduciary Duty Defendants. In the case that he seems to say it says it all, SF Health Plan, I'd like to inform the Court that in that, in that case they actually were allowed to take 30 depositions. That was across multiple cases and they were seeking leave for an additional 11. So those numbers are really not comparable.

And you know, the claim that we did not agree to incorporate language in the proposed discovery plan about duplication, we did, okay? Mr. Phillips was part of each of those meet and confers which, again, is, I'm not really sure why as this doesn't really impact his proceeding, but he voices his objections, we propose language, which is what we agreed to in Paragraph 6(c)(3). And there was no objection from any of the other defendants as to that language saying, "Before we start depositions, we will agree and, and meet and confer with you to try to establish a deposition protocol."

As to the second issue, you know, I, I think it's made clear that there really is no burden to pull and collect this information.

THE COURT: What do you say about the suggestion that you already have the information?

MS. CALVAR: We, we don't have and we explained that, that some of it is actually, it wasn't clear from a lot of those depositions. Some of these individuals hold multiple roles, four or five roles, and we, some of that information we don't have.

So if they're just, if they want to talk about excluding those six -- even if we did have the information, your Honor -- and I really have to go back and -- I don't want to misrepresent anything -- but if it's those 16 individuals that we're really arguing about, okay, there's additional, many other employees that we need to know basic employment information. And your suggestion of a questionnaire, I mean, it was brilliant, Judge, and it, it shows that there's really no burden here and --

THE COURT: First time for everything.

MS. CALVAR: I -- I -- yes.

But it shows that there really is no burden involved here. I mean, these individuals should know what titles they had and when. And you know, if they want to include a disclaimer that always happens, "We did the best we can,"

that's usually all we can hope for in these types of cases.

THE COURT: Couldn't we also do that by -- if you've got 16 that you know based on the depositions that were previously taken, you've got some new folks that you don't know what they do, can we not just ask that question? It wouldn't seem to me to be that very complicated or very controversial as to what they did when.

Is there not a way that we can meet in the middle on this?

MS. CALVAR: So the problem is how. So we're not gong to take depositions of 250 employees.

THE COURT: Right.

MS. CALVAR: If you put it in an interrogatory, that, arguably, could be, you know --

THE COURT: Well, I'm, I'm thinking --

MS. CALVAR: -- ten different interrogatories. So --

THE COURT: All right. We get the log. You've got a bunch of documents. You don't know -- you've got various people in, individually who you're not sure what they did when. Can we not ask at that point?

MS. CALVAR: That's exactly what we're doing now. We have the privilege logs from the preliminary injunction proceeding.

THE COURT: Right.

MS. CALVAR: Those cases -- that -- I'm sorry -- those

logs are admissible in these proceedings.

THE COURT: Right.

MS. CALVAR: So we're asking for the information right now.

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

MS. CALVAR: So --

THE COURT: But, but are you asking for everyone that they have or are we only asking for the people who are on the logs as --

MS. CALVAR: Only for the people that are on the logs and only for defendants' --

THE COURT: Right.

MS. CALVAR: -- officers, employees, and directors.

THE COURT: And are we backing out the 16 people that were already deposed that we --

MS. CALVAR: If it turns out we, you know, we need clarification on that, we'll ask. But sure, we can --

THE COURT: Yeah.

MS. CALVAR: -- we can take out the 16. The problem is we still need that basic employment information because we don't really know who was acting in what capacity and for what entity.

THE COURT: Okay.

MS. CALVAR: And I think that's it, your Honor.

THE COURT: Okay. That it?

Mr. Mascitti? This is the point in the proceeding where I say there's no premium paid to being the last speaker, but --

MR. MASCITTI: I will be brief, your Honor.

With respect to the, counsel's argument that there's no case where all of the factors have been presented and, and the court didn't grant the additional depositions, I don't believe any of those cases involved a proceeding where the party had had 22 prior depositions on the exact same subjects.

In terms of cutting off discovery before it occurs, we're not trying to cut any discovery off. We're try, we're talking about the initial requirements. And again, if we get to a point in the future where 20 isn't enough, everyone has the right to come to the Court and make that point if we can't reach an agreement. If the privilege logs identify a specific document at issue, we can talk about the employment information for those employees.

And your Honor, just wanted to also mention this, this idea that, the footnote on the, the deposition protocol. That's apples and oranges. We asked for that footnote because your Honor had declined to put in the duplication language we had requested. And we --

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

MR. MASCITTI: If, if the Committee is going to depose the same witness again, we recognize there's going to be a problem when we get to the Committee asking the same question again. And that protocol is designed to figure out, well, what are we going to do when we get to that point. That has nothing to do with whether or not there's going to be 30 depositions, in addition to the 22 that have already occurred.

And -- well, I don't want to suggest that your idea wasn't brilliant.

THE COURT: Go ahead.

MR. MASCITTI: You know, not every employee will necessarily recall what position they held.

THE COURT: Sure.

MR. MASCITTI: But perhaps more importantly, this, this idea that they need basic employment information to assess some type of privilege assertion is just not supported in a vacuum. In other words, that need arises in the context of a specific document at issue and it doesn't -- your Honor had asked the question before about the need to know. Did an employee need to know certain information? Having the person's title doesn't answer that question. It doesn't -- knowing that someone was a, you know, whatever the title is, Treasurer or whatever of the particular entity, doesn't answer the question as to whether or not that individual needed to know the information that was conveyed as part of a document that had

been subject to the assertion of privilege.

So your Honor, again, that -- it's just -- even if there were an easy way to gather that information, the Committee hasn't identified in any way how it helps them today when we are talking about the hypothetical scenario of a privilege log that hasn't even been produced.

Thank you, your Honor.

THE COURT: I'm asking the question, not expressing an opinion.

Since we're talking about privilege logs, and starting with the preliminary injunction privilege log, do we really need to know all of the dates of employment and affiliation and relationships, or do we just need to know at the dates of the documents? Is that what you're really asking for?

MS. CALVAR: Your Honor, and I'm sorry if I wasn't clear. It's just the time period that's in the privilege log.

THE COURT: Right.

MS. CALVAR: And we are really focused on the communication, you know, the e-mail communications going back and forth.

THE COURT: But when that particular individual was -- has -- receiving --

MS. CALVAR: Exactly.

THE COURT: -- the communication?

MS. CALVAR: Exactly.

THE COURT: So you're not necessarily asking the five-year or four-year period that all of this --

MS. CALVAR: Correct.

THE COURT: -- was transpiring?

MS. CALVAR: It would probably make things easier.

THE COURT: Yeah.

MS. CALVAR: Because otherwise either the burden would be on us or them, probably them because they're asserting privilege, to figure out which dates they need.

But respectfully, they, they should have done this, already. If you're making an assertion of privilege, you should know what title and role and who, what entity you're working for at that time.

THE COURT: Okay.

All right. Well, I think this one, I'm, I've got a split decision for you.

I believe we should let, let this play out when it comes to the number of depositions. I don't think you're going to need to come back one at a time. I think I can batch those. If we get towards, later in the point where we've identified the, the Rule-based number of depositions and you think you've got the need to depose five more, I think you can come in and say, "I need five. I need ten." But I don't like deciding things in a vacuum 'cause you never have all of the facts and I believe we ought to stick with the way the Rule proceeds in

this and take that number first and when you get towards the end where those are all identified and, perhaps, noticed out and you need to come back and you see a need that, you can tell me what you need. Obviously, we did a very expansive version of this in the preliminary injunction and that does change the context that we're all sitting in, but there may be a need to ask other questions of other parties and I don't want to prejudge that.

So on that part of it, I, I'm inclined to agree with the affiliates and the debtor and deny the request.

As to the Players' List, on the other hand, I believe that given the number of documents we're going to be talking about in this context and also in -- in -- not just the preliminary injunction log, but what comes out when we start doing discovery overall, it's going to be necessary to know who the party was at the time of the communication.

So to that extent, I am granting the motion.

Let me, Ms. Calvar, ask you to take the laboring oar of trying to, to craft an order to that effect and bounce it back between the opposing parties for their comments and, and let's see if we can't get that entered and get you on the way. Otherwise, of course, the proposal is fine, all right?

MS. CALVAR: Thank you.

MR. NEIER: Your Honor, may we be excused from the hearing at this point?

THE COURT: Well, I can't imagine you're not having fun, Mr. Neier, but --

MR. NEIER: Fun, yes, but --

THE COURT: Well, yes, you -- unless Mr. Mascitti needs to say something else about this matter.

MR. MASCITTI: No. I, I was just going to say thank you, your Honor.

THE COURT: Yes, you may be.

It's now 12:30. So a little housekeeping. We are going to need to take a break at, sometime between now and 1:00 for lunch and this might be a good time to stop, but I think we ought to revisit again what we're going to be doing when we resume.

And as to the remaining matters, I think the, the most efficient thing to decide what we're going to do would be to talk about the debtors' motion to strike in 303, but if the parties have a strong feeling otherwise, I'd like to hear you on what, what you think would be the next logical batting order. It would seem to me that if we're, if the debtors' motion is granted there, that reduces the arguments that would be made afterwards. But y'all may have a different viewpoint and I'd like to hear it.

Mr. Evert?

MR. EVERT: Your Honor, here, here would be my suggestion. There are -- and, and I've got a little slide on

this, but you don't need the slide. What, what we have is we have the, the New Jersey proceeding that has the, the Verus motions in there, then we have the Delaware proceeding.

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

MR. EVERT: Verus has filed a motion for adjournment in the Delaware proceeding, but they've also referenced --

THE COURT: Right.

MR. EVERT: -- the, the Verus proceeding.

So I think your -- I, I agree -- another brilliant idea. I agree with you.

THE COURT: I'm just full of myself today.

MR. EVERT: Oh, my goodness, your Honor. It's -- it's -- it's somewhat overwhelming for us down here, but --

THE COURT: Until the appeals get filed and then the ideas will have dissipated.

MR. EVERT: Just the, you know, the whole, the whole stream, it's, it's hard to comprehend.

So, so my thinking would be let, let's hear the motion to strike, let's hear Verus' motion to adjourn --

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

MR. EVERT: -- and, and, and then query whether we also hear DCPF's motion to adjourn or we go, depending upon the Court's ruling, we go from there to the underlying motions. So

the -- that, that's the way we thought about it when we set up the, tried to set up the agenda.

So just, just to be clear, motion to strike, which affects the Matching Claimants in all filings.

THE COURT: Right.

MR. EVERT: The motion to adjourn for Verus, they could either argue only the part that applies to their New Jersey proceeding or they can argue the part that applies to the Delaware proceeding as well. What I had in my mind I thought would be most, easiest for your Honor is for them to argue the part that applies to New Jersey. If the Court rules we're, you want to hear argument in New Jersey, we take the New Jersey matters, then, when that's concluded, we argue DCPF's and Verus' motion to adjourn in the Delaware matters --

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

MR. EVERT: -- and if the Court rules they want to hear it, we go forward with the motion for rehearing.

That, that, I think, is the most logical way to do it, but obviously, with the effusive brilliance that's coming from the bench, I -- I'll just -- I'll wait and see what the Court thinks.

THE COURT: Let me remind you folks. I've been married for three decades. I have no illusion as to my brilliance.

MR. EVERT: But you're here, not at home, Judge.

THE COURT: Right.

Mr. Guy?

MR. GUY: Your Honor, I only have one modest request and that is I, we heard at the very beginning that the motion for rehearing is tied to the sampling issue and I'd love to be able to get to that at some point today. And I understand that there are witnesses for that. So that might -- if we can do that, that would be great.

The other issues are for the other parties.

Thank you.

THE COURT: Mr. Houston?

MR. HOUSTON: Your Honor, Andy Houston for the Verus Trusts.

I, I think -- I heard Mr. Evert say that we would take up after lunch with Matters 6 and 7 on the current calendar. We are very much in agreement with that and we will describe, discuss and describe how we think the New Jersey proceeding fits in there. We, we don't think that's really properly heard today, but we'll, we'll deal with that.

I think we're in agreement that Matters 6 and 7 are the way to start after the break.

THE COURT: Anyone feel differently?

(No response)

THE COURT: Okay. That's what we'll do.

How much time do you need for lunch?

MR. EVERT: It's really 6, 7, and 8, but yes. Sorry. Whatever, whatever the Court --

THE COURT: Now you just said something different. Anyone feel that differently about No. 8?

MR. GUY: No, your Honor.

THE COURT: I had looked at them and, and was thinking 5 -- excuse me -- 6 separately, and then, then the 7 and 8, but we'll, let's do them all, okay?

How about 9? Do we need the motion? Because it's got a continuance request. That's the Delaware Claims Processing Facility.

MR. EVERT: Oh. I'm sorry, your Honor.

THE COURT: Do, do we hear all the requests for continuances --

MR. EVERT: I'm -- I'm -- I'm --

THE COURT: -- at the same time?

MR. EVERT: Yeah. I'm sorry, your Honor. You're right. 6, 7, 8, and 9.

THE COURT: That's the way I thought it might work best, but in any event.

Okay. How much time you need for lunch? An hour?

MR. EVERT: An hour?

THE COURT: Everyone good with that?

(No response)

THE COURT: Let's try to cut it just a little bit. We'll pick back up at 1:30, okay?

MR. EVERT: Thank you, your Honor.

THE COURT: Thank you.

(Lunch recess from 12:33 p.m., until 1:29 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat, all.

Okay. Well, we've thinned the crowd a little, but --

Are we ready to proceed with the, the next matter?

MR. EVERT: Yes, your Honor.

THE COURT: Okay, very good. If I can find my page here.

All right. Are we going to take these all at once and just hear whatever arguments are, are coming along from --

MR. EVERT: Your Honor, I would suggest that we take them in, in, in three small parts. Take the, No. 6, which is separate and apart. That involves the Matching Claimants.

THE COURT: Right.

MR. EVERT: No. 7 and 8, which involve the Verus entities, take that as the second one. And then No. 9, which involves the DCPF entities.

THE COURT: Other thoughts? Does that work for everyone?

(No response)

THE COURT: All right. Let's try it.

MR. EVERT: All right, your Honor. So No. 6, next up -- Michael Evert for the debtors.

No. 6, next up, the Debtors' Motion to strike the Pleadings filed by the Non-Party Certain Matching Claimants.

THE COURT: Right.

MR. EVERT: I'm going to try to start a trend for the afternoon here, this Honor, your Honor, and I think we're, I'm going to try to do this in two minutes. This one's pretty simple.

The Court ruled that the Matching Claimants needed to identify themselves and the Court denied their motion to proceed anonymously. The Court entered an order that said, "Tell you what I'll do. I'll give you guys 30 days to go to the District Court and see if you can get a stay of my ruling in the District Court so you don't have to identify yourself to be heard in this Court." On, depending upon which particular Matching Claimant group you're talking about, on about the 27th or 28th or 29th day, they filed a motion for stay in the District Court which still sits pending at the District Court.

So what we have is is we have a pending motion to stay and no order on that motion to stay and the debtors have moved to strike the Matching Claimants because, inconsistent with the Court's order, they've not identified themselves and the 30 days has since expired. Pretty much it.

THE COURT: Okay.

MR. EVERT: Thank you, your Honor.

THE COURT: All right.

MR. HOGAN: Good afternoon, your Honor. Daniel Hogan of Hogan McDaniel on behalf of the Non-Party Certain Matching Claimants. Your Honor, thanks for your time today. I appreciate it.

THE COURT: Sure.

MR. HOGAN: Your Honor, this motion is predicated on a hearing that happened before your Honor on November 30th of last year. The order was entered on February 6th, the order denying the anonymity. We appealed that order on February 20th and we filed the motion to stay with the District Court on March 8th. Interestingly, curious timing, the debtors filed their motion for rehearing on March 9th. We find that curious, your Honor. Debtors are essentially attempting to relitigate the motion to quash. At the time that we argued the motion to quash you had not ruled on the anonymity order.

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

MR. HOGAN: So we have a temporal disconnect here, your Honor. We are essentially going back in time to argue the motion to quash, yet we're being prevented, or the debtors are attempting to prevent us from participating in rearguing the motion to quash predicated on an order that we've appealed and

for which we have moved to stay that order pending the appeal.

Your Honor, I don't relish having to point to the language of your order. I've made this argument to you before --

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

MR. HOGAN: -- but I have to create a record, as you know.

THE COURT: Sure. Go ahead.

MR. HOGAN: Your order provides that we had 31 days, 30 days to seek a stay and we did that. And so all we are looking to do, your Honor, by participating in this motion for rehearing is to be heard, like we were heard initially when the motion to quash was argued before your Honor on November 30th. That's what the debtors are seeking by their rehearing motion. They want to go back in time and let's hear it again. Let -- give you everything again, maybe make some new arguments, maybe point to some different factors --

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

MR. HOGAN: -- and from our perspective, they should not be permitted to allow for our pleading to be struck. We should be heard if this matter's going to be heard again. Your Honor, they're really looking to silence us, as we see it, and they've really demonstrated no basis. The courts see this type

of relief as a drastic type of relief, your Honor, and the courts typically disfavor these type motions to strike. And so from our perspective, your Honor, we should be heard.

We see this as, essentially, a Groundhog-Day argument where we're going back to November 30th now, except they're trying to quiet us. They're trying to silence us from making arguments counter to their arguments on the sampling. And so we believe that you should deny the motion to strike.

You have any questions for me, your Honor?

THE COURT: No thank you.

MR. HOGAN: Thank you.

MS. JOHNSON: Good afternoon. Diana Johnson with Waldrep Wall Babcock & Bailey. We are local counsel to Joe Lemkin, who is on the phone.

In his pleading he has joined the arguments Dan made and I just wanted to clarify the dates for his -- his -- in the Miscellaneous Proceeding. Their order denying the motion to proceed anonymously was entered on February 22nd. The appeal to the District Court was on March 7th. They filed their motion for stay on March 24th and that matter is not yet fully briefed.

So we also ask that the motion to strike be denied.

Thank you.

THE COURT: Okay.

Any response to that?

MR. EVERT: Your Honor, just a couple of quick points just so I can satisfy any curiosity.

We filed the rehearing motion on March 9th 'cause that was the deadline in order for the March 30th omnibus hearing. So that was the --.

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

MR. EVERT: -- reasoning behind that filing date.

And, and your Honor, look, our only point is the Court said to the anonymous claimants, "Look, for you to be here, heard, we got to, you got to identify yourselves so I can understand exactly who you are and what you're doing and where, what your perspective is," and all those kinds of things. And, and so, that's, that's the premise of our motion.

THE COURT: Okay.

That got it?

Well, I, I appreciate what you're saying, but unless you want to identify your clients, I can't let you participate. I, I thought I was stretching a point to, to give any sort of stay at all. I didn't see grounds for it. The motion to proceed anonymously, to me, looked very clear and we didn't have facts that would justify the apprehensions that give rise to anonymous proceedings and, of course, the general rule is quite the opposite that, that parties are to be known on the record.

I understand you disagree with that, but I was, effectively, saying I don't think I could have granted the stay myself and rather than waste time filing the motion with me, I wanted to give you a little bit of an opportunity to see if the District Court thought there was egregious error here, perhaps, that they would intervene. But frankly, I just don't see it and the bottom line is while they may be talking -- and I don't know yet whether I'm going to reconsider the earlier ruling on sampling -- but the bottom line is it's a question of participating in the case after the 30 days and without knowing who your clients are, I don't think I'll allow you to do that.

So with all respect for what your clients have argued and what they want to do, I, I think the fact that there's a reconsideration motion is no different than any other kind of motion that you might have an interest in in the case.

So I'm going to have to ask you. Do you wish to, to identify or do you want to stand down for today's purposes?

MR. HOGAN: Your Honor, Daniel Hogan of Hogan McDaniel on the record.

We are not prepared at this time to identify the 12,000 plus to your satisfaction. I think the, the record would be, would take, you know, the remainder of the day even if I, you know, was Evelyn Wood at this point, your Honor.

THE COURT: Well, I was just trying to anticipate that there might have been a written document that just in case and

I wanted to ask the question. I understand.

MR. HOGAN: Thank you, your Honor.

THE COURT: All right. Thank you.

Motion granted. I'll ask the debtor for a proposed order.

MR. EVERT: Thank you, your Honor.

I do commend the Evelyn Wood reference, though, your Honor. That's, that's taking us a ways back.

So up next, your Honor, is Docket No. 7 and 8, Third Party Asbestos Trusts' Motion for Adjournment and Related Relief and Motion of Third Party Verus Claim Services for Adjournment and Related Relief, your Honor.

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

Who would like to lead off?

MR. HOUSTON: Good afternoon, your Honor. Andy Houston for the Verus Trusts. And I've got Lynda Bennett, my co-counsel from Lowenstein Sandler, here with me this afternoon.

MS. BENNETT: Good afternoon --

THE COURT: All right.

MS. BENNETT: -- your Honor.

THE COURT: Good afternoon.

MS. HOBSON: Good afternoon, your Honor. Anna-Bryce Hobson here for Verus Claims Services. I've got Zach Wellbrock

with me as well --

THE COURT: All right.

MS. HOBSON: -- and Andrew Anselmi on the phone.

MR. WELLBROCK: Afternoon, your Honor.

THE COURT: Very good.

All right.

MR. HOUSTON: Your Honor, and Mr. Evert said that he was going to break trend and try to speed things up. I was hoping we were going to read 12,000 names into the record so we, so we would get our filibuster and, and effectively make sure that our motion to adjourn is granted. So unfortunately, I don't have anything more than this to read into the record. So I'll, I'll probably lie somewhere in between.

Your Honor, on behalf of the Verus Trusts, we would ask you to do one of two things. The first would be to adjourn all the matters related to the rehearing motion until the debtors can articulate as to the Verus Trusts what their position is. They did not file a motion or any other pleading in our Miscellaneous Proceeding and we believe that that is something that could be accomplished very quickly. If the answer is, "We're making the same arguments against you that we are against DCPF," a one-page kind of response. If they are putting something in the record that is more expansive, for instance, explaining why the 10 percent agreement which caused us to consent to the case being moved here applies or doesn't

apply and there's more information that's needed, then we would have the opportunity to respond to that.

Short of moving all the matters on the rehearing motion, your Honor, we would ask the Court that if you are to allow the rehearing motion to proceed today, then we would ask you to reserve ruling on it to give us the opportunity to have that basic due process, to have notice of what the charges are against the Verus Trusts and the opportunity to respond to those very specific charges and to argue our motion.

And as I mentioned, that's not something that needs to be protracted. I think we're talking about moving these matters out to your next hearing date in April. I know there are some matters that Mr. Guy has on that also would be related. He's got a sampling motion on that was also continued, I believe, to that day. And from our standpoint, that is necessary to avoid the potential deprivation of due process. The debtors are certainly going to take the position that the Verus Trusts are bound by a ruling in this Miscellaneous Proceeding --

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

MR. HOUSTON: -- which is Matter, I think, 303, but yet we have not really had the opportunity to have notice and to be heard and don't want the Court to rule, whereby when we do get the opportunity to argue that, effectively, that ruling

is, the matter has already been ruled on.

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

MR. HOUSTON: It's a fait accompli, as my counsel refers to it as.

By way of some limited background for the record, August 19th of last year, the Verus Trusts filed motions to quash the subpoenas in New Jersey and in September of this past fall the debtors moved to transfer the matters to the bankruptcy court here. Neither of those motions were heard and the reason they weren't heard is because, from the Verus Trusts' standpoint, we had an agreement on what was to be produced and that included having the case transferred here, to North Carolina, and that started on about November 30th when Ms. Bennett, my co-counsel -- excuse me. That, that was when you ruled in the DCPF matter that the production would be limited to a 10 percent claimant sampling with the parties to work out the logistics of, of how that would play out.

-- December 19th, in reliance on your Honor's ruling, contacted the debtors and proposed a resolution, whereby the Verus Trusts would consent to the matters being moved from New Jersey and for the parties to follow your 10 percent sampling ruling and to work out, of course, the logistics and compliance and production details here.

The debtors responded that very next day, December

20th, and said that they agreed to be bound by the rulings that you have made and that they would also be bound by those matters of compliance and production that you would make post transfer. And so in reliance on those statements and that agreement the parties negotiated a consent order in January that transferred the cases from New Jersey here on the terms that I outlined.

In January and February, it's my understanding that the ACC and the debtors were attempting to negotiate how that 10 percent sampling would be accomplished in accordance with your ruling and then on or about February 10th of this past, this year the debtors advised you that they were making progress towards reaching an agreement on how to conduct the sample, but then also advised you that they were at least considering moving to reconsider your 10 percent sampling ruling. Verus Trusts were not served with a motion at that time, did not participate in any of those hearings.

On February 14th, only a few days later, debtors informed the Court of their intention to then move for reconsideration of the sampling ruling. The Court, your Honor, asked specifically how this cut with the Verus Trusts and expressed concern about the Verus Trusts' due process rights since we were not participating and you set a March 9th deadline for the debtors to file whatever motion they were going to file related to the sampling issue and seeking

reconsideration.

So March 9 happens. The debtors only file a motion as to DCPF Trusts and the DCPF entity. Verus is not mentioned, or Verus Trusts, they're not mentioned anywhere in those motions. There's no motion that is filed in the Verus Trusts' Miscellaneous Proceeding, which I think is Proceeding No. 300.

March 16th, my co-counsel, Ms. Bennett, contacted the debtors seeking confirmation that our 10 percent sampling agreement remained intact post transfer. The next day, she was told that there was no deal on the matter and that Verus agreed to be bound by whatever happens in the DCPF matter, which is certainly not our belief or understanding, and that we were then invited to show up today and argue, even though there's no motion, there's no filing in our matter, and the like.

Right after that happened, we filed this motion -- I think that was March 20th -- asking for an adjournment of, of our matter for the reasons that I mentioned so that we could have some kind of motion filed targeted at the Verus Trusts, have the opportunity to respond appropriately, and have a hearing on it as due process would require. The debtors rejected that request as well.

We filed the motion to intervene -- excuse me. There was a correspondence March 10th. We filed our motion to intervene, this motion, the next day, on the 21st. Trying to be proactive, I contacted Chambers after contacting the only

parties who are actually of record in this case, who are the debtors' counsel --

THE COURT: Right.

MR. HOUSTON: -- and then Mr. Martin and his firm, who represents the DCPF. I, I did not reach out more broadly. The next day, a number of parties chimed in and said we had not contacted them. I assure you that was purely inadvertent. They just hadn't made appearances in the case and I claim, very accurately, ignorance of this case. I have not been heavily involved in this. I did not know everything that's going on. We were offered or discussed having a hearing on this motion to adjourn on Monday only to be told that the debtors would not consent. So they were just pushing forward. From our standpoint, all of this, to me, just looks like a whipsaw. Usually, whipsaws seem a lot more subtle than this, to me. This is kind of a, "No, we're just going to push and, and we're going to try to bind you to a ruling in another case."

So our argument is a very simple one, from my standpoint. It's basic due process, but even more than due process I think it really is just timing. I think all of these matters really should be teed up at one time. And so what we are asking the Court to do is to allow, perhaps order, the debtors to at least identify their position as to the Verus Trusts on the docket in our matter and to give us an opportunity to respond as due process requires and then we

could have a hearing on whatever those issues are, whether they are these same issues between DCPF or whether they are the DCPF issues, plus others.

That is all we are asking the Court to do, which is to have this lined up appropriately so that my clients, Verus Trusts, have their day in court and the opportunity to respond without arguing about whether they're bound by something that happened vis-à-vis other parties in another case.

Thank you.

THE COURT: Okay. Thank you.

Now did the Trusts also have a argument? Am I imagining things?

What did we do in No. 7? Are we going to hear those in turn or are we going to do them together?

MS. BENNETT: Yeah. Your, your Honor, Lynda Bennett from Lowenstein Sandler for Verus Trusts.

The additional pleading we put in was on the motion for rehearing. It's a limited objection. So I think it makes sense to hear this first and then we can address the substance if need be.

THE COURT: Any opposition to that?

MR. HOUSTON: Are you saying -- I'm sorry, your Honor.

Were you saying to hear Matters 7 and 8 sort of concurrently so that --

MS. HOBSON: I think it -- yeah, I think it makes

sense.

MR. HOUSTON: The, the adjournment matters, I think that's what we're talking about, right?

THE COURT: That's what I thought --

MR. HOUSTON: Yeah.

THE COURT: -- was being proposed.

MS. HOBSON: Yeah.

MR. HOUSTON: Yes. Great.

THE COURT: 7 and 8 together.

So I'm, I'm ready to hear --

MS. HOBSON: 8 is very brief.

THE COURT: Okay.

MS. HOBSON:: I will tell you that -- Anna-Bryce Hobson for Verus Claims Services.

And I would just echo everything that Andy just said as it relates to Verus Claims Services.

And we would also request an order, but at, directed to Verus Claims Services. They, the debtors have to put something on the record that tells us what it is we're responding to.

Thank you, your Honor.

THE COURT: Okay.

Anything more on, on the debtors' side of this?

MR. EVERT: Yes, your Honor. Michael Evert for the debtors

So the, the request here today is a little different than the requests that were made in the motion. So let -- let me -- let me try to unpack it as best I can.

THE COURT: Okay.

MR. EVERT: And there were two things requested in the motion. The, the first was an opportunity to be heard in the DCPF rehearing matter to which the debtors do not object.

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

MR. EVERT: We have -- we -- we have perceived since the very beginning that the Verus parties would be able to be heard in any matters before this Court to, in regard to the DCPF sampling issues or the DCPF production issues in their entirety, which we understood, maybe mistakenly, but which we understood that Verus had agreed to be "bound," is, is the term that they used. I would say that they've agreed to abide by what happens in that, those matters with the right and opportunity to be heard. So we have no objection to that.

The second is continuance. And yes, they did reach out to us and asked if we would agree to continue. We said no and we said no because, as the Court knows -- and Mr. Houston's not burdened with this history -- the Court knows we've been fighting this battle for a long time. So let me -- let's -- let's talk about the notice that they did receive and we'll see whether or not the Court views that as something that is, that

was appropriate.

So the Verus motions to quash that were transferred to this Court were on the agenda for the January omnibus hearing for a status conference. That agenda was served on the Verus parties, on all of the parties in the Verus matter. I do not know whether they attended that conference or not. Four days prior to the February 14th conference we sent an e-mail -- and this is part of Ms. Bennett, the exhibits to the Verus motions -- we sent an e-mail to the Verus parties that said:

"In addition to the extent Verus, its related Trusts, and its related Matching Claimants seek to prosecute their motions to quash or motions to proceed anonymously that have been transferred to Judge Whitley, we will ask the Court to set them for hearing for the same March 30 omnibus hearing."

Four days later, well, I guess, really, two days later, the agenda for that hearing, which included the Verus motions to quash on for status, was served on the Verus parties.

Then at the hearing on February 14th we inquired of the Court, we discussed the fact that a motion for reconsideration would be filed, as Mr. Houston said. The Court said, "Okay. Get it on file by March 9th," as Mr. Houston said, and we discussed with the Court the issue of the fact that the Verus motions to quash were still pending.

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

MR. EVERT: And, and I said to the Court, "So does the Court just want to hear it all on the 30th?" And the Court said, "Well, wait a minute. I thought there was a consent order" --

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

MR. EVERT: -- and reading from the transcript -- "entered in New Jersey that basically said these motions would stand or fall based on the way that they had been handled in the earlier DCPF hearing." I said, "That's what we understand, your Honor. However, the Verus parties have always continued to reserve all rights." And, and the reason I was able to call that to my mind when I was standing before the Court on February 14th was because I remember being perplexed when I got the last e-mail that's included in Ms. Bennett's motions where we agreed to this compromise and we agreed to the cases coming back to, to this Court and the last sentence was, "The Verus parties continue to reserve all their rights," and I thought that was odd in an e-mail where you'd agreed to compromise some rights. But the point was, didn't matter. I remembered it. I didn't want to misrepresent to the Court.

The Court on the phone said, "Hey, anybody from Verus on the line?"

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

MR. EVERT: There was no attendance from Verus, notwithstanding that the motion was up for status. So the Court says, "Well, why don't we put everything on the 30th, then, and just go ahead and knock it out and try to get us moving again." I said, "Well, we'll put them all on. We'll move to rehear on the sampling issue and then the Verus papers are there and the Court can, can seek whatever information from us that would be helpful for the Court."

So on the issue of notice, your Honor, if the question is did we send them a Notice of Hearing for their motion to quash on March 30 and if that's dispositive, we lose. If, conversely, the purpose of the monthly omnibus hearings and the, and the purpose of the agendas being served on all the parties and the purpose of calling a motion up for status is to inform all the parties what the Court intends to do with those motions, then, then adequate notice here, in fact, should have been given.

Now those were the two requests in the, in the motion. Today, Mr. Houston said that the Verus parties would like for the debtors to articulate their position. Now I'm not exactly sure what that means, but I'll -- I'll -- I'll give it a shot. And that is, as the Court saw from the motion and the e-mails that were attached to the motion, which I know how diligent the

Court is about reading everything, I, I will say in my years of practicing law I'm not sure I've ever had a dispute over a meet and confer, but I know I've never had a dispute over a meet and confer that occurred 100 percent in writing.

So this -- there were no other conversations other than the e-mails that was attached to the Verus motions. This is *de novo* review on steroids, okay? You, you can read the e-mails. You can read the order. We believed what we thought happened is that they had agreed that whatever happens in DCPF, "We'll stand by it and we want an opportunity to be heard." And we agree they should, in fact, be heard.

So our position is if they want to argue their motion to quash today in which, in which, presumably, all of these issues are preserved, please argue. If, conversely, they want to simply argue in the DCPF matter on sampling, please argue. But regardless of what happened before, all those are still before the Court and we don't, we're not, we're not arguing waiver of any of those. So if they want to argue them, argue them.

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

MR. EVERT: So at the end of the, end of the day, your Honor, our view is the Verus motions to quash should be up. They seemed to have indicated in past communications that what they're really worried about is the sampling issue. So they

may not have anything new to add on the motion to quash, but they may want to be heard on the sampling issue. All of that is acceptable to the debtors.

But we believe notice was appropriate, given the way these cases are run, and we'd like to get this process, well, to say we'd like to get this process moving seems to be so inadequate. We, we've been at this for a while and we're, we're trying to get to closure.

Thank you, your Honor.

THE COURT: Anything else?

Ms. Bennett?

MS. BENNETT: Yeah. Just very briefly, your Honor. Lynda Bennett from Lowenstein Sandler for the Verus Trusts.

To, to the Verus Trusts, it's a very simple question, which is if the debtors wanted to bind the Verus Trusts on the rehearing motion, why didn't they file something on March 9th and articulate, even if it is, as Mr. Houston said, a one-page document that says, "Everything we just said for DCPF and DCPF Trusts applies with equal measure to Verus and Verus Trusts," we would understand what we were responding to.

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

MS. BENNETT: The fact is March 9th came and went and there was no filing.

So referring back to the original motions to quash

that were fully briefed that were then resolved by the consent order bringing us here --

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

MS. BENNETT: -- where the Verus Trusts relied upon the 10 percent sampling agreement to talk about the, the motions to quash, that's old news. We now have a new motion here and we need to know what is the debtors' basis for walking back from that 10 percent agreement in relation to Verus. Again, it may be for exactly the same reasons that they're doing with DCPF. The simple thing to do on March 9th is to make that clear and we would have known and we would have put our arguments in and, and stated our positions.

Thank you.

THE COURT: So --

Yes. Counsel?

MR. WELLBROCK: Your Honor, good afternoon. Zachary Wellbrock from Anselmi & Carvelli on behalf of Verus.

Just to add very briefly, I would actually like to agree, to an extent, with two things that debtors' counsel said, one about agendas in the DCPF matter. I don't doubt, I have no position to doubt that agendas were circulated to counsel in that matter. However, they didn't make their way to the Verus parties who are not a party to that matter.

The other thing that counsel mentioned, correctly,

this was a discussion that happened exclusively via e-mail. It's all in writing, that is, until, up and until the e-mail that said, "We're thinking about filing a motion for reconsideration," after which, at the time that the motion actually was filed, we have a sudden cessation of all e-mail correspondence. It would have been very simple to e-mail that motion to us, put us on notice, paper it in the correct way, tee everything up. That never happened, your Honor.

Thank you. That's all I have.

MR. EVERT: Your Honor, just, just one point.

Sampling is raised in their motion to quash.

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

MR. EVERT: So, so I, I'm still confused about the procedural confusion. The fact that we are seeking rehearing in the oral ruling that the Court made in DCPF on sampling doesn't affect Verus' filings. They've already said, "We ought to sample." So if they want to argue about sampling, they're on record. Let's do it.

MS. BENNETT: Your Honor, just very briefly on that.

We detrimentally relied that we had an agreement on sampling and there's nothing in the record from Verus to address that. I mean, we're happy to put those papers in.

But you can't keep going back to the motion to quash that was fully briefed and the facts have changed since.

Thank you.

THE COURT: Right.

And I take it from the parties' perspective culling out the, the Verus hearing from the other motion to reconsider the, the Delaware proceeding if you will, that's not a, an answer to this. Everyone's afraid that I'll rule on the, the other and thereby set. Now these, these cases are getting complicated because of the amplification of a decision in one and on the other case and on the other parties within a case. So it, it's a little bit problematic there. I'm just wondering whether I ought to wait and hear requests for reconsideration itself.

Let me ask -- changing gears to, to the next motion, the Debtors' Motion for Reconsideration. I know there's opposition to it. Is there opposition to having a hearing on reconsideration or is it please don't change your mind?

MR. EVERT: There's two. One, yes. DCPF has filed a motion to adjourn --

THE COURT: Right.

MR. EVERT: -- on the basis of, essentially, that they didn't get to take Dr. Mullin's deposition.

THE COURT: Right.

MR. EVERT: And then they filed a separate opposition to the substance of the motion for rehearing. And look, I -- your Honor, I'll, I'll just say to the Court. In addition to

what you've just said -- and I'm -- I'm -- I'm not, you know, I'm not looking for a knife back here, people go, "Why'd you say that," but I'm going to say it, anyway -- it would -- if, if you're going to continue it as to Verus, it, frankly, makes sense from an efficiency perspective to continue it as to everybody and just do it all in April, if that's what the Court's inclined.to do. We think adequate notice was given here and we really think all these issues have been in front of the Court almost more times than we can count.

But, but if, if that's the Court's inclination, then I see no reason from a judicial efficiency perspective -- even though we're all here and all that good stuff --

THE COURT: Yeah.

MR. EVERT: -- I see no reason to go forward on one and not the other, in addition to the reasons the Court raised.

THE COURT: Well, I'm not sure what I'm inclined to do at the moment. The -- what I am inclined to do is try to make sure that I don't make an announcement right this moment that adversely affects the next two or three matters.

So the request by the Delaware Facility to strike, etc., are we ready to go on that one as well?

MR. GUERKE: We're ready, your Honor.

THE COURT: And you had an adjournment request in that motion as well?

MR. GUERKE: It's a motion to strike, your Honor, and,

in the alternative, to adjourn.

THE COURT: Uh-huh (indicating an affirmative response). Maybe I need to consider that and, and then give you an answer on, on both of them.

But why don't we just hold right there. I, I'd like to be able to take these in order, but one bleeds into the other.

So let's, let's stand down on the Verus motion and, and the Trusts' motion and go ahead and talk about the Delaware case.

MS. BENNETT: Thank you, your Honor.

MR. HOUSTON: Thank you, your Honor.

MS. HOBSON: Thank you, your Honor.

THE COURT: And that would be helpful to me.

For the other parties, my earlier question is there opposition to even having a rehearing as opposed to me reconsidering and changing the decision, anything you can illuminate on your positions there would be helpful, all right?

Counsel?

MR. GUERKE: Thank you, your Honor. Good afternoon. Kevin Guerke from Young Conaway on behalf of Delaware Claim Processing Facility.

Your Honor, you may recall from our last hearing, or at least my last time I addressed the Court that I had a scheduling conflict today --

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

MR. GUERKE: -- and I asked the Court if it could push off this hearing --

THE COURT: Right.

MR. GUERKE: -- till next week or, possibly, to the next omnibus hearing.

THE COURT: Right.

MR. GUERKE: I've rearranged my schedule to be here, given that the debtors have repeatedly attacked me personally. I thought it was important to show up and I don't want my personal schedule to be viewed in any way as my client trying to delay this matter.

THE COURT: Sure.

MR. GUERKE: And I'd be happy to answer any questions about my schedule, your Honor, or I'm prepared to move on.

THE COURT: I'll take your word for it. I'm -- and I'm sorry I couldn't accommodate it. We try to do what we can to make it possible to practice here. It's just, you can see the group. I'm, I'm sure we'd have a hard time finding a day where someone didn't have a problem, so.

MR. GUERKE: Yes, your Honor.

On to DCPF's motion to strike. The declaration of Charles Mullin. The motion to quash was filed in Delaware last July 25th. The debtors filed a response August 22, 2022.

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

MR. GUERKE: There was no declaration from Dr. Mullin, no declaration from any witness. Briefing was completed in the Delaware matter September 6th. The motions to quash were then transferred to this Court. A hearing was held November 30th. The Court made its sampling ruling. Again, the debtors didn't provide any evidence at that hearing or any witness at that hearing. Debtors didn't counter our motion to quash facts and at the end of the hearing the Court ordered a 10 percent sample granting our motion. Dr. Mullin was nowhere in sight.

The parties then turned to the sampling methodology to comply with the Court's order. The debtors consulted with Bates White and then on December 19th of last year debtors proposed a sampling protocol after consulting with Bates White. The debtors specifically proposed a stratified random sampling protocol that, according to the debtors, would be a representative and efficient sample that can be, that can provide a, a reliable cross-section of the data. Again, at that time nothing from Dr. Mullin. No declaration from anyone. No indication from the debtors that there was newly discovered evidence.

On March 9th, debtors filed a motion to reconsider, over three months after the Court's ruling. The motion was prompted by the, by comments that the Court made in a different

case. For the first time, debtors submitted a declaration from Dr. Mullin.

Attaching a new declaration to a motion to, to reconsider is improper. It's very clear that a party can't introduce new evidence or new arguments at the reconsideration stage in all the cases that we cite in our, in our papers, your Honor. The two cases that the debtors cite don't support submission of a declaration under these circumstances, either. The debtors have no legal support for what they're trying to do and there's no justification for waiting three months after the Court's ruling to lob in a new declaration. Dr. Mullin's generic opinion on sampling not being precise enough is not new evidence recently discovered. It could have been presented in response to the motion to quash and the Gallardo-García declaration that Dr. Mullin discusses at length was attached to the Trusts' motion to quash filed in July in Delaware.

Both Dr. Mullin and Dr. Gallardo-García are partners in Bates White. Bates White has been debtors' consultant since June 2020. Both were on the Aldrich payroll in July and in August during the briefing in the Delaware matter on the motions to quash. Both have worked on the sampling issue in this case. The debtors could have submitted a declaration last year, but they chose not to. They're precluded from doing that now after the fact.

So for that basis alone the entire declaration should

be struck.

The debtors argue there's new evidence since the November 30th hearing that necessitates rehearing. According to the, according to the debtors, the new evidence is the relatively modest costs in DBMP and the Court's February 9th comments, but Dr. Mullin doesn't discuss the February 9th hearing. That's not the basis for a new declaration. It's not evidence, anyway. Dr. Mullin only mentioned the $86,000 in invoices in a single paragraph, Paragraph 24, of his 30-paragraph expert opinion declaration. There's hardly any mention of the $86,000 in the declaration.

Turning to the invoices. There are two, your Honor, and I, I have copies. If, if you're interested in seeing them, I can -- I could -- I could hand them up, or I could just run through what I have to say.

THE COURT: Go ahead.

MR. GUERKE: The first invoice, your Honor -- it's attached to our papers, our opposition to the motion for reargument -- the first invoice is dated November 2, 2022. That's four weeks before the November 30th hearing. The second invoice is dated January 18th. We had a hearing in this case January 26th, a little more than a week after they received that, and we heard nothing about the, the invoices. We heard nothing about the relatively modest costs in DBMP, certainly nothing about a declaration. If the costs were really the

reason that prompted the declaration and the motion, why, why, why weren't they attached? I mean, we, we had to attach them. We don't need a 30-paragraph declaration from an expert to comment on two invoices, anyway. That's a contrived argument and completely inconsistent with the facts.

In truth, the Mullin declaration is not limited to just the invoices, as, as the debtors suggest, or the costs. Most of the Mullin declaration is dedicated to sampling and critiquing Dr. Gallardo-García. Neither have anything to do with the invoices. Dr. Mullin states in his declaration his credentials and then it's followed by an additional 23 paragraphs of opinions. He covers a variety of topics, all of which existed before the November 30th hearing. Dr. Mullin's opinions are summarized in four paragraphs in a section of his declaration titled Summary of Opinions. They don't say anything about the DCPF invoices. Dr. Mullin's position on sampling already existed. It's not new and it's mostly theoretical, but the alleged lack of precision in sampling is a new argument in this case. Debtors didn't argue that before in their papers or at the hearing. It also conflicts with the debtors' position, with the debtors' proposal that they made to us with a sampling protocol back in December.

As for Dr. Gallardo-García, Dr. Mullin talks about him in his declaration. That's not new, either. The declaration was attached to the filings in Delaware last July. The fact is

Dr. Mullin's declaration is extensive and not focused on the costs as, as the debtors suggest. Debtors' argument that the motion was prompted by the DBMP invoices or newly discovered evidence is simply not, not credible.

Dr. Mullin is also not qualified to testify about many of the subjects in his declaration. What's his area of expertise? What are his qualifications for the opinion he's trying to render? He's not qualified to give an opinion on the innerworkings of DCPF. He's attempting to, to critique arguments that we made November 30th and that the Trusts made November 30th and in our briefing in Delaware last, end of the summer and last fall, but he's not qualified to make legal arguments.

He also lacks personal knowledge as a fact witness. Commenting on what your partner said in a declaration in a different case is completely improper and Mullin's lay opinion on what someone else did or said is not helpful to the Court or relevant. He's not an expert in reading someone else's declaration and his opinions about the debtors' filing are irrelevant. The Court can read Dr. Gallardo-García's declaration attached to the Trusts' motion. The Court can read the motions and the pleadings in Bestwall and all that existed before November 30th.

This has gone on too long, your Honor. The, the motion for reconsideration never should have been filed. The

declaration is too late. It does not contain newly discovered evidence. The declaration lacks foundation and Dr Mullin lacks personal knowledge and is unqualified to give many of the statements that he makes in his declaration. The declaration should be struck. The last thing we want, your Honor, is discovery on discovery. We shouldn't have to take the deposition of an expert four months after the fact or ever as a non-party third-party motion to quash, but if the Court's inclined not to strike the declaration -- and we hope that the Court does strike the declaration -- we simply ask to depose Dr. Mullin and his, his declaration should be severely limited to Paragraph 24 and the DBMP invoices.

Thank you, your Honor.

THE COURT: Thank you.

Others?

MR. EVERT: I guess that's me, your Honor.

First, let me say --

THE COURT: Is there a joinder in that? I thought the Trusts had joined in with this one.

MS. MOSKOW-SCHNOLL: Your Honor, there is a joinder.

MR. EVERT: Oh, sorry.

THE COURT: All right.

MR. EVERT: Maybe it's not me.

MS. MOSKOW-SCHNOLL: I, I'm just going to let Mr. Guerke speak, though.

THE COURT: Okay.

MS. MOSKOW-SCHNOLL: I, I think he did a great job and I have nothing to add.

THE COURT: Okay. Thank you.

All right.

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

First of all, I want to say, to the extent that we personally attacked Mr. Guerke, we certainly didn't mean to do that. So my, my apologies for whatever that, that was.

So you asked, your Honor, to, for a little bit of discussion of this motion for rehearing versus motion for reconsideration.

THE COURT: Right.

MR. EVERT: You may recall that we, we brought this up to you at the February 14 hearing and, and I will admit we, we took from the Court your view that it, since no order had been issued, no, no, no final, final order had been signed, it was only an oral --

THE COURT: That's not really what I was saying.

MR. EVERT: Oh.

THE COURT: What I wanted to find out was -- I understand that everyone but the debtor and the affiliates and FCR don't want me to reconsider the order, not to change the 10 percent sampling requirement, specifically. What I'm trying to

figure out is are there people procedurally who are opposed to even talking about whether there's a motion to reconsider or a motion for rehearing, two different things, the substantive decision or whether or not grounds exist, and that's the part that I'm hoping you're about to get to, is that -- what I was trying to find out is who wants to be heard on what's, effectively, the next matter coming up and never mind about -- 'cause it strikes me we've got like three or four issues now teed up, one of which would be do we strike on, on the deposition; one's going to be whether we continue this to next month to have a hearing; one's going to be whether I should change the ruling at all; and then the last one is are grounds existent to decide to have a, a reconsideration/rehearing. And that's the one I'm really interested and the rest of the room and their perspectives. 'Cause I already have an opinion and I don't want to announce it until I, I get some, get everyone a chance to, to weigh in.

Quite -- kind of a different thing. I understand all versus 10 percent. Everybody's got an opinion on that. We've got an opinion on whether or not the Mullin's deposition or -- excuse me -- affidavit should be allowed or whether he should be deposed, but what I'm really wanting is that one little bit before I blab and say something that's going to affect the next matter.

So if there are some of you who want to weigh in on

the topic of is it appropriate to reconsider at all, we're moving into, what is it, No. 10, but I'd like to know that before I announce any rulings on the rest of that to this. If you've got other arguments on this motion, I'd be happy to hear them now, but that's the next thing I'm going to do, is ask the room if anyone else has anything they want to say about whether I should have a rehearing/reconsideration --

MR. EVERT: Well --

THE COURT: -- not whether I should change the decision.

MR. EVERT: I, I think I'm hearing you, your Honor, at least I'm going to try. And please, as you did a moment ago, correct me if I'm not going in the right direction.

So in our view, because there's no written order, this is a motion for rehearing.

THE COURT: Right. And I --

MR. EVERT: And the motion --

THE COURT: -- said as much at the last hearing.

MR. EVERT: You did. And, and in our view, in a motion for rehearing it, it's entirely in your discretion to get to a just result in the bankruptcy court.

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

MR. EVERT: The other side has argued that it should be judged under the motion for reconsideration standards.

THE COURT: Right.

MR. EVERT: Is -- am I, am I talking about what you want me to talk about or am I missing it still?

THE COURT: Yeah, but I'm still more interested what the other side is saying. The -- the rest -- the rest of it, Mr. Evert, what I'm really interested in as to the motion to strike aspects of this motion. Why don't you hit that first, then I'll hear what these other folks have to say about whether No. 10 should, we should have a hearing at all, and then I'll get your opinion on that.

MR. EVERT: Okay.

THE COURT: Okay?

MR. EVERT: Okay.

So the motion to strike aspect. The argument essentially is that they use the motion to reconsider, the other side uses the motion for reconsideration factors to say there's no -- there -- there -- we can't meet those factors for reconsideration and, therefore, the affidavit or declaration should be struck because it could have been entered earlier --

THE COURT: Right.

MR. EVERT: -- is essentially what the argument is.

What changed in this case, your Honor, were two things. The first was at the hearing where the Court ruled the 10 percent sample there were substantial arguments made about the quantity of the burden to DCPF in order to review the

individual --

THE COURT: Right.

MR. EVERT: -- fields. We now can quantify that burden. We could not until there was a hearing, although, although I'm sure Mr. Guerke is right. The invoices were issued to DBMP at a certain time. That was not transparent to us until the hearing in DBMP or counsel for DBMP stood up and said $86,000.

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

MR. EVERT: And that, to us, is not nearly as material as, in the scheme of this case, is not nearly as material as at least we understood it to be.

So that, to us, is a monstrously key piece of evidence that helps the Court quantify the burden, which the Court said on February -- on -- not February -- on, on November 30 the Court said, "This is important to me. This is one of the things I was looking at." I didn't realize they were going to have to look at those fields individually and the Court said, "That's new to me."

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

MR. EVERT: Now we believe it wasn't new, but that's a whole different issue, all right?

So that's No. 1.

And No. 2, one of the other standards is change in, change in the law. Well, the law hadn't changed, but the Court had the opportunity to look at this issue, not binding on the Court.

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

MR. EVERT: I certainly think it would be persuasive on the Court, but the Court had the opportunity to look at the issue and that was new. And that's what prompted us to file the motion for rehearing. We think we meet all the standards and as a result, the motion should be heard.

Now I -- I -- I don't want to get afield, you know. There, there are other arguments being made about Dr. Mullin's declaration. We believe those all go to the weight, you know. The question is whether he's, he can opine about this or opine about that or whether it's in his field of expertise. Dr. Mullin is here and we intended to, if we go forward, present him today on, on the sampling issue so the Court could get all the information that the Court would like to have.

We, we have taken the position since Day 1 that sampling is inappropriate in this particular context.

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

MR. EVERT: And I think we've made that very clear to the Court. So the idea that we couldn't give the Court

information on the sampling issue, it's an issue we've raised. It's an issue that's been out there. So the idea that we couldn't do that, to us, doesn't seem to make any sense.

Oh. And then on the last point.

Thank you.

On the last point, your Honor, this question of they never, they didn't have an opportunity to take his deposition. I think we're in agreement on this. Nobody ever asked. So, so from, from March 9 when the declaration was filed until, really, today, although we could count their reply, I guess, that was filed last Thursday. Maybe you can count that as an ask. Nobody ever asked.

So we, we feel like it's incumbent on a party before they complain about no depo to at least ask for one.

THE COURT: Okay.

MR. EVERT: Thank you, your Honor.

MR. GUERKE: Umm --

THE COURT: Anything else?

MR. GUERKE: Yes, your Honor.

We shouldn't have to take the deposition of an improper witness. The, the Court already ruled on this issue. And if we asked to take his deposition, they would surely be arguing that we waived our motion to strike. No harm no foul. "You already took the deposition. Let's just have the hearing. Let Dr. Mullin testify."

We also needed the, the Court's ruling on the motion to strike before we wanted to proceed in, into a deposition. If the declaration is stricken, there would be no need to take the deposition. We wouldn't have to waste our time and money doing it. And if it is allowed, in what capacity is it, is it allowed and is it chopped down at all? A, a deposition of Dr. Mullin is a burden. Another hearing is a burden. The, the debtors' motion for reconsideration is a burden. We're trying to minimize the burden and by -- we don't want to jump headfirst into more burden, more expense, more costs, more effort and we shouldn't be forced to do so by taking a possibly unnecessary deposition.

On the quantity of the burden and the change in law, the two, the two triggers to the motion for reconsideration, are, are not valid. They don't meet the standard. They don't come close.

To answer your, the question I think your Honor was posing, does, did the debtors meet the threshold, you know, as a threshold matter, do they have the ability to have a reargument motion, a reconsideration motion? The answer's no. No matter what standard you look at, they fail to meet it. They can't, they can't articulate it. The quantity of, of burden, how can they say they didn't know about the quantity of burden? They, they made a presentation. Their co-counsel made a presentation in DBMP and included extensive testimony from --

from -- I should say transcripts from the, from the other hearings. And if this evidence, if this is a monstrous key piece of evidence, why isn't it addressed more in Dr. Mullin's declaration? That's -- it's simply -- that's simply not the case.

And the change of law, your Honor, respectfully, your decision in one case isn't a change in law. It's, you know, different cases, different matters, different facts, different parties, different rulings. It happens all the time.

As far as the weight of the testimony, it, it's not a weight issue now. It's, it's an admissibility issue. It's a qualification issue. Maybe we talk about weight if we're having this discussion last September, last --

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

MR. GUERKE: -- October, last November, but not now. We already have a ruling. This is their, their time to, to ask for a re, rehearing and it should be denied.

THE COURT: Okay. Thank you

MR. GUERKE: And the -- and the -- I'm sorry -- and the declaration struck, your Honor.

THE COURT: All right. Thank you.

Let me repeat my prior inquiry -- I'm going to bleed over into No. 10 -- and just ask succinctly, if you can. I don't want to argue the entire motion for rehearing. I want to

talk about the question of parties who are opposed for any, whatever call you, reconsideration, rehearing, whatever you want to term it, of another bite at the apple, not the decision of whether we go 10 percent or whether we go full disclosure.

If you've got opinions on that, I would like to, to hear what you have to say. Because as I said, I've already got an opinion on that and I don't want to announce it. It's needed for this purpose, but I don't want to say anything more until you get a chance to weigh in on it.

Counsel?

MS. MOSKOW-SCHNOLL: Your Honor, Beth Moskow-Schnoll, Ballard Spahr, for the DCPF Trusts.

THE COURT: Okay.

MS. MOSKOW-SCHNOLL: And we absolutely don't think there should be a reconsideration of your prior ruling. I'm not sure I understand the question, though. I, I wasn't certain if you were asking whether or not your prior ruling or order was actually an order that could be reconsidered or whether it should be a rehearing.

Is that the question?

THE COURT: No --

MS. MOSKOW-SCHNOLL: Okay.

THE COURT: -- not quite. I know that there are differences of opinion on what that is. I, I said last month that I considered it to be a request for a rehearing since no

order had actually been entered.

MS. MOSKOW-SCHNOLL: Well, your Honor, I, I mean, I just pulled up the transcript and what you did is you said, "The motion to quash is granted." And in our world, my world -- but I'm not a bankruptcy lawyer -- that means that there has been a ruling which you said "and now the parties should work at trying to come up with a sample" in accordance with your ruling.

THE COURT: Right, but technically --

MS. MOSKOW-SCHNOLL: And the parties --

THE COURT: -- an order is not effective until it's docketed in, in writing.

MS. MOSKOW-SCHNOLL: But, but, your Honor, the parties relied on, on that ruling and the parties worked together to try to come up with a sample and they had reached accord on that.

THE COURT: Right.

MS. MOSKOW-SCHNOLL: And, and not only had, had they got to that point in reliance on that, but the Verus Trusts also relied on that in agreeing to come down to this Court. And, your Honor, we certainly relied on it thinking it was 10 percent and, therefore, we didn't have to participate anymore, which, no offense to your Court, I would be happier if I was still in Delaware.

THE COURT: I understand.

MS. MOSKOW-SCHNOLL: You know -- so I think, absolutely, it was treated by everyone concerned as though it was an order and you did say the motion was granted.

THE COURT: I did.

MS. MOSKOW-SCHNOLL: Okay. Thank you.

THE COURT: Yes, ma'am.

MS. RAMSEY: Thank you, your Honor. Natalie Ramsey for the Committee.

Your Honor, we also did object on the basis that we do not believe that the debtor meets the, the debtors meet the legal standard for reconsideration and we understand that that may be a slightly different question than we're hearing, but we think that the applicable legal standard should apply and what we've heard from the debtors is there are, essentially, three reasons that they talk about.

One is surprise or new information about the actual burden and cost. Frankly, you know, we join in the argument that has been made by Mr. Guerke. It is difficult to accept that argument in light of the extensive amount of litigation that has gone on over trust discovery and the information that is out there and if that was such a crucial aspect, then it should have been a much more focal point of the debtors' initial evaluation and Dr. Mullin's declaration.

With respect to a change in the law because of what has happened in DBMP, I also want to join but also expand a

little bit on that because we understand that the Court is interested in consistent rulings, but the fact patterns in cases often differ. And so, for example, in the Bestwall case there are two very distinct sample, claim file samples that are going to be pursued there. No decision has yet been reached in DBMP, but it's tending toward that.

In this case, what the parties have been discussing is one claim sample that both parties would use. Different facts drive different types of analyses. And similarly, it's our position that here the decision to limit trust discovery to 10 percent made a lot of sense and, and that it would expedite the ability to move forward in this case. It would put all parties on a much more even platform. And, and so again, we do not see that that is a change in the law because something was done under different facts in a different case. Legal standard is important when the same facts apply and the same law should apply, but here, we don't believe we have that.

And the third was Dr. Mullin's declaration. And we did not move to strike, but we did object in Footnote No. 5 on Page 8 of our objection to certain paragraphs of Dr. Mullin's declaration on the basis that we contend that the declaration is argument, that there are opinions that are expressed that are beyond his expertise, and, and on the basis that there are assumptions embedded within some of the statements that are portrayed as fact. And so we do believe that with respect to

Dr. Mullin's declaration if there was going to be testimony in the other cases, there was a declaration that was submitted in connection with the motion for trust discovery. Here, the debtors determined not to do that.

And again, we believe that having gone through the hearing, having had the Court reach the determination it did, we do object to rehearing on the motion.

THE COURT: Anyone else?

MR. GUERKE: May I add one point, your Honor?

THE COURT: Please.

MR. GUERKE: On the, on the quantity burden argument that the, the debtors didn't know, two points. One, they argued extensively about DBMP at the November 30th hearing, in their briefing. They were well aware what was going on in that case.

The other point I want to make, your Honor, is, as I stated earlier, the first invoice is dated November 2, 2022, like four weeks before. How can that be a surprise?

Thank you.

THE COURT: Okay. Let me, let me jump in at this point, folks, because I do have an opinion and it's no one's fault, but my own. So I'm going to just tell you that I think I've created some confusion based on the two cases and what I may have said in this one and then, of course, this issue got raised in DBMP. And I want to make sure that we have a good,

clean record and that the decisions are properly made, to the extent I have the ability to, to do so, and that the District Court on appeal gets a clean record.

So I have an opinion on the idea of whether we should have a rehearing on the issue of sampling and that backs you into the quash motions, to a certain extent. I think we should. The reason is that I think I've contributed to some confusion in all this and there is one fact that may not change anything. I'm not at all convinced that I need to change the ruling. I do think I need to have a rehearing of the motion and the bottom line is, as was pointed out in the DBMP case, and the parties were speculating as to what the Court knew and what the Court was thinking and why it was different between Aldrich and DBMP and all that.

First thought. It is not humanly possible to do the same thing in two different cases as much as they are alike.

I'm, I'm with you, Ms. Ramsey, on that.

You will notice that Judge Beyer and I always don't rule the same way and you folks learn from an experience in a case and the next case you give us a slightly different look and a different tactic, a different method, different motion. Judge Beyer's had, I guess she's on her third motion to dismiss. I haven't seen any. I seem to draw relief from stay motions, but whatever.

The cases are slightly different. I cannot humanly --

and three months ago, I guess it was, I had parties from this case showing up in the DBM [sic] case fearing that I was going to decide a motion in DBMP that would practically decide it in this case. Now if y'all want to, to really be bodacious, let's just consolidate both cases and we'll just have three-or-four day hearings at a time and we'll, we'll try to be more consistent.

But absent that, there are going to be differences in the decisions and I don't apologize for that. Just as you learn from the experience, I'm probably learning more. This is my first estimation exercise. I picked up Garlock after estimation. So I'm, I'm learning along the way and I'll have to change my tactics.

But the, the confusion I think I've created in this was what I said in this case and that was I didn't say quite enough, I guess. Several things were happening here and as the, I guess it's the Facility's response points out, there was a demonstrative given to me in the November hearing in this case and the demonstrative showed the, the details of what the narrative portions of these, these documents might reflect.

And that, I may have seen that earlier, Mr. Evert, but I don't recall seeing it in, in DBMP. That was the first time I, I think I've ever noticed that.

The second thing that was moving me in this case was Mr. Guy getting through to me on, on costs, seeing the charts

of how much these cases are costing, and watching in the two cases I have as we seem to go farther and farther from getting to a resolution with more litigation and more discovery and more expense and the thought that maybe we can start reining some of that in with sampling.

Now I won't argue about sampling or not at the moment, but the thing that I forgot in this case on November 30th was that in DBMP we had put in the PII scrubbing mechanism. That was not on my mind. I knew it. I just didn't think about it. Y'all, by the end of a day, y'all have me in knots, anyway. So I have to, have to say that that just didn't occur to me that we had done that. And that's why I think I need a rehearing. If for no other reason, is I want to know more about why sampling doesn't work for the debtors' side, why sampling wouldn't reduce the risk of just even human error missing some of that stuff. And so I'm inclined to have a further hearing on that.

With that being the case, I'm not inclined to strike the declaration of Dr. Mullin's yet, but you can raise that at the next hearing if it's here. And now the question is when do we do all that. But I'm inclined to hold that one until I hear all the arguments, the substantive arguments on whether I should adopt sampling.

So that's kind of the -- the -- where I've got it at this point.

That, then, begs the question of do we do the rehearing today or do we do it next month and that, I guess I'm announcing the Verus motion at this juncture.

I've read those e-mails that y'all had and it looks like you were ships passing in the night as to what you're saying. I can see from what the debtors said that they assumed that there -- if future days we were going to talk about reconsideration in, in this case, then, then we were, but I don't get the sense that Verus understood that was on the table. And again, I believe in full and fair hearings for all of you and I don't want to foreclose anyone from having that chance.

So I am inclined to grant the request for a continuance and do all of this at one time next month and get it all on the table. I think, if nothing else -- now maybe procedurally you might want to clean that up a little bit in terms of, of either a consent order or a stipulated order or one that just says the Court says that the Verus situation is going to be heard along with the Delaware Miscellaneous Proceeding and we're going to talk about all these issues next month. I don't know how you want to say it, but the, the bottom line is that if Verus thinks that they need more clarification of why they're not bound by this, well, you hadn't asked me to send you back to New Jersey. So I guess that's not part of the --

I look at you, Ms. Bennett and Mr. Houston. That's not part of the relief that you want at this juncture?

MS. BENNETT: Your Honor, that's correct. We know we're not going back to Jersey, but we will want the opportunity to supplement the record. If it's just a "me too" of what's been said against DCPF, we'll put in a supplemental submission --

(Extraneous talking on telephone)

THE COURT: Hang on one second.

Folks, we got someone who's, who's talking and has unmuted their receiver. Unless it's really spicy, we don't want to hear it.

Yes, ma'am. The -- I don't know. Y'all might be able to work out -- and we're about due for a lunch or a mid break, anyway -- y'all might want to talk about how we put the procedural deadlines for filing any additional documents.

Similarly, if you want to, on this end, depose Dr. Mullins, then you can get that done. And frankly, if there are other declarations that need to be filed, then we need to go ahead and set a time period for all that.

Do you think we might be able to take about a 10-or-20 minute break and, and get some of that squared up?

MR. EVERT: Let's give it a shot, your Honor.

THE COURT: Everyone good? Okay.

Yes?

MR. HOGAN: Your Honor, I don't mean to complicate the record at all, but I just -- and I know your earlier ruling on the motion to strike. I get that and --

THE COURT: Mr. Hogan, we're not getting it clear enough. Either get near a microphone or --

THE AUDIO OPERATOR: Yes, please.

MR. HOGAN: How about if I speak up? Is that fine? Can you hear me now? Can you hear me now?

THE COURT: Okay. Go ahead.

MR. HOGAN: Thank you.

So I understand your order on the motion to strike. I understand your order on anonymity. We're standing down. I get all that.

But what I'm hearing you say, effectively, is that we're going to have another hearing in April on the motions to quash. Our motions to quash have not been stricken. We filed motions to quash.

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

MR. HOGAN: They were opposed. And so I'm left in a bit of a quandary about whether I can or should participate in a hearing on my motion when it hasn't been stricken, but you've ordered on the anonymity that we can't participate. So I'm in a box and I need some, some guidance.

THE COURT: Well, the bottom line is, again, I don't

think it's a question of which motion. I think it's a question of can you participate in the case without identifying your clients and while I respect why your clients don't want to give that information up, I believe it's, it's legally required if they're going to be heard in these cases.

So, so bottom line -- and the exception being the District Court. They can make their own decisions about what they want to do -- but yes, I'm afraid they're going to have to identify if they want to be heard on those motions.

MR. HOGAN: Understood, your Honor. That's crystal clear. I appreciate that.

And so with regard to the motion to quash that the Matching Claimants filed --

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

MR. HOGAN: -- absent a motion to strike by any of the parties, what -- will the disposition of that motion be commensurate with the other determinations? Is that what I'm left to believe?

THE COURT: Well, the bottom line is we're not going to let the other parties prosecute your motion, but if the relief is the same, then the relief is the same. Whatever disposition is made probably will be applicable to every claimant in the case, so. Right? Okay.

MR. HOGAN: Thank you.

THE COURT: Let me know. I'm going to ask the clerk to, to sit in the courtroom.

THE COURTROOM DEPUTY: Uh-huh (indicating an affirmative response).

THE COURT: Or can they just buzz you at a number or something so you don't have to sit here? Okay.

All right. Well, we'll take a recess until you're ready to go.

MR. EVERT: Thank you, your Honor.

(Recess from 2:46 p.m., until 3:41 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat.

All right. What was arrived at during the break?

Mr. Hirst.

MR. HIRST: Your Honor, Morgan Hirst for the debtors.

Mr. Evert got to do all the fun argument. I got to announce an agreed schedule. So --

THE COURT: Okay. Well, you're one up.

MR. HIRST: -- exciting, exciting for me.

So, your Honor, we did, I think, reach an agreement. We have one tiny disagreement, which we'll raise at the end.

THE COURT: Okay.

MR. HIRST: It is a, maybe a lengthier schedule than your Honor originally may have suggested.

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

MR. HIRST: The other side would like to retain an expert to rebut, or attempt to rebut Dr. Mullin. We have no issue with that.

So June 6 is what we decided on for a hearing date --

THE COURT: Okay.

MR. HIRST: -- if that works for the Court and we --

THE COURT: It does.

MR. HIRST: -- -- I think, understand that it does. And then there's some interim dates in the middle.

First of all, here's what we understand and I think the other side understands what this hearing is. We want to make sure your Honor is -- is --

THE COURT: Okay.

MR. HIRST: -- agreeing with this. The, the issue at the hearing is whether or not there's going to be compliance with a subpoena in full; in other words, a response concerning all the claimants or all the Matching Claimants, or whether it's going to be a sampled compliance with a subpoena.

THE COURT: Okay.

MR. HIRST: That's what we understand the hearing to be about.

With that in mind, here's kind of some interim dates that we've agreed to. This is more for your Honor's

information, but we'll --

THE COURT: Please.

MR. HIRST: -- make it for the record.

The other side's going to retain an expert. They're going to submit some expert report or a declaration or some form of expert submission by April 25th. They will then have the opportunity to depose Dr. Mullin up until May 5th.

THE COURT: Okay.

MR. HIRST: We -- I'm sorry. They will then submit their brief. Verus will submit a brief in opposition to our motion for rehearing. DCPF can supplement their opposition to the motion for rehearing. Those briefs from the objectors to the motion for rehearing will be done by May 12th.

THE COURT: Right.

MR. HIRST: We will have the right to depose the expert they're going to put up and Mr. Eveland, who is the Verus President, I believe, who submitted an affidavit, and then, potentially, Mr. Winner, who's the DCPF President, though that's our area of disagreement, but those depositions have to take place by May 19th. And then our reply brief is due May 26th.

THE COURT: Okay.

MR. HIRST: And there'll be no -- yeah -- there'll be no further briefing after May 26th. One issue of minor disagreement for your Honor, I think, can decide today is

Mr. Winner.

So Mr. Winner is DCPF's President.

Is that right, Kevin?

MR. GUERKE: I believe he's COO.

MR. WINNER: Or COO. He submitted a declaration in, in support of their motion to quash --

THE COURT: Right.

MR. HIRST: -- last summer.

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

MR. HIRST: They have -- DCPF -- and Mr. Guerke'll, Mr. Guerke'll tell me if I got this wrong -- they've indicated they will at least rely on his old declaration. They may submit a supplemental declaration. We would like to take his deposition, regardless. DCPF has indicated they would only agree to a deposition of Mr. Winner in the event they provide a supplemental declaration. And so our view is if they're going to rely on his declaration, we should get to depose him whether it's a new declaration or an old declaration. That, I think, is the only issue in dispute.

THE COURT: Okay.

MR. GUERKE: That is in dispute, your Honor. Again, Kevin Guerke on behalf of DCPF.

We object to a deposition of Richard Winner at this point. The, the declaration was filed in July. The debtors

chose not to depose him and the motion to -- so the first we heard about the deposition, that they want to take his deposition after all these months was just now out in the hallway, but struck a, a, a reasonable balance that if we're going to supplement with new information, they'd have a chance to depose Mr. Winner on the new information, but don't get a chance to go back and, and start all over again.

DCPF is not a party to this case. You've heard us argue burden and expense probably more than you, you want to hear. We shouldn't have that burden magnified by additional discovery directed at us. I know we're going down on this path on sampling --

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

MR. GUERKE: -- and additional expert discovery, but, you know, your Honor, we had a sampling ruling. We thought it was great. The debtors proposed a sampling that worked for the debtors. The parties talked about it and reached agreement on a sampling protocol, at least a 99 percent agreement, and, and this all could be avoided with the 10 percent sampling, your Honor and -- but if we have to go down this path, it's going to be a, a longer, more drawn-out, burdensome, expensive process.

Thank you.

THE COURT: And what is it you want to ask him about, generally?

MR. HIRST: If they're going to rely on him -- they have his affidavit -- if they're going to rely on that affidavit on June 6th, we'd like a chance to ask him questions about his affidavit and the factual underpinnings behind it. If they're not going to rely on his affidavit on June 6th at the hearing or in their papers, we don't have any reason to bother.

THE COURT: So why now and not before?

MR. HIRST: Why now? 'Cause they're going to rely on him in a hearing in --

THE COURT: Okay.

MR. HIRST: -- two months where they're now going to have an expert who, presumably, is going to rely, in part, on some of Mr. Winner's factual underpinnings to his testimony. So that's, that's why.

THE COURT: Well, I got to tell you. What I was envisioning more was talking about the need for sam, for full-blown production versus sampling, not as much on, on burden to that. But if we're going to argue about burden, then, you know, if we're going to use him, that's fine. We probably need to, to depose him.

But from my vantage point, the questions I have, primarily, in my mind that made me want to have a further hearing is, given that we got down the road so far about sampling, why is that not sufficient? I mean, the bottom line

is what are the likelihood that, that, if we do full production, that there's a risk, now that I can remember that we were doing these hand scrubbing. But if we're going to fight about the, you know, how much other cost there is to the, the Facility, then yeah, I think I'd be inclined to, to allow it.

The question is how, how broadly are y'all planning to argue.

MR. HIRST: That's actually to my colleagues. 'Cause we're happy to take the issue of burden off of the table, essentially. If they're going to simply argue -- if the entire hearing's going to be about -- I mean, their basis for a sampling -- their, their motion requesting sampling was 'cause it was burdensome.

MS. MOSKOW-SCHNOLL: That is not the only reason.

THE COURT: No, no, no. It was also about confidentiality.

MR. HIRST: Confidentiality as well. No, those were the, the two underpinnings.

THE COURT: Right.

MR. HIRST: If we're going to continue to --

THE COURT: So are we arguing both, or one? That's, that's all I really think. 'Cause if we're arguing both, I think I'm setting a rehearing and if I'm reconsidering all of that, then fine. But the bottom line is the -- in that event,

I think we need to have full fact presentation there, declaration, and if we're going to get anything else from him, an amended declaration or whatnot, the chance to review. If we're just going to talk about what the debtors needs are and why they aren't satisfied, then I would say no.

MR. GUERKE: Your Honor, the, the, the same group of people have already taken Mr. Winner's deposition --

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

MR. GUERKE: -- in DBMP. He already went through that, that burden in time and effort. The declaration that we filed in this case is similar to declarations that were filed in past cases -- and I don't want to mix the cases up -- but --

THE COURT: Yeah. We've done too much of that.

MR. GUERKE: -- it's -- it's un -- it's unfair to DCPF as a nonparty to keep being dragged, dragged into more and more discovery and, and we, we object, your Honor. Unless we, unless we assert additional facts in a supplemental declaration, we ask that the Court not allow a deposition of, of Mr. Winner. His, his declaration has been out there and we've argued it for months and months.

THE COURT: If we're going to rehear burden, then I'm going to, to allow them to do the deposition, okay? All right.

I, I appreciate where he's come, where the Facility's coming from and this being nonparties, but they're very

interested nonparties and, and effectively, I think the information is very key to what we're doing here.

So I, I want a decent record that can go up, if it needs to be, and I believe we need him for that purpose, so.

All right. What else?

MR. GUERKE: Please.

MS. MOSKOW-SCHNOLL: Your Honor, I just wanted to put on the record that we, we believe you did enter an order and that this is procedurally improper.

THE COURT: Understood.

MS. MOSKOW-SCHNOLL: I just want to make sure that was on the record.

THE COURT: Overruled.

MS. MOSKOW-SCHNOLL: Thank you.

THE COURT: Okay.

Mr. Guy?

MR. GUY: Your Honor, we weren't asked about these dates, but we will totally work with them, of course.

On the sampling motion, I want to be practical about it. I know I want to move forward, but I think, realistically, we're not going to get progress until this is resolved.

So maybe we can continue it until after this hearing. I hate to say that because my predictions have proven to be true again, but that seems like the sensible thing to do. But I defer to the Court entirely on that.

THE COURT: Anybody else want to weigh in on that?

Ms. Ramsey.

MS. RAMSEY: Thank you, your Honor. Natalie Ramsey for the Committee.

Your Honor, we do think that it would be most productive to have the advantage of your Court's ruling and then to have a little time to continue to meet and confer with the debtor. As we indicated, we were very close before and I think it, depending on how the Court rules, we could either have a, a deal more quickly or more slowly. But I think, I think it's worth continuing the dialogue after the Court rules on this motion.

THE COURT: Well, if at all possible, I'll try to rule from the bench on that and then let the order follow along behind.

What would you have in mind in terms of continuing the motion? Are you wanting to move it to July or are you wanting to -- we're early in June, anyway. We were the 8th and I -- that was my next question, was are we still doing the omnibus day on the 8th? We're, we're moving everything to the, to the 6th and hoping for the best.

MR. EVERT: That would be our suggestion, your Honor.

THE COURT: I'm sure the clerk's told you. I've got a summary judgment motion the next morning in another case. So if we run long, then I may have to have you wait until the

afternoon of the 7th to finish. But we'll try to do what we can.

So about the FCR's motion, July?

MR. GUY: Whatever the next date would be, your Honor --

THE COURT: What is the next day?

MR. GUY: -- for the Court's convenience.

THE COURT: The 14th of July.

THE COURTROOM DEPUTY: Yeah, July 14th.

MR. GUY: That works for us, your Honor.

THE COURT: Okay.

MR. GUY: Thank you.

THE COURT: All right. So ordered.

What else?

MR. GUY: Long as it doesn't go past September.

THE COURT: Yes, Counsel. Mr. Guerke?

MR. GUERKE: Your Honor, I've already stood too many times today and I apologize.

But on the Winner declaration, two points. One, his declaration was already admitted into evidence without an objection back at the November 30th hearing. And two, your Honor, if you're still going to allow for a, a deposition, we ask that the deposition be limited to new grounds and not go over topics that have already been discussed with the witness in prior depositions.

THE COURT: In the DBMP case?

MR. GUERKE: Yes, sir.

THE COURT: I can't do that. That's different parties, different cases.

Overruled on those. I, I don't fault you for trying. I know they're similar, but all I would say is try to learn from the other case and use as much of that as we can. You could simply ask him questions, "Do you have any differences in your opinions than those expressed in the DBMP deposition," and maybe that would speed it up some, but --

All right. Anything else for today's purposes?

(No response)

THE COURT: Well, I would -- thank you for your negotiations on trying to get this squared back up. Unless -- I told the law clerk, "Well, when I miss one, I really hit the hornet's nest hard." And so I'm sorry to the extent that I didn't remember the other. I think we had some other things we would need to talk about, anyway.

And I guess the more encouraging thing is I used the time while you were negotiating to start signing Aldrich fee orders. So there is some positive benefit for what had transpired.

And for those of you who were like witnesses and the like coming in expecting the hearing on this, I'm sorry we couldn't accommodate you today. This is a very important issue

and of great magnitude and it's going to affect discovery by other parties as well, if only by the good for the goose good for the gander arguments. So I think we need to get this one right.

And I'm sorry I've caused as much delay as I have here, but rather than having you speculate as to what the Court was thinking I thought it best just to tell you what the, what the rub was and hopefully, we'll figure out whether we really need, whether sampling's appropriate or whether full-blown discovery is appropriate and get that behind us, okay?

If nothing else, travel safely.

We're in recess.

MR. EVERT: Thank you, your Honor.

MR. GUERKE: Thank you, your Honor.

(Proceedings concluded at 3:56 p.m.)

CERTIFICATE

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

/s/ *Janice Russell* April 4, 2023

Janice Russell, Transcriber Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing REQUEST FOR CERTIFICATION OF DIRECT APPEAL TO THE COURT OF APPEALS OF ORDER DENYING MR. ROBERT SEMIAN AND FORTY-SIX OTHER MRHFM PLAINTIFFS' MOTION TO DISMISS was filed in accordance with the local rules and served upon all parties registered for electronic service and entitled to receive notice thereof through the CM/ECF system.

Respectfully submitted this the 11th day of January 2024.

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