

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

IN RE: ) Misc. No. \_\_\_\_\_  
 )  
ALDRICH PUMP, LLC, et al. ) Underlying Case: 20-BK-30608 (JCW)  
 ) (U.S. Bankr. W.D.N.C.)  
Debtor. )

**THE MANVILLE TRUST MATCHING CLAIMANTS’ MOTION TO QUASH OR  
MODIFY SUBPOENA, OR ALTERNATIVELY FOR PROTECTIVE ORDER**

Movants The Manville Trust Matching Claimants, by counsel, submit this Motion to Quash or Modify Subpoena, or Alternatively for a Protective Order. The subpoena prompting this Motion, served by Aldrich Pump LLC and Murray Boiler LLC (collectively, “Aldrich”) targets a wealth of personal identifying information belonging to thousands of asbestos victims who have long since settled their claims against Aldrich.

Rule 45 requires quashing subpoenas that either target “protected” matters or subject a person to an “undue burden.” FED. R. CIV. P. 45(d)(3)(A)(iii)–(iv). Now come 8,022 asbestos victims whose highly personal information is sought (collectively, “the Matching Claimants”)<sup>1</sup>, as nonparties, by and through the undersigned counsel,<sup>2</sup> to move this Court under Rule 45 to enter an

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<sup>1</sup> The Certain Matching Claimants are a discrete subset of those claimants in the Trusts’ databases whose injured party datafields or related claimant datafields match (or may match) any (a) nine-digit SSN and (b) last name associated with a Aldrich Claimant in Aldrich’s database and who did not file their Trust claims pro se. *In re Aldrich LLC*, No. 20-30608, Bankr. W.D.N.C., Dkt. 1240 (“Order Granting Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response”), at 5.

<sup>2</sup> A list of the law firms acting as counsel to the Matching Claimants in this proceeding are attached as Ex. A.



order quashing (or modifying) the subpoena served on the Manville Personal Injury Settlement Trust (“Manville Trust”) and its Virginia-based administrator Claims Resolution Management Corporation (“CRMC”).<sup>3</sup>

## BACKGROUND

### Asbestos Bankruptcy Trusts

Asbestos diseases like asbestosis, lung cancer, and mesothelioma afflict thousands of Americans who have inhaled asbestos dust. Most pernicious is mesothelioma, an “invariably fatal cancer of the lining of the lungs or abdomen associated with exposure to asbestos.” *Silver v. Johns-Manville Corp.*, 789 F.2d 1078, 1080 (4th Cir. 1986). To balance the need for “just and comparable compensation” for asbestos victims versus the “overwhelming liability” faced by struggling asbestos-producing companies, Congress authorized “asbestos bankruptcy trusts” under 11 U.S.C. § 524(g). *In re Flintkote Co.*, 486 B.R. 99, 131, 132–33 (Bankr. D. Del. 2012), quoting H.R. Rep. No. 103-835, Section 111, at 41. As a general matter, the trust assumes the liability of an asbestos tortfeasor and must use its assets to pay future claims and demands. *See In re Grossman’s Inc.*, 607 F.3d 114, 126 n.12 (3d Cir. 2010).

To make a claim, an asbestos victim must submit a wide array of personal information to a trust. For example, the Manville Trust may require, depending on the disease level claimed, “the submission of X-rays, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence....” Ex. C, Manville Personal Injury Settlement Trust, 2002 Trust Distribution Process, May 2021 Revision, at 13. *See also In re Western Asbestos Co.*, 416 B.R. 670, 709 (N.D. Cal. 2009) (claimants possessed a legally protected privacy interest in their claim information, which “in large part includes medical records,

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<sup>3</sup> The challenged subpoena is attached as Exhibit B hereto.

financial details, and other information of a highly personal nature”). The Manville Trust’s “distribution procedures” (“TDP”) also require evidence of meaningful and credible exposure to asbestos products made by each trust’s predecessor-tortfeasor. *See* Ex. C, at 14. Exposure evidence includes information like a claimant’s occupation(s), testimony, and/or affidavits identifying relevant asbestos-containing products. *Id.*

The Aldrich subpoenas at the heart of this miscellaneous action target a wealth of confidential, sensitive, personal identifying information, belonging to thousands of Matching Claimants, mesothelioma victims, who have long since settled their claims against Aldrich and its predecessors.<sup>4</sup> Aldrich cannot demonstrate a basis for needing this discovery.

#### **Prior History of Trust Subpoenas**

This Subpoena is the third in a series that asbestos-related companies, all of whom are named debtors in bankruptcy in the Western District of North Carolina, have served on asbestos liability trusts. and the third time that many of the Matching Claimants have sought to quash them. Aldrich’s counsel in its bankruptcy case are counsel to the debtors in a trio of bankruptcy cases pending in the Western District of North Carolina: *In re Bestwall, LLC*, 20-BK-30080 (Bankr. W.D.N.C.); *In re DBMP, LLC* 20-BK-30080 (Bankr. W.D.N.C.); and *Aldrich*. In each case, the debtor has undertaken the same discovery tactics, and has served a nearly identical subpoena on asbestos liability trusts in Delaware and Virginia, seeking nearly identical identifying data.

In May 2021, then representing Bestwall LLC, a successor to asbestos liability like Aldrich, Debtor’s counsel served a similar subpoena on the Manville Trust. At the same time, Bestwall served the same subpoena on nine Delaware asbestos liability trusts (“the Delaware Trusts”). In

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<sup>4</sup> Aldrich’s predecessors include former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Old IRNJ”), and the former Trane U.S. Inc. (“Old Trane”).

both the Virginia and Delaware cases, thousands of asbestos victims joined in a motion to quash. *In re Bestwall, LLC*, Misc. No. 1:21-mc-00014-RDA-MSN (E.D. Va.); *In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del.).

In the Delaware *Bestwall* case, the district court granted the motion to quash the substantively identical discovery sought by Bestwall LLC. *See In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del. Jun. 1, 2021), *Memorandum and Order Granting Motion of Third-Party Asbestos Trusts to Quash or Modify Subpoenas* [Docket Nos. 29 and 30]. The Court found that the discovery sought in the subpoena was overbroad and did not adequately protect the privacy of the claims data. The Court further held that any revised subpoena must: (i) limit the production of Trust Claimants' data to a random sample of no more than 10% of the mesothelioma victims at issue; (ii) authorize the Delaware Claims Processing Facility, or a neutral third party, to anonymize the Trust Claimants' data before producing it, and (iii) include additional protections consistent with the "Access Decision," *In re Owens Corning*, 560 B.R. 229 (Bankr. D. Del. 2016).<sup>5</sup> *Id.*, Dkt. 33. After the Motion to Quash in Delaware was granted, Bestwall withdrew its subpoena to the Manville Trust.

Bestwall appealed the granting of the Motion to Quash to the United States Court of Appeals for the Third Circuit, *In re Bestwall, LLC* (No. 21-2263). Oral argument was held on March 15, 2022.

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<sup>5</sup> In the Access Decision, the Delaware Bankruptcy Court held that 1) access would be granted solely for a three-month period, after which the exhibits had to be destroyed, 2) the requesting parties were prohibited from sharing the identity of individuals by name or other identifying mean, and 3) an independent facilitator would be appointed to oversee production of the exhibits and insure protection of privacy data. *Id.* Bestwall has appealed the decision to the Court of Appeals for the Third Circuit.



Next, in *DBMP*, successor entity debtor DBMP—represented by the same counsel—served a similar subpoena on the Manville Trust and the Delaware Trusts, seeking similar information. Again, the matching claimants filed motions to quash the subpoena, on largely the same grounds as in *Bestwall*. *In re DBMP LLC*, No. 22-139-CFC (D. Del. Dkt. 1); *In re DBMP, LLC*, 1:22-mc-00009-LMB-TCB (E.D. Va. Dkt. 1). In the Eastern District of Virginia, the court granted Debtor’s motion to transfer the matter back to the United States Bankruptcy Court for the Western District of North Carolina (“the Bankruptcy Court”), where the Motion to Quash was denied. The Delaware District Court has not yet ruled on the Motion to Quash.

Finally, now, in this case, successor entity debtor Aldrich has filed the third version of the Subpoena.

The only district court to consider a Motion to Quash this onslaught of subpoenas targeting victims of asbestos-induced mesothelioma has granted the Motion to Quash on the grounds that the subpoena was overbroad and failed to adequately protect claimant data. *Bestwall*, Dkt. 29, 30, 33]. This Court should grant the same motion, on the same grounds.

### **The Subpoenas**

Like the debtor in *Bestwall*, Aldrich moved the Bankruptcy Court to estimate its liability for certain current and future mesothelioma claims. It seeks evidence to support its theory that the dollar amount of its estimated liability for the present and future asbestos personal injury claims is lower than the dollar amount it paid in settlements prior to its bankruptcy.

To obtain this evidence, Aldrich moved the Bankruptcy Court (the “Subpoena Motion”) for authority to subpoena electronically stored data concerning approximately 12,000 mesothelioma victims that Aldrich’s predecessors resolved claims with through settlement or verdict prior to its bankruptcy. Ex. D (Subpoena Motion). The Subpoena Motion was directed

to, and sought data from DCPF, the Delaware clearinghouse for claims against the Delaware Trusts; the Manville Trust; and Verus Claims Services, LLC (“Verus”), a New Jersey entity that processes claims for eight other trusts.<sup>6</sup> *Id.* ¶¶15-17.

On July 1, 2022, the Bankruptcy Court entered an order granting the Subpoena Motion, thereby allowing Aldrich to serve the subpoenas it requested (the “July 1 Order”). Ex. E. In granting the Subpoena Motion, the Bankruptcy Court did not consider or address the requirements of the Delaware Court’s decision in *Bestwall*. Nor did it require Aldrich to limit its requested production to a random 10% sample of the mesothelioma claims at issue and to incorporate meaningful anonymization. The July 1 Order, like the Subpoena Motion, did not specify the authority under which Aldrich could issue subpoenas. *Id.* ¶3.

Pursuant to the Aldrich Subpoenas, Aldrich’s estimation expert, Bates White LLC (“Bates White”), is to create a “matching key.” *Id.* ¶6. The matching key is a comprehensive, searchable list of approximately 12,000 claimants who asserted mesothelioma claims against Aldrich or its predecessor. *Id.* For each claimant, the matching key lists the claimant’s last name and Social Security number (“SSN”) and assigns a numerical identifier. *Id.*

Bates White is to deliver the matching key to Manville, which is required to notify counsel for Trust Claimants on the matching key that the relevant Trusts have received a subpoena and that their data will be produced unless they file a motion to quash. *Id.* ¶9. If they do not file a motion to quash, Manville must produce to Bates White the following confidential data for each Trust Claimant on the matching key:

- A. Claimant Pseudonym;
- B. Claimant’s law firm (with email and address of contact person);

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<sup>6</sup> The Subpoena is also directed at Paddock Enterprises, LLC (“Paddock”), another chapter 11 debtor seeking to resolve current and future claims relating to asbestos exposure.

- C. Date claim filed against Trust;
- D. Date claim approved by Trust, if approved;
- E. Date claim paid by Trust, if paid;
- F. If not approved or paid, status of claim; and
- G. All exposure-related fields, including:
  - i. Date(s) exposure(s) began;
  - ii. Date(s) exposure(s) ended;
  - iii. Manner of exposure;
  - iv. Occupation and industry when exposed; and
  - v. Products to which exposed.

*Id.* ¶10.<sup>7</sup>

Once produced, Bates White may use the data and matching key to (i) “match and combine the [Trust-produced data], on a claimant-by-claimant basis, with data from [Aldrich’s] database or other sources” and (ii) “provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the [Trust-produced data] with and analyze individual claims.” *Id.*, ¶ 12(b).

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<sup>7</sup> Unlike in *Bestwall*, the Aldrich Subpoena does not expressly seek the Trust Claimants’ personal information (e.g., SSNs, names, addresses). This purported change is of little practical difference. The “exposure-related fields” Aldrich seeks may still contain personally identifiable information. Regardless, because Manville must match the Trust Claimants’ names and SSNs to names and SSNs provided by Aldrich prior to production, Manville is releasing claimant identifying information. Ex. B ¶¶7-8.

### **STATEMENT OF GROUNDS AND AUTHORITIES**

A district court where subpoena compliance is required “must quash or modify” a subpoena that [1] requires disclosure of privileged or other protected matter, or [2] subjects a person to undue burden. FED. R. CIV. P. 45(d)(3)(A)(iii)–(iv). The Subpoena requires production of the data here in the District of Columbia; accordingly, this is the proper forum for such a motion. *See, e.g., Guice v. FTC*, No. 20-mc-87 (CKK), 2021 U.S. Dist. LEXIS 69036 (D.D.C. Apr. 9, 2021) (denying motion to quash for lack of jurisdiction where production was in another district); *Adams v. Symetra Life Ins. Co.*, No. 19-MC-401-EFM-ADM, 2020 U.S. Dist. LEXIS 16253 (D. Kan. Jan. 28, 2020) at \*7 (same); *Whiteamire Clinic, P.A. Inc. v. Cartridge World N. Am., LLC*, No. 1:16CV226, 2021 U.S. Dist. LEXIS 259825 (N.D. Ohio Oct. 27, 2021) (same). A party issuing “a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” FRCP 45(d)(1). A person affected by a subpoena, whether a nonparty or party, can move to quash or modify, or for a Rule 26(c) protective order.

Whether a subpoena imposes an “undue burden” depends on the specific facts of the case and courts “ ‘must balance the interests served by demanding compliance with the subpoena against the interests furthered by quashing it.’ ” *Dell Inc. v. Decosta*, 233 F. Supp. 3d 1, 3 (D.D.C. 2017), quoting *In re Ex Parte Application of Kleimar N.V.*, No. 16-MC-355, 220 F. Supp. 3d 517, 2016 U.S. Dist. LEXIS 165297, 2016 WL 6906712 at \*3 (S.D.N.Y. Nov. 16, 2016) (quoting *Anwar v. Fairfield Greenwich Ltd.*, 297 F.R.D. 223, 226 (S.D.N.Y. 2013)).

Any person with a personal right or privilege in subpoenaed information can challenge the subpoena. *Albert v. Clark Constr. Grp. (In re Shelton Fed. Grp., LLC)*, Nos. 15-00623, 17-10026, 2018 Bankr. LEXIS 2492, at \*4 (Bankr. D.D.C. Aug. 20, 2018); *Singletary v. Sterling Transport*

*Co., Inc.*, 289 F.R.D. 237, 239 (E.D. Va. 2012), quoting *U.S. v. Idema*, 118 F. App'x 740, 744 (4th Cir. 2005); *Vengosh v. Jacobs Eng'g Group, Inc.*, 2020 WL 5709256, at \*4 (E.D.N.C. 2020) (collecting cases and finding because third party movants assert a right or privilege, movants have standing); WRIGHT & MILLER, FED. PRACTICE & PROCEDURE § 2463.1 (3d ed. 2016). Federal courts recognize a personal right in records “likely to contain highly personal and confidential information” like Social Security numbers, legally confidential medical records, and family member information. *Singletary*, 289 F.R.D. at 240; accord *Barrington v. Mortgage ID, Inc.*, 2007 WL 4370647, at \*2 (S.D. Fla. 2007); *Richards v. Convergys Corp.*, 2007 WL 474012, at \*1 (D. Utah 2007); *Beach v. City of Olathe*, 2001 WL 1098032, at \*1 (D. Kan. 2001).

As with all civil discovery, the scope of a subpoena is limited by Rule 26’s proportionality principles. FED. R. CIV. P. 26(b)(1); *Watts v. S.E.C.*, 482 F.3d 501, 507 (D.C. Cir. 2007); *Dep’t of the Treasury v. Pension Benefit Guar. Corp.*, 301 F.R.D. 20, 25 n.3 (D.D.C. 2014) (holding that relevancy standard remains the same for subpoenas of non-parties); *Virginia Dep’t of Corrs. v. Jordan*, 921 F.3d 180, 188-9 (4th Cir. 2019) (collecting cases); *Vengosh*, 2020 WL 5709256, at \*3 (concluding when evaluating subpoenas issued to third parties, courts “will give extra consideration to the objections of a non-party, non-fact witness in weighing burdensomeness versus relevance.”).

A potential invasion of privacy—in itself grounds to quash under Rule 45(d)(3)(A)(iii)—also affects whether a burden is “undue.” *Jordan*, 921 F.3d 180, 188-9 (collecting cases). “A nonparty should not have to do the work of tailoring a subpoena to what the requesting party needs.” *Id.* “[T]he requesting party should have done that before serving it.” *Id.*

## ANALYSIS

The underlying bankruptcy and litigation from which the subpoena stems have an unquestionably complicated procedural history. But resolution of the instant motion turns on straightforward application of the Civil Rules and settled decisional law. The Court must quash (or modify) the subpoena because it foists an undue burden onto both the Manville Trust and the Movants. Aldrich has not come close to the requisite showing of need necessary to outweigh the grave confidentiality concerns inherent in the subpoena.

***I. A Disproportionately Undue Burden: Aldrich Needs Only a Small Percentage of Matching Claimant Information, yet it Seeks a Sweeping Amount of Confidential Information.***

Federal law categorically recognizes that a subpoena that subjects “a person” to undue burden “must” be quashed or modified. FED. R. CIV. P. 45(d)(3)(A)(iv). Independently, a subpoena that requires disclosure of “protected matter” like social security numbers, full name, family information, and dates of birth “must” be quashed or modified. Fed. R. Civ. P. 45(d)(3)(A)(iii).

Rule 45 works in tandem with Rule 26’s proportionality requirement, and the substantive bases for denying discovery are similar. *Jordan*, 921 F.3d at 188-90; *Singletary*, 289 F.R.D. at 241; *In re ThompsonMcMullan, P.C.*, 2016 WL 1071016, at \*4 (E.D. Va. 2016); *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 203 F.R.D. 525, 529 (D. Del. 2002). A court balancing undue hardship against the need for requested information may consider the relevance of the materials, the requesting party’s need for the information, the confidentiality of the information sought, the breadth of the request, the recipient’s nonparty status, and the burden imposed. *Jordan*, 921 F.3d at 189–90; *Singletary*, 289 F.R.D. at 241; *In re ThompsonMcMullan, P.C.*, 2016 WL 1071016, at \*4.

Even if the information sought is relevant, discovery is not allowed where no need is shown, or where compliance is unduly burdensome, or where the potential harm caused by production outweighs the benefit. *Jordan*, 921 F.3d at 188–90; *Singletary*, 289 F.R.D. at 241. The burdens of a subpoena are not just financial; for example, “a subpoena may impose a burden by invading privacy or confidentiality interests.” *Jordan*, 921 F.3d at 189.

Here, Aldrich has failed to show that the sweep of confidential information sought is proportional to its purported needs.

***II. Too Loose a Fit: Aldrich’s “Need” for the Data does not Comport with its Legal Theories. Only a Small Percentage of the Confidential Information Sought is Relevant, and it is Aldrich’s Unmet Burden to Identify that Percentage.***

Aldrich claims to need a vast amount of information showing “alternative exposures,” *i.e.*, claimants’ exposures to asbestos for which its predecessors were not responsible. *See In re Aldrich LLC*, No. 17-31795, Bankr. W.D.N.C., Dkt. 1237, 8–10. Under Aldrich’s new theory-of-the-case, it overpaid in the tort system because the withholding of alternative exposure evidence infected its assessment of case values.

The Manville Trust was not created as an information clearinghouse for potential bankruptcy petitioners. It is up to Aldrich, as the party seeking confidential and settlement-related information, to make a well-tailored, particularized showing of relevance before that information is produced. *See Jordan*, 921 F.3d at 189 (“A more demanding variant of the proportionality analysis” applies in assessing undue burden *vis-à-vis* a nonparty); *id.* (“The information sought must likely (not just theoretically have marginal benefit in litigating important issues.”).

Without revealing specific information uniquely in its control—the claimant cases for which it depended on asbestos-exposure information—Aldrich falls far short of the heightened

showing of relevance and need required to command production of confidential information. The Court should quash the subpoena.

***III. Heavy Confidentiality Concerns: Data Security, and a Chilling Effect on Settlements.***

The Manville Trust subpoena solidifies Aldrich’s plan to combine extraordinarily sensitive, separately maintained claims files of the Manville Trust (along with the ten Delaware trusts’ claims files) and pool them into a *single, consolidated* database. Aldrich’s plan presents myriad confidentiality concerns: the dangers of data aggregation, the particular susceptibility of the Moving Claimants, a potential chilling effect on Congressionally-approved trust claims, and the particular unsuitability of Bates White as a recipient of confidential data.

The risk that such a merged database, once created, could be used in a manner detrimental to the privacy interests of movants, particularly if it is misappropriated or inadvertently disclosed (*e.g.*, because of a data breach), is profound. “[T]he compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information,” and a “computerized summary located in a single clearinghouse of information” warrants particular scrutiny. *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 763-64 (1989). Aggregation of public data presents privacy and security concerns, because the “unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse.” *United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring); *see also U.S. Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994) (“An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”); *Havemann v. Colvin*, 537 F. App’x 142, 147–48 (4th Cir. 2013) (recognizing privacy interest in nondisclosure of



information, even if otherwise public, in a format that could be combined with other available data to identify specific individuals).

Centralizing the Matching Claimants' private data into a single database, regardless of security measures, creates a powerful analytical tool that may be abused to discern patterns and reveal insights about individual claimants on subjects unrelated to the subpoenaed purpose. The aggregation of this data puts more Trust data (in both the number of claimants and the amount of data per claimant) at risk of inadvertent disclosure or misappropriation, and amplifies the potential consequences of a single data breach. The theft of a single file could compromise personal data concerning more than 12,000 people.

#### ***IV. Sampling is more than sufficient for Aldrich's needs.***

As the *Bestwall* court held, sampling is necessary to protect the Trust Claimants' data and appropriate for Aldrich's estimation proceeding and the July 1 Order's "Permitted Purposes." *In re Bestwall, LLC*, Case No. 1:21-mc-00141 (D. Del.) Dkt. 29, 33. Sampling is a widely utilized litigation technique. As the Manual for Complex Litigation recognizes, "[a]cceptable sampling techniques, in lieu of discovery and presentation of voluminous data from the entire population, can save substantial time and expense, and in some cases provide the only practicable means to collect and present relevant data." MANUAL FOR COMPLEX LITIG. § 11.493 (4th ed. 2020). For these reasons, courts routinely encourage sampling. *See, e.g.*, June 17, 2021 Order (*Bestwall* Dkt. 33); *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454–55 (2016) (sampling to establish hours worked in a class action lawsuit); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Porter Hayden Co.*, 2012 U.S. Dist. LEXIS 23716, at \*6 (D. Md. Feb. 24, 2012) (limiting disclosure to a random sample of 10% of the claimants at issue); *Fed. Hous. Fin. Agency v. JPMorgan Chase & Co.*, 2012 U.S. Dist. LEXIS 173768, at \*5, \*7-10 (S.D.N.Y. Dec. 3, 2012) (approving 4% sample to establish

fraud liability); *In re Garlock Sealing Techs.*, 504 B.R. 71, 95 (Bankr. W.D.N.C. 2014) (adopting estimation approach based on questionnaire responses from a claimant sample).

There is no need for Aldrich to receive the protected data of approximately 12,000 Trust Claimants to undertake this analysis, especially when balanced against the need to protect the sensitive, confidential information of 12,000 sick, elderly people. Sampling will not modify the substance or quality of the data Aldrich receives--only decrease the volume. Aldrich would be able to discern the exact same patterns from a sample as it would from data for the entire claimant population.<sup>8</sup> This Court should adopt the *Bestwall* ruling, and limit Aldrich to a 10% sample of Manville claimant data.

***V. The anonymization scheme proposed by Aldrich is ineffective.***

Aldrich's Subpoena also inappropriately incorporate a nugatory "anonymization" scheme that permits Aldrich's consultant to aggregate the Trust Claimant data, post-production, with data from Aldrich's database and other sources into a single, consolidated clearinghouse, while holding a matching key that de-anonymizes the data.

The very existence of a matching key flies in the face of *Bestwall's* pre-production anonymization requirement, and indeed the notion of true anonymization at all. The core purpose of pre-production anonymization is to prevent the Trust Claimants from being identified after production. But a matching key allows the Trust Claimants and their corresponding

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<sup>8</sup> Nor can Aldrich's counsel, the same counsel who represented the debtor in *Bestwall*, disagree. In *Bestwall*, the debtor admitted that using a 10% sample would "provide an efficient mechanism by which the parties and th[e] [Bankruptcy] Court can address issues presented by the estimation proceeding" and argued that approving the 10% sample "offers a practicable and fair way to proceed [and] will save time and expense ...." Ex. F. ¶24 (*Bestwall* Mot. to Approve Resolved Claim Sample). Aldrich's own consultant, Bates White, further opined that a 10% sample was "reliable" "for performing analyses related to ... liability estimation." Ex. G., ¶11 (*Decl. of Jorge Gallardo-Garcia*).

confidential data to be de-anonymized and re-identified in an instant. No key decrypting the Trust Claimants' data should exist, much less held by the same entity with access to a vast consolidated database of Trust Claimant data, an entity which seeks to also hold additional aggregated databases, such as from the Delaware Trusts, or Verus, or Paddock, containing Trust Claimant data and their corresponding matching keys.

With such de-anonymized data, the Manville database has significant commercial value, particularly to experts and insurers in the business of pricing asbestos liability, as they would otherwise need to devote significant resources to estimating conclusions easily gleaned from facts at Manville Trust.<sup>9</sup> Bates White specializes in providing analysis to companies and law firms, “guid[ing] clients to make better decisions about issues involving asbestos, environmental pollution, and other mass tort liabilities.” It holds out its “Environmental and Product Liability” practice as a “market leader” in liability forecasting. *See* Bates White Economic Consulting, “Environmental and Product Liability,” <https://www.bateswhite.com/practices-Environmental-Product-Liability.html> (last visited August 22, 2022). “When the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 (1978).

Bates White’s history and the commercial value it gleans from information from (and for) the tort system amplify the risk of a data breach. The mass production of such aggregated, non-

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<sup>9</sup> To illustrate, the leaders of Bates White previously ran a side business called the Litigation Resolution Group (“LRG”). For a price, LRG would assume the asbestos liabilities of companies that chose to remain in the tort system. *See* Ex. H., Litigation Resolution Group Website (no longer available), at 4 (“LRG’s product offers companies an attractive and more cost-effective alternative to Section 524(g) that provides for a quicker time line to resolution and enables the company to retain procedural control of the litigation throughout the process.”). Access to the Trust’s data would enable a business like LRG to more accurately quantify companies’ expected asbestos liabilities—and would therefore be hugely valuable.

anonymized data to Bates White, an organization with a pecuniary interest in data related to asbestos liability weighs in favor of an extremely particularized showing of need. Aldrich has not made that showing.

As to the Trust claimants, they are *the* target demographic for identity theft plots. Because of the latency period of asbestos disease, the claimant group largely comprises widow and widower senior citizens. According to the Department of Justice, seniors are “some of our nation’s most vulnerable citizens.” *See* U.S. DEP’T OF JUSTICE, “Elder Justice Initiative (EJI),” <https://www.justice.gov/elderjustice>. The Justice Department takes scams against seniors so seriously it has created a “Transnational Elder Fraud Strike Force,” which works to warn seniors of the myriad data dangers they face. *See* U.S. Dep’t of Justice, “Senior Scam Alert,” <https://www.justice.gov/elderjustice/senior-scam-alert>. In this era of runaway identity theft and data protection dangers—the Russian intelligence penetration of government and businesses via SolarWinds, the Colonial Pipeline hack, the Equifax data breach, *etc.*—forced disclosure and aggregation of thousands of seniors’ personal data will create a juicy target for malevolent actors.

The Trust claimants have other valid reasons for keeping their information private. Not every asbestos victim is blessed with saintly family members or benevolent neighbors. Keeping an influx of money private is a choice that should be left to each claimant, not to Aldrich. Moreover, Matching Claimant submissions to the Manville Trust are a *de facto* communication in furtherance of settlement negotiations. Permitting a third party like Aldrich to sift through such settlement communications will have a chilling effect on other settlements, to the detriment of the policies served by the Rules of Evidence, *see* Rule 408, and the bankruptcy system itself, *see In re Flintkote Co.*, 486 B.R. at 132–33. *See also Jordan*, 921 F.3d at 190 (a person’s “interest in protecting their privacy” factors into the undue burden analysis); *Ford Motor Co. v. Edgewood*

*Properties, Inc.*, 257 F.R.D. 418, 423 (D.N.J. 2009) (parties seeking to discover settlement-related communications must make a “heightened, more particularized showing of relevance”); *Food Lion, LLC v. Dairy Farmers of Am., Inc.* 2020 WL 6947921, at \*3–4 (M.D.N.C. 2020) (same); *CHS Inc. v. ABM Healthcare Support Servs., Inc.*, 2021 WL 149861, at \*2–3 (W.D. Va.) (same).

In light of the heavy concerns inherent in the confidential information it seeks, Aldrich’s new litigation strategy deserves the same skepticism as its efforts to sow doubt into scientific literature. The subpoena inadequately protects claimant information from misuse, and there are scant penalties against Aldrich (or its agents) for dissemination. That is especially true here, where Aldrich seeks a sweepingly broad information dump unmoored from a tailored showing of relevance. The Court should quash the subpoena.

***VI. In the alternative, the Court should issue a protective order adopting the protections of the Bestwall ruling.***

A requesting party must tailor a subpoena to its needs before serving it. *Jordan*, 921 F.3d at 190. In the absence of quashing, a Rule 26 protective order (or Rule 45 subpoena modification) can be an appropriate remedy for minimizing the release of confidential information. *Singletary*, 289 F.R.D at 241–42; *Malibu Media, LLC v. John Does 1-11*, Civil Action No. 12-cv-0237, 2012 U.S. Dist. LEXIS 94648 (D.D.C. July 10, 2012)(denying motion to quash but granting protective order to protect nonparty).

Federal Rule of Civil Procedure 26 provides that “for good cause” a court may issue a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The party requesting the protective order bears the burden of showing good cause “by demonstrating specific evidence of the harm that would result.” *Jennings v. Family Mgmt.*, 201 F.R.D. 272, 275 (D.D.C. 2001); *Alexander v. FBI*, 186 F.R.D. 71, 75 (D.D.C. 1998). Protective orders may “deny discovery completely, limit the

conditions, time, place, or topics of discovery, or limit the manner in which the confidential information is to be revealed.” *Univ. of Mass. v. Roslin Inst.*, 437 F. Supp. 2d 57, 60 (D.D.C. 2006).

Under either Rule 45 or Rule 26, a subpoena that seeks irrelevant information is both overbroad and a *de facto* “undue burden,” and should be quashed. *See AF Holdings, LLC v. Does 1-1058*, 752 F.3d 990, 995 (D.C. Cir. 2014); *Singletary*, 289 F.R.D at 241–42; *Albert*, 2018 Bankr. LEXIS 2492, at \*4. Movants have more than demonstrated evidence of the harm that would result if their data is released without adequate protections in place. Accordingly, the Court may issue a protective order, in lieu of granting the Motion to Quash, implementing the protections of sampling and pre-production anonymization.

#### CONCLUSION

The *Bestwall* court was correct. The Subpoena being served in this case is overbroad, and fails to adequately protect the claimants’ data. This Court should adopt the reasoning of the *Bestwall* ruling, and limit the production of data to a 10% sample, and require the pre-production anonymization of the data by the Manville Trust, or a third party.

For the foregoing reasons, the Manville Trust Matching Claimants pray this Court grant their Motion to Quash, and for such other relief as to the Court seems proper.

Dated: August 23, 2022

Respectfully submitted,

/s/ David I. Bledsoe-----

David I. Bledsoe  
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600 Cameron Street  
Suite 203  
Alexandria, VA 22314  
703-379-9424  
703-684-1851(fax)  
bledsoelaw@earthlink.net

Counsel for Movants The Manville Trust  
Matching Claimants

**CERTIFICATE OF GGOD FAITH CONFERENCE**

I certify that pursuant to Local Rule 7(m), I discussed this Motion in a good faith conference with opposing counsel prior to its filing.

\_\_\_\_\_  
/s/David I. Bledsoe  
David I. Bledsoe

**CERTIFICATE OF SERVICE**

I certify that on August 23, 2022, I served a copy of the foregoing by email on:

Richard C. Worf, Jr.  
ROBINSON, BRADSHAW & HINSON, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, North Carolina 28246  
[rworf@robinsonbradshaw.com](mailto:rworf@robinsonbradshaw.com)

Morgan Hirst  
Jones Day  
110 N. Wacker Dr., Suite 4800, Chicago, IL 60606  
[mhirst@jonesday.com](mailto:mhirst@jonesday.com)

Counsel for Aldrich, LLC

\_\_\_\_\_  
/s/David I. Bledsoe  
David I. Bledsoe



# EXHIBIT A

PARTICIPATING MATCHING CLAIMANT COUNSEL

1. Bailey Cowan Heckaman PLLC
2. Baron & Budd, PC
3. Bergman Draper Oslund Udo, PLLC
4. Bevan & Associates LLP
5. Brayton Purcell, LLP
6. Brown Kiely, LLP
7. Cooney & Conway, LLP
8. Cooper, Hart, Leggievo & Whitehead, PLLC
9. Dean Omar Branham & Shirley, LLP
10. Dubose Law Firm PLLC
11. Flint Cooper
12. George & Farinas, LLP
13. Goldberg Persky & White PC
14. Kazan, McClain, Satterley & Greenwood
15. Madeksho Law Firm
16. Motley Rice LLC
17. MRHFM-Maune Raichle Hartley French & Mudd
18. Patten Wornom Hatten & Diamonstein
19. Peter Angelos Law
20. Provost Umphrey Law
21. Robins Cloud, LLP

22. Shein Law Center, Ltd.
23. Shepard Law
24. Shrader & Associates, LLP
25. Simmons Hanly Conroy
26. Simon Greenstone Panatier, PC
27. SWMW Law, LLC
28. The Ferraro Law Firm
29. The Gori Law Firm P.C.
30. The Lanier Law Firm
31. The Lipman Law Firm
32. Thornton Law Firm LLP
33. Wallace & Graham
34. Waters & Kraus and Galihier DeRobertis and Waxman
35. Weitz & Luxenberg, PC
36. Wilentz, Goldman & Pitzer, P.A.
37. Williams Hart Boundas Easterby, LLP
38. Worthington & Caron, PC

# EXHIBIT B

# UNITED STATES BANKRUPTCY COURT

Western

District of

North Carolina

In re Aldrich Pump LLC, et al.

Debtor

Case No. 20-30608

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Manville Personal Injury Settlement Trust c/o Jason Rubinstein, 7 Times Square, New York, NY 10036

(Name of person to whom the subpoena is directed)

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material. The information ordered to be produced in the attached Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC (Dkt. 1240) (the "Order"), entered in the above-captioned case, limited to individuals identified in the "Matching Key" described in paragraph 6 of the Order, identifying individuals whose mesothelioma claims the Debtors or their predecessors resolved through settlement or verdict between January 1, 2005 and June 18, 2020. The Matching Key will be provided by Bates White via secure electronic transmission following service of this subpoena upon identification of the appropriate recipient.

PLACE	DATE AND TIME
Bates White LLC, 2001 K Street NW, North Bldg., Suite 500 Washington, DC 20006	See dates in Order

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 07/05/22

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Morgan Hirst  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Aldrich Pump LLC, et al., who issues or requests this subpoena, are:

Morgan Hirst, Jones Day, 110 N. Wacker Dr., Suite 4800, Chicago, IL 60606, mhirst@jonesday.com, (312) 269-1535

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
July 1 2022  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*J. Craig Whitley*  
J. Craig Whitley  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

\_\_\_\_\_  
In re : Chapter 11  
: :  
ALDRICH PUMP LLC, *et al.*,<sup>1</sup> : Case No. 20-30608 (JCW)  
: :  
Debtors. : (Jointly Administered)  
\_\_\_\_\_ :

**ORDER GRANTING MOTION OF THE DEBTORS  
FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

This matter coming before the Court pursuant to the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the “Motion”),<sup>2</sup> filed by Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”), as debtors and debtors-in-possession in the above-captioned cases (together, the “Debtors”). Based upon a review of the Motion, the objections to the Motion filed by Paddock [Dkt. 1161] and the ACC [Dkt. 1162], the reply in support of the Motion filed by the

<sup>1</sup> The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors’ address is 800-E Beaty Street, Davidson, North Carolina 28036.  
<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.



Debtors [Dkt. 1182], the evidence presented, and the arguments of counsel at the hearing on this matter held on May 26, 2022 (the “May 26 Hearing”), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. For the reasons stated on the record at the May 26 Hearing, which are incorporated herein by reference, the Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated by the Court on the record at the May 26 Hearing.

3. Upon entry of this Order, the Debtors are authorized to issue and serve subpoenas requesting the data described in paragraph 10 below on:

- a. the Manville Personal Injury Settlement Trust (“Manville Trust”);
- b. the Delaware Claims Processing Facility (“DCPF”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “DCPF Trusts”):<sup>3</sup>
  - (i) Armstrong World Industries Asbestos Personal Injury Settlement Trust;
  - (ii) Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
  - (iii) Celotex Asbestos Settlement Trust;
  - (iv) DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);

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<sup>3</sup> The Debtors also may subpoena the DCPF Trusts to effectuate this Order.

- (v) Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
  - (vi) Flintkote Asbestos Trust;
  - (vii) Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);
  - (viii) Pittsburgh Corning Corporation Asbestos PI Trust;
  - (ix) United States Gypsum Asbestos Personal Injury Settlement Trust; and
  - (x) WRG Asbestos PI Trust;
- c. Verus Claims Services, LLC (“Verus”<sup>4</sup> and, collectively with the Manville Trust and DCPF, the “Trust Producing Parties,” and each, individually, a “Trust Producing Party”) with respect to the following asbestos personal injury trusts whose claims are handled by Verus (the “Verus Trusts” and, collectively with the Manville Trust and the DCPF Trusts, the “Trusts”):<sup>5</sup>
- (i) ACandS Asbestos Settlement Trust;
  - (ii) Combustion Engineering 524(g) Asbestos PI Trust;
  - (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust;
  - (iv) GST Settlement Facility;
  - (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
  - (vi) Quigley Company, Inc. Asbestos PI Trust;
  - (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and
  - (viii) Yarway Asbestos Personal Injury Trust.

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<sup>4</sup> To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term “Verus” shall include such entity.

<sup>5</sup> The Debtors also may subpoena the Verus Trusts to effectuate this Order.

4. On or after June 30, 2022, the Debtors are authorized to issue and serve a subpoena requesting the data described in paragraph 11 below on Paddock Enterprises, LLC (“Paddock”).

5. The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors’ liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors’ asbestos liability; the estimation of the Debtors’ asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases (collectively, such purposes, the “Permitted Purposes”).

6. Bates White, in its capacity as a Retained Expert (as defined herein) for the Debtors, shall create a “Matching Key”, which shall be a list (in electronic, text searchable format) of last names and Social Security numbers (“SSNs”), in separate fields, for claimants who asserted mesothelioma claims against the Debtors, Aldrich’s predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Old IRNJ”), or Murray’s predecessor, the former Trane U.S. Inc. (“Old Trane”) that were resolved by settlement or verdict and for whom the Debtors possess SSNs, as well as the corresponding last names and SSNs of any injured party if different from the claimant (the “Claimants”), as well as a unique numerical pseudonym (the “Claimant Pseudonym”) assigned by Bates White and corresponding to each Claimant. On the same day the Debtors effect service of a subpoena authorized by this order (as applicable, the “Service Date”), Bates White shall provide the Matching Key to the Manville Trust, DCPF, Verus, and Paddock (each,

individually, a “Producing Party” and, collectively, the “Producing Parties”), as applicable. On the earliest Service Date following entry of this Order, Bates White shall also provide the Matching Key to Legal Analysis Systems, Inc. (“LAS”), and Ankura Consulting Group, LLC (“Ankura”), each in its capacity as a Retained Expert (as defined herein) for the ACC, and the FCR, respectively.

7. On or before the twenty-first (21st) day following the applicable Service Date,<sup>6</sup> DCPF, the Manville Trust, and Verus shall identify the claimants in the Trusts’ databases, and Paddock shall identify the claimants in any claims database within Paddock’s possession, custody, or control whose purpose is or was to track asbestos personal injury claims asserted against Paddock or Owens-Illinois, Inc. (the “Paddock Database”), whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Claimant and who did not file their Trust claims *pro se* or, in the case of Paddock, who are listed in the Paddock Database as having a claim that was not asserted *pro se* (the “Matching Claimants”). In performing this match, the Producing Parties shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

8. On or before the twenty-first (21st) day following the applicable Service Date, the Producing Parties shall also provide to counsel for the Debtors a list of the first and last names and SSNs of claimants in the Trusts’ databases or, in the case of Paddock, in the Paddock

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<sup>6</sup> If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.

Database, who match the nine-digit SSN of any Claimant but who (a) filed their Trust claims *pro se* or, in the case of Paddock, who appear in the Paddock Database as having asserted a claim *pro se*, (and identify such claimants on the list) or (b) in the view of the Producing Party do not match the last name associated with the Claimant (the “Meet and Confer List”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Data (as defined herein). On or before the thirty-fifth (35th) day following the applicable Service Date, the Debtors and the Producing Parties shall meet and confer concerning whether any of the claimants on the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the applicable Service Date, the Debtors (and the Debtors’ Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide the Producing Parties with written confirmation of such deletion; provided, however, that such deletion deadline shall be extended for each day the meet and confer process between the Debtors, on the one hand, and the Producing Parties, on the other hand, continues after the sixtieth (60th) day following the applicable Service Date. In the event the Debtors and the Producing Parties cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

9. Within seven (7) days of the identification of Matching Claimants in the Trusts’ databases (collectively the “Trust Matching Claimants,” and each, individually, a “Trust Matching Claimant”), whether pursuant to paragraph 7 or paragraph 8 above (and this paragraph 9, as applicable), the Trust Producing Parties shall notify the Trust Matching Claimants’ counsel of record that the relevant Trusts have received a subpoena from the Debtors. The notice from the Trust Producing Parties shall state that the data associated with the Trust Matching Claimants, as described in paragraph 10 below, will be produced if they do not file a motion to



applicable deadlines set forth above in this paragraph 9, the Trust Producing Party shall produce to the Debtors the data described in paragraph 10 below, relating to the Trust Matching Claimant (other than the Unnoticeable Claimants) on or before the seventh (7th) day after the date by which any motion to quash must be filed (as applicable, the “Trust Production Date”). As to all Matching Claimants identified in the Paddock Database (collectively, the “Paddock Matching Claimants” and each, individually, a “Paddock Matching Claimant”), Paddock shall produce to the Debtors the data described in paragraph 11 below, relating to the Paddock Matching Claimants: (a) for Paddock Matching Claimants identified pursuant to paragraph 7 of this Order, on or before the forty-ninth (49th) day following the Service Date applicable to Paddock; and (b) for any claimant on the Meet and Confer List that the Debtors and Paddock agree, after meeting and conferring, should be classified as a Paddock Matching Claimant pursuant to paragraph 8 of this Order, on or before the later of (i) the forty-ninth (49th) day following the Service Date applicable to Paddock and (ii) the seventh (7th) day following the agreement by the Debtors and Paddock that such claimant should be classified as a Paddock Matching Claimant (as applicable, the “Paddock Production Date”).

10. On or before the applicable Trust Production Date, DCPF, the Manville Trust, and Verus shall produce to Bates White (in electronic database format and, with respect to DCPF and Verus, separately for each Trust) the following information pertaining to each Trust Matching Claimant<sup>7</sup> (to the extent the relevant Trust databases contain such information) (the “Trust Anonymized Matched Production”):

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<sup>7</sup> For the avoidance of doubt, the terms “Trust Matching Claimant” and “Paddock Matching Claimant” referenced in paragraphs 10 and 11 of this Order include, as applicable, any claimant on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as a Trust Matching Claimant or Paddock Matching Claimant.

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields,<sup>8</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

11. On or before the applicable Paddock Production Date, Paddock shall produce to Bates White (in electronic database format) the following information pertaining to each Paddock Matching Claimant (to the extent the Paddock Database contains such information) (the "Paddock Anonymized Matched Production" and, together with the Trust Anonymized Matched Production, the "Anonymized Matched Productions"):

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed or otherwise asserted;
- d. Jurisdiction and state of filing (if applicable);

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<sup>8</sup> To the extent any names or SSNs appear in any exposure-related field, the Manville Trust, DCPF, and Verus may redact such names and SSNs prior to production of the Trust Anonymized Matched Production. In addition, prior to delivery of the Trust Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Trust Anonymized Matched Production.



- e. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- f. Date claim resolved, if resolved;
- g. Date claim paid, if paid; and
- h. All exposure-related fields,<sup>9</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

12. The Anonymized Matched Productions shall be used as follows:

a. Subject to and without in any way limiting the restrictions described in paragraph 13(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtors, the ACC, the FCR, Trane Technologies Company LLC (“New Trane Technologies”) and Trane U.S., Inc. (“New Trane” and, together with the Debtors, New Trane Technologies, the ACC, and the FCR, the “Parties”), if otherwise entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Productions.

b. The Retained Experts (as defined in paragraph 13(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Productions, on a

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<sup>9</sup> To the extent any names or SSNs appear in any exposure-related field, Paddock may redact such names and SSNs prior to production of the Paddock Anonymized Matched Production. In addition, prior to delivery of the Paddock Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Paddock Anonymized Matched Production.

claimant-by-claimant basis, with data from the Debtors' database or other sources;

(ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Productions with and analyze individual claims (provided that such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Productions that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, provided, however, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. No Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the complete set of Claimant Pseudonyms in the Anonymized Matched Productions to the Matching Key.

c. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Productions, on a claimant-by-claimant basis, to the Debtors' database or other sources of information, such Retained Expert shall delete from any resulting database the names and SSNs of injured parties and any related claimants (any such database being an "Anonymized Database").

13. The Matching Key (and any portion or extract thereof), the Anonymized Matched Productions, and any Anonymized Databases (together, the “Confidential Data”) shall be deemed “Confidential” pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 345] (the “Protective Order”). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

a. No Confidential Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know or access the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with these cases, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party’s Retained Expert (defined below) in these cases (collectively, the “Authorized Representatives”); provided, however, that the right of access to the Confidential Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 13(b) immediately below.

b. Any person exercising a right of access to the Confidential Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Data conferred by paragraph 13(a) above, each entity whose Authorized Representatives will receive access to the Confidential Data and any other

Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Data in the performance of the entity's duties with respect to these bankruptcy cases. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.

c. Any entity whose Authorized Representatives receive access to any Confidential Data and any Authorized Representative who receives access to any Confidential Data in their individual capacity as provided in this Order shall provide for physical, managerial, and electronic security thereof such that the Confidential Data are reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission, and storage. Any electronic transmission of the Confidential Data (including without limitation the Matching Key or any information derived therefrom) must be through a secure encrypted service, and not as an ordinary email attachment.

d. Notwithstanding anything in this Order to the contrary, access to the Matching Key shall be limited to (i) Bates White, LAS, and Ankura, each in its capacity as a retained claims expert for the Debtors, the ACC, and the FCR, respectively, and (ii) to the professional staff employed by such experts (each of (i) and (ii), a

“Retained Expert”), and (iii) such other persons as the Parties and the Producing Parties may agree to in writing from time to time; provided, however, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 13(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 13(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

e. No claimant-specific data from or derived from any Confidential Data shall be (i) offered as evidence in these bankruptcy cases, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to the Producing Parties and claimants provided to their attorneys at the addresses contained in the data produced by the Producing Parties) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 13(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant’s identity.

f. If, in connection with a motion pursuant to paragraph 13(e), or any response to such motion, a Party proposes to place any Confidential Data under seal, that



without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall permanently delete such Confidential Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Data or any excerpts thereof; provided, however, that any such data stored on a Party's or Authorized Representative's back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party's or Authorized Representative's operations.

16. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 13(g); and (d) complied with the requirements in paragraph 15 concerning the deletion of any Confidential Data.

17. Subject to the requirements of paragraphs 12 and 13 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in these bankruptcy cases in conformity with this Order, or any data

or material that is or becomes publicly available other than by a breach of this Order; or

- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Data.

18. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Claimants, including where such Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Productions.

19. The Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.

20. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.  
The Judge's signature and Court's seal appear  
at the top of the Order.

United States Bankruptcy Court



**EXHIBIT A.1 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

On behalf of my employer, \_\_\_\_\_ [write in name of employer] (“Employer”), I and Authorized Representatives of Employer may be given access to Confidential Data. The Confidential Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer’s Authorized Representatives who are to receive access to any Confidential Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), Employer will destroy any Confidential Data. Within 30 days after the Deletion Date, Employer will file a declaration in compliance with paragraph 16 of the Order.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_

**EXHIBIT A.2 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), I will destroy any Confidential Data. Within 30 days after the Deletion Date, I will file a declaration in compliance with paragraph 16 of the Order.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_

# EXHIBIT C

## 2002 TRUST DISTRIBUTION PROCESS

*May 2021 Revision*

### A. Overview.

The goal of the Manville Personal Injury Settlement Trust (the "Trust") is to treat all claimants equitably. This Trust Distribution Process ("TDP") furthers that goal by including procedures for processing and evaluating claims generally on an impartial, first-in-first-out ("FIFO") basis with the intention of paying all claimants over time as equivalent a share as possible of their claims' values. This TDP also establishes a Schedule of Asbestos-Related Disease Categories and Values that will enable many claims to be resolved more quickly, while retaining for each claimant the right to elect individual claim evaluation.

The process for determining the liquidated value of any claim to be paid from the assets of the Trust includes an initial determination of whether the claim meets the Categorization Criteria for one of eight Scheduled Diseases that are listed on the Schedule of Asbestos-Related Disease Categories and Values described in Section D below. The Scheduled Diseases are Other Asbestos Disease (Cash Discount Payment, Level I), Asbestosis/Pleural Disease (Level II), Asbestosis/ Pleural Disease (Level III), Severe Asbestosis Disease (Level IV), Other Cancer (Level V), Lung Cancer (One, Level VI), Lung Cancer (Two, Level VII), and Mesothelioma (Level VIII). In general, if the claim qualifies for categorization, the claimant will be offered the Scheduled Value for the Scheduled Disease. The Scheduled Values for the Scheduled Diseases are based on the Trust's experience settling claims using the factors set forth in the Claims Resolution Procedures (the "CRP Factors") attached as Annex B to the Trust Agreement,<sup>1</sup> and on liquidated values of recent settlements experienced in the United States tort system.

If a claim does not meet the Categorization Criteria for a Scheduled Disease, or the claimant decides to reject the Scheduled Value for a Scheduled Disease, and in certain other circumstances, the claimant may elect to have the claim individually evaluated by the Trust based on the CRP Factors. All unresolved disputes over categorization and valuation of claims will be subject to arbitration under procedures described below, and claimants whose valuation disputes are not resolved by non-binding arbitration may enter the tort system. However, if and when a claimant enters the tort system, the claimant's judgment will be payable out of a pool of funds with respect to which the payment, as provided in Section G below, will be limited to the Maximum Value for the Disease Category in which the claim is placed by the Trust or by

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<sup>1</sup> All capitalized terms used herein and not otherwise defined have the meanings assigned to them in Exhibit A to the Manville Corporation Second Amended and Restated Plan of Reorganization.

arbitration, except for an Extraordinary Claim, as defined below. The excess amount, if any, of any judgment will be payable from a second pool of funds which will not be available until all claimants have received 50 percent of the liquidated value of their claims.

After the liquidated value of a claim is determined by reference to a Scheduled Value, by individual evaluation, by arbitration, or by litigation, with the exception of claimants who accept a Cash Discount Payment pursuant to Section D, Level I, the claimant will receive a pro rata share of that value based on a percentage set by the Trust with the concurrence of the Selected Counsel for the Beneficiaries (the "SCB") and the Legal Representative of Future Claimants (the "Legal Representative"), after consultation with the Special Advisor to the Trust (the "Special Advisor"). The pro rata share may be adjusted upwards or downwards from time to time to reflect current estimates of the Trust's assets, its liabilities, and the estimated value of pending and future claims. When the TDP was adopted in 1995, it contained a provision that to the extent that the pro rata share increases over time, claimants whose claims were liquidated in prior periods under this TDP will receive additional payments so as to equalize over time each claimant's pro rata share of the liquidation value of their claims. When that provision was adopted, it was not anticipated that circumstances might later be such, as they are now, that changes in the pro rata share might be accompanied by changes in categorization criteria and a decrease in the Scheduled Values for some claims. Given this change in circumstances, additional payments to claimants who have already received ten percent (10%) of the liquidated value of their claims are increasingly unlikely and may no longer serve this TDP's goal to treat all claimants equitably. If the pro rata share is increased to more than ten percent (10%), the Trust, the SCB and the Legal Representative will review the impact of this provision as part of the periodic pro rata review required by Section H.1(d). Because it is difficult to predict the number and severity of future claims, and the amount of the Trust's assets, no guaranty can be made of any pro rata share of a claim's liquidated value.

Indemnity Claims (except for claims processed using a Distributor Indemnity Claim percentage, as described in Section I.7, below) and Contribution Claims will be subject to the same categorization, evaluation, pro rata share, and payment provisions of this TDP applicable to all other Trust Claims.

## **B. Ordering and Categorizing of Claims.**

**1. Ordering of Claims.** Claims will be ordered for processing on a FIFO basis. A claimant's position in the FIFO queue will be determined by the earlier of (i) the date of receipt by the Trust of an acceptable proof of claim form with the Trust or (ii) the date of filing a lawsuit for an asbestos-related injury against the Trust or any other defendant.

## 2. Categorizing of Claims by Disease.

(a) As a proof of claim is reached in the FIFO queue, the Trust will evaluate it to determine whether the claim meets the Categorization Criteria for a Scheduled Disease and shall advise the claimant of its determination. If a Scheduled Disease is determined, except for Non-Standard Claims, the Trust shall tender to the claimant an offer of payment of the Scheduled Value for the Scheduled Disease, together with a form of release. If the claimant accepts the Scheduled Value and returns the release properly executed, the Trust shall disburse payment within 30 days thereafter, subject to the terms of Section H.3 below.

(b) If the claimant does not respond to the Trust's offer within 360 days, the claim will be deactivated. If the claim remains in a deactivated status for two years, it will be deemed to be withdrawn and a new claim will have to be filed if claimant later wishes to pursue the claim. During the period of deactivation, Claimant may request that the claim be reactivated solely for the purpose of accepting the Trust's last offer. A claimant may also elect to withdraw a claim at any time. A claim that is withdrawn or deemed to have been withdrawn may be re-filed at any time, and shall be ordered in the FIFO queue based on the date of receipt by the Trust of the re-filed claim. A claimant can also request that the processing of his or her claim be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitation purposes, in which case the claimant shall also retain his or her original place in the FIFO processing queue.

(c) If the Trust determines that a claim does not meet the Categorization Criteria for a Scheduled Disease, or determines the claim is a Non-Standard Claim as defined in Section C, or if a claimant disagrees with the Scheduled Disease determination made by the Trust, the claimant may dispute the determination. Upon receipt of written advice from the claimant of such a dispute, coupled with the claimant's written statement of the basis for the dispute and any supporting documentation, the Trust shall reevaluate the claim in light of all then available documentation and advise the claimant of its determination. If on reevaluation the Trust determines that the claim qualifies for placement in a Scheduled Disease Category or in a different Scheduled Disease Category than the Trust originally determined, the Trust shall tender an offer in the amount of the Scheduled Value for the Scheduled Disease so determined, together with a form of release. If the claimant accepts the Scheduled Value and returns the release properly executed, the Trust shall tender payment within 30 days thereafter, subject to the terms of Section H.3 below.

(d) If the claimant still disputes the Trust's categorization of the claim or denial of categorization, the claimant may elect arbitration of the categorization or individual evaluation. If arbitration is elected, the arbitrator shall decide, solely on the basis of the

documentation in the claim file when the claim was categorized, whether the claim should be categorized as a Scheduled Disease. If the arbitrator agrees with the claimant's position, the decision shall be binding upon the claimant and the claimant shall not be entitled to any individual evaluation. If the claimant returns the release properly executed, the Trust shall tender payment of the Scheduled Value for the Scheduled Disease within 30 days thereafter, subject to the terms of Section H.3 below. If the arbitrator does not agree with the claimant's position, the claimant may elect individual evaluation, as described below.

### **C. Individual Evaluation of Claims.**

Following the claims categorization process described above, any claimant, including one whose claim was not placed in a Scheduled Disease category, may elect to have his/her claim individually evaluated by the Trust. However, because the Scheduled Values represent an equitable settlement value for most claims that meet the criteria of a corresponding Scheduled Disease, and because individual evaluation will be costly and time-consuming, resulting in significant delay in claim payment, the Trust will not value a claim for a liquidated amount in excess of its Scheduled Value unless a higher value is clearly justified. Moreover, if a claimant elects individual evaluation, and the Trust's final offer, or a subsequent arbitration award or judgment, is lower than the Scheduled Value for the claimant's Scheduled Disease category, the claimant cannot elect to receive a previously offered higher Scheduled Value.

#### **1. Valuation of Non-Standard Claims.**

(a) The Schedule of Asbestos-Related Diseases and Values set forth herein is based (i) on diseases that are generally recognized to be caused in part or in whole by asbestos, and (ii) on values that reflect (A) the Trust's experience in liquidating claims for such diseases using the CRP Factors and (B) the liquidated values of current settlements in the tort system.

(b) The Trust anticipates it may be presented with claims involving new or different causation and valuation factors not reflected in the Schedule of Asbestos-Related Diseases and Values set forth herein, including claims filed on behalf of claimants whose asbestos exposure took place outside the United States and Canada. In the event the Trust determines that a claim(s) involves new or different causation and valuation factors, such claim(s) will not be eligible for valuation under the Schedule of Asbestos-Related Diseases and Values. Instead, such claims will be individually evaluated in accordance with the CRP Factors when they come up for processing in the FIFO queue. In evaluating such claims, the Trust may gather or request the claimant(s) to provide supplementary information, including the nature of the disease and the tort law, litigation practice, and liquidated values currently experienced in settlements and verdicts for similar claims in the jurisdiction in which the claim arose. The Trust, with the concurrence of the SCB and the Legal Representative, after consultation with the



Special Advisor, may also use such information to develop separate Scheduled Values and new Disease Categories for such Non-Standard Claims.

**2. Failure to Meet Criteria for a Scheduled Disease.** A claimant's right to assert a valid claim for the liquidated value of an asbestos-related disease is not prejudiced by failure to meet the Categorization Criteria for a Scheduled Disease. There are no standard definitions or criteria that could fairly include or compensate all meritorious claims involving asbestos-related diseases. It is therefore assumed that many claims will be individually evaluated based on the CRP Factors, with no adverse presumption that the liquidated values of these claims are more or less than the Scheduled Value.

**3. Evaluation Factors.** All claims must present evidence of an asbestos-related injury resulting from exposure to Manville asbestos that will sustain a cause of action under applicable law. Individual evaluations of claims will be based on the CRP Factors affecting the amount of damages, including without limitation, disease, age, current settlements and verdicts in the tort system in the claimant's jurisdiction, Manville's relevant market share, whether the claimant is living or dead (as of the earlier of the filing of the claim or a lawsuit involving the claim), disability, dependency, special damages, pain and suffering, and evidence that the claimant's damages were (or were not) related to asbestos exposure (for example, alternative causes, strength of documentation of injuries). For these purposes, the claimant may elect as the "claimant's jurisdiction" either (a) the jurisdiction in which the claimant resides at the time of diagnosis or when the claims is filed with the Trust; or (b) a jurisdiction in which the claimant had exposure to Manville asbestos.

**4. Maximum Values.** The Trust, with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor, has established a Maximum Value for each Scheduled Disease category. These Maximum Values are set forth on Attachment A to this TDP. The liquidated value of an individually evaluated claim may be higher or lower than the Scheduled Value for the Scheduled Disease category into which the claim would otherwise be placed, or which the claim most closely fits. However, unless the claim meets the standards of an Extraordinary Claim set forth below, the liquidated value of an individually evaluated claim is limited to the Maximum Value for the relevant Scheduled Disease. Moreover, the Maximum Value will only be offered to those claimants who present the most severe combinations of factors to be anticipated within the category, and will provide the upper limit of a claim that will enter Pool A as described below. For purposes of determining the Maximum Value of any claim, the Trust will evaluate the claim and place it in the Scheduled Disease category with respect to which the claim most closely meets the categorization criteria. Any dispute over the Trust's determination of the closest Scheduled Disease category will be subject to arbitration as provided in Section F below.

5. **Claims Liquidated After November 19, 1990.** Claimants who liquidated a Trust Claim after November 19, 1990, under the original proposed Trust Distribution Process, may elect either to retain that liquidated value and be paid immediately under this process, or to have their claims placed at the front of the FIFO queue and be processed under the procedure set forth below.

6. **Second (Malignant) Injury Claims.** Unless a general release was executed, a claimant may file a Second Injury Claim against the Trust for additional damages if the claimant subsequently develops an asbestos-related malignant disease. A Second Injury Claim shall be ordered in the FIFO queue based upon the date of receipt by the Trust of the Second Injury Claim, and shall be treated as a new claim to be categorized or individually evaluated, and paid, under this TDP. If the earlier claim for a non-malignant disease was liquidated after November 19, 1990, the amount already received and to be received, if any, from the Trust for the non-malignancy claim will not be deducted as a set-off against amounts payable for the Second Injury Claim, unless the malignancy was diagnosed prior to the date on which the non-malignancy claim was settled. However, if the claimant liquidated his/her non-malignancy claim against the Trust on or before November 19, 1990, any amounts paid or to be paid pursuant to such liquidation shall be set-off against the liquidated amount arrived at hereunder for the Second Injury Claim.

7. **Supporting Medical Evidence.** The Trust will categorize or individually evaluate claims based on the medical evidence already submitted to the Trust as part of the claimant's proof of claim. A claimant may, but need not, supplement this information with more current medical evidence. Where the claimant has filed an incomplete proof of claim for categorization or individual evaluation, the Trust will notify the claimant of the need for additional information and the Trust need not process the claim until the file is complete. In addition to such medical evidence as claimants are required to submit under the CRP, the Trust with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor, may require that additional kinds of medical evidence be provided.

8. **Audit Procedures.** In all cases, the Trust may require that medical x-rays, tests, laboratory examinations and other medical evidence comply with recognized medical standards regarding equipment, testing methods, and procedures to assure that such evidence is reliable. The Trust may develop methods for auditing the reliability of medical evidence, including independent reading of x-rays. If its audits show an unacceptable level of reliability for medical evidence submitted by specific doctors or medical facilities, the Trust can refuse to accept medical evidence from such doctors or facilities. In addition, the Trust may develop methods for auditing other types of evidence necessary to support a claim.

9. **Extraordinary Claims.** In extraordinary situations such as where a claimant was exposed only to Manville asbestos products, or where Manville asbestos products constituted the

overwhelming majority of the claimant's asbestos exposure, or where special damages are exceptionally large, the Trust may individually evaluate and liquidate a claim for an amount that exceeds the Maximum Value for the particular Scheduled Disease asserted by the claimant. Any dispute as to Extraordinary Claim status shall be submitted to arbitration by a special Extraordinary Claims Panel established by the Trust with the concurrence of the SCB and the Legal Representative after consultation with the Special Advisor.

**10. Exigent Health and Extreme Hardship Claims.** Notwithstanding the FIFO order processing rules, the Trust may categorize or individually evaluate, and pay, Extreme Hardship Claims and Exigent Health Claims.

(a) For Exigent Health claims: (i) there will be an irrebuttable presumption that there is substantial medical doubt that living Trust claimants with confirmed mesothelioma will survive beyond six months and thus, if they settle their Trust claim, they qualify for Exigent Health treatment; and, (ii) there will be a rebuttable presumption to be exercised at the discretion of the Trust that there is substantial medical doubt that living Trust claimants with confirmed lung cancer caused by exposure to asbestos will survive beyond six months and thus, if they settle their Trust claim, they qualify for Exigent Health treatment.

(b) All other living Trust claimants can qualify for Exigent Health treatment by providing: (i) documentation that a physician has diagnosed the claimant as having an asbestos-related illness and (ii) a declaration or affidavit made under penalty of perjury from a physician who has examined the claimant within one hundred twenty (120) days of the date of the declaration or affidavit of which states that the physician believes there is substantial medical doubt that the claimant will survive beyond six (6) months from the date of the declaration or affidavit.

(c) A claim qualifies for payment as an Extreme Hardship Claim if the Trust, in its sole discretion, determines there is a causal connection between a claimant's financial condition and an asbestos-related disease, and the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all sources of available income.

**11. Secondary Exposure Claims.** If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, it is a Secondary Exposure Claim. The claim must be individually reviewed, and as provided by Section E.2(c) below, the Trust may require submission of other or additional evidence of exposure as it deems necessary to support Secondary Exposure Claims. For a Secondary Exposure Claim, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP that would have been applicable had that person filed a direct claim against the Trust. In addition, the claimant with secondary exposure must

establish that he or she is suffering from one of the eight Scheduled Disease categories described in Section D below or an asbestos-related disease otherwise compensable under this TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos containing products produced by Manville prior to December 31, 1982, and that such secondary exposure was a cause of the claimed disease. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

**D. Schedule of Asbestos-Related Disease Categories and Values**

For eight asbestos-related diseases, the Trust, the SCB and the Legal Representative, after consultation with the Special Advisor, have established the following Schedule of Asbestos-Related Disease Categories and Values. The Scheduled Values are based on extensive review of the current settlement and litigation environment and on the Trust's historic experience settling claims using the CRP Factors, and are believed by the parties to represent equitable settlement values for most of the claims that meet the criteria of a corresponding Scheduled Disease.

<b><u>Level</u></b>	<b><u>Scheduled Disease</u></b>	<b><u>Scheduled Value</u></b>
I	Other Asbestos Disease (Cash Discount Payment)	\$ 600
II	Asbestosis/Pleural Disease	\$ 12,000
III	Asbestosis/Pleural Disease	\$ 25,000
IV	Severe Asbestosis Disease	\$ 95,000
V	Other Cancer	\$ 45,000
VI	Lung Cancer (One)	None
VII	Lung Cancer (Two)	\$ 95,000
VIII	Mesothelioma	\$350,000

**Categorization Criteria.** The criteria that a claim must meet to receive an offer for the Scheduled Value for one of the eight Scheduled Disease categories are as follows:

**Level I: Other Asbestos Disease (Cash Discount Payment)**

**(Scheduled Value: \$ 600)**

1. Diagnosis<sup>2</sup> of a Bilateral Asbestos-Related Nonmalignant Disease<sup>3</sup> or an asbestos-related malignancy (except mesothelioma), and
2. Exposure to Manville asbestos products prior to December 31, 1982.

**Level II: Asbestosis/Pleural Disease (Scheduled Value: \$ 12,000)**

1. Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, and
2. Six months occupational exposure to Manville asbestos products prior to December 31, 1982, plus five years cumulative occupational exposure to asbestos.

**Level III: Asbestosis/Pleural Disease (Scheduled Value: \$25,000)**

1. Diagnosis of asbestosis with ILO of 1/0 or greater or asbestosis determined by pathology<sup>4</sup>, or bilateral pleural disease of B2<sup>5</sup> or greater, plus (a) TLC less than 80%, or (b) FVC less than 80% plus FEV1/FVC ratio greater than or equal to 65%,

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<sup>2</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section E.1.(a), below.

<sup>3</sup> Evidence of “Bilateral Asbestos-Related Nonmalignant Disease” (or “Markers”) means a report submitted by a qualified physician stating that the claimant has or had an x-ray reading of 1/0 or higher on the ILO scale, or bilateral pleural plaques or pleural thickening (or, if an ILO reading is not available, a chest x-ray reading that indicates bilateral interstitial fibrosis, bilateral interstitial markings, bilateral pleural plaques or bilateral pleural thickening consistent with, or compatible with, a diagnosis of asbestos-related disease).

<sup>4</sup> Proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases,” Vol. 106, No. 11, App. 3 (October 8, 1982).

<sup>5</sup> “[B]ilateral pleural disease of B2” is defined as chest wall pleural thickening or plaque with a maximum width of at least 5mm and a total length of at least one quarter of the projection of the lateral chest wall. William S. Cole, M.D., *The Classification of Radiographs of Pneumoconiosis, in A STUDY SYLLABUS FOR CLASSIFICATION OF RADIOGRAPHS OF PNEUMOCONIOSES* 21 – 24, footnote 13 (W. J. Tuddenham, M.D. ed., NIOSH April 1983) (a study guide for the application of the ILO radiographic classification system; prepared by the Division of Respiratory Disease Studies, NIOSH Centers for Disease Control and Prevention, Morgantown, W.V.).

2. Six months occupational exposure to Manville asbestos products prior to December 31, 1982 plus Significant Occupational Exposure to asbestos,<sup>6</sup> and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

**Level IV: Severe Asbestosis (Scheduled Value: \$95,000)**

1. Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathology, plus (a) TLC less than 65% or (b) FVC less than 65% plus FEV1/FVC ratio greater than 65%,
2. Six months occupational exposure to Manville asbestos products prior to December 31, 1982, plus Significant Occupational Exposure to asbestos, and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.

**Level V: Other Cancer (Scheduled Value: \$45,000)**

1. Diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease,
2. Six months occupational exposure to Manville asbestos products prior to December 31, 1982, plus Significant Occupational Exposure, and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.

**Level VI: Lung Cancer (One) (Scheduled Value: None)**

1. Diagnosis of a primary lung cancer,
2. Occupational exposure to Manville asbestos products prior to December 31, 1982, and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

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<sup>6</sup> “Significant Occupational Exposure” is defined in Section E.2.(b), below.

Lung Cancer (One) (Level VI) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer (Two) (Level VII) claims. All claims in this Disease Level will be individually evaluated. The estimated anticipated average of the individual evaluation awards for this category is \$40,000, with such awards capped at \$50,000.

Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Nonmalignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.<sup>7</sup> In any event, no presumption of validity will be available for any claims in this category.

**Level VII: Lung Cancer (Two) (Scheduled Value: \$95,000)**

1. Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease,
2. Six months occupational exposure to Manville asbestos products prior to December 31, 1982, plus Significant Occupational Exposure to asbestos, and
3. Supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

**Level VIII: Mesothelioma (Scheduled Value: \$350,000)**

1. Diagnosis of mesothelioma and
2. Credible evidence of exposure to Manville asbestos products prior to December 31, 1982.

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<sup>7</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer (Level VII) or Lung Cancer (Level VI), although a claimant who meets the more stringent requirements of Lung Cancer (Level VII)(Markers and Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the Trust. In such a case, it is anticipated that the liquidated value of the claim might well exceed the \$95,000 Scheduled Value for Lung Cancer (Level VII) shown above. “Non-Smoker” means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.



## **E. Evidentiary Requirements**

### **1. Medical Evidence.**

(a) **In General.** All diagnoses of a Disease Level shall be accompanied by either (i) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis, or (ii) a history of the claimant's exposure sufficient to establish a 10-year latency period. All diagnoses of a nonmalignant asbestos-related disease (Disease Levels 1-IV) shall be based (i) in the case of a claimant who was living at the time the claim was filed, upon (A) a physical examination of the claimant by the physician providing the diagnosis; (B) an x-ray reading by a certified B-reader, and (C) on pulmonary function testing<sup>8</sup> in the case of Asbestosis/Pleural Disease (Level III) and Severe Asbestosis (Level IV);<sup>9</sup> and (ii) in the case of a claimant who was deceased at the time the claim was filed, upon (A) a physical examination of the claimant by the physician providing the diagnosis, or (B) pathological evidence of the non-malignant asbestos-related disease, or (C) an x-ray reading by a certified B reader. Diagnoses of a malignant asbestos-related diseases (Levels V – VIII) shall be based upon either (i) a physical examination of the claimant by the physician providing the diagnosis, or (ii) on a diagnosis of such a malignant Scheduled Disease by a board-certified pathologist. A finding by the diagnosing physician that a claimant's disease is "consistent with" or "compatible with" asbestosis will be treated by the Trust as meeting the standard of a reasonable degree of medical probability.

(b) **Credibility of Medical Evidence.** Before making any payment to a claimant, the Trust must have reasonable confidence that the medical evidence provided in support of the claim is credible and consistent with recognized medical standards. The Trust may require the submission of x-rays, detailed results of pulmonary function tests, laboratory tests, tissue samples, results of medical examination or reviews of other medical evidence, and may require that medical evidence submitted comply with recognized medical standards regarding equipment, testing methods and procedure to assure that such evidence is reliable.

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<sup>8</sup> "Pulmonary Function Testing" shall mean spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which is in material compliance with ATS standards for technical quality and calibration.

<sup>9</sup> All diagnoses of Asbestos/Pleural Disease (Disease Levels II and III) not based on pathology shall be presumed to be based on findings of bilateral asbestosis or pleural disease, and all diagnoses of Mesothelioma (Disease Level VIII) shall be presumed to be based on findings that the disease involves a malignancy. However, the Trust may rebut such presumptions.

## 2. Exposure Evidence.

(a) **In General.** To qualify for any Disease Level, the claimant must demonstrate a minimum exposure to an asbestos-containing product produced by Manville prior to December 31, 1982 together with additional asbestos exposure requirements where provided.

(b) **Significant Occupational Exposure.** “Significant Occupational Exposure” means employment for a cumulative period of at least five years, in an industry and an occupation in which the claimant (i) handled raw asbestos fibers on a regular basis; (ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers; (iii) altered, repaired or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or (iv) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described in (i), (ii) and/or (iii).

(c) **Exposure Evidence.** The claimant must demonstrate meaningful and credible exposure to asbestos or asbestos-containing products supplied or manufactured by Manville in accordance with the exposure requirements described above. That meaningful and credible exposure may be established by an affidavit of the claimant, by an affidavit of a co-worker or the affidavit of a family member in the case of a deceased claimant (providing the Trust finds such evidence reasonably reliable), by invoices, construction or similar records, or by other credible evidence. The specific exposure information required by the Trust to process a claim is set forth on the proof of claim form to be used by the Trust. The Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

## F. Resolution of Categorization and Valuation Disputes.

1. **Contestable Matters.** Except for Non-Standard or Extraordinary Claims, if a claim otherwise meets the Categorization Criteria for a Scheduled Disease, the Trust will pay the Scheduled Value for that disease in accordance with the provisions of this TDP. If a claimant chooses individual evaluation, and if the claim is eligible to be placed in one of the Scheduled Disease Levels, and is supported by appropriate evidence, the Trust will not dispute the culpability of Manville's conduct, or, as a general proposition, that asbestos exposure caused such disease. Instead, the Trust will have the right to contest only the following matters:

- the type and seriousness of the claimant's injuries;
- the claimant's exposure to Manville asbestos products;
- other causation-in-fact issues;
- the amount of damages; and
- applicability of statutes of limitation as set forth in the following subsection 1(a).

Nothing in this paragraph is intended to amend or alter the contestable issues the Trust is permitted to assert as defined in the Claims Resolution Procedures and the Trust Agreement.

(a) All Manville Trust claims arising from exposure to asbestos in the United States must meet the applicable federal or state statute of limitations that was in effect at the time of filing with the Trust. In addition, irrespective of the application of any relevant federal or state statute of limitations or repose, any claims may be filed with the Trust within three years after date of diagnosis or, if later, date of asbestos-related death. All Manville Trust claims arising from exposure to asbestos outside the United States must be filed with the Trust within three years after the date of diagnosis or, if later, date of asbestos-related death. This subsection F.1(a) will become effective on January 1, 2011.

**2. Arbitration.** Even a flawless claims resolution procedure may not always fairly meet a claimant's perceived deserved disease categorization or claims valuation. Accordingly, the Trust, with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor, will institute binding and non-binding arbitration procedures for resolving disputes over disease categorization for Scheduled Values and Maximum Values, individual evaluation of claims, and Extraordinary Claim status. These procedures may be modified by the Trust with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor.

As provided in Section B above, a claimant may initially elect arbitration of categorization. Except for such arbitration of categorization, a claimant must first choose individual evaluation and the individual evaluation must be completed before the claimant can elect arbitration. Individual evaluation is completed when the claim has been individually reviewed by the Trust, the Trust has made an offer on the claim, the claimant has rejected the liquidated value resulting from the individual evaluation, and the claimant has notified the Trust of the rejection in writing.

Arbitrators may determine whether a disease falls in a higher or lower category of Scheduled Disease for purposes of determining both Scheduled Values and Maximum Values. After a claim is individually evaluated, arbitrators may also determine a liquidated value which may be higher or lower than the Scheduled Value for the claim. However, except in the case of an Extraordinary Claim (as determined by the Trust or by the Extraordinary Claims Panel), arbitrators may not return an award in excess of the Maximum Value for the appropriate Scheduled Disease category. In the case of individual evaluations, a claimant who submits to arbitration and who accepts the arbitral award will receive payments in the same manner as one who had accepted the Trust's original valuation of the claim and will be deemed to have released the Trust from any liability beyond the liquidated value determined by the arbitrator.

**3. Litigation.** Only claimants who, following individual evaluation, elect non-binding arbitration and then reject their arbitral awards retain the right to trial against the Trust of the liquidated value, if any, of their claims. A judgment creditor is eligible for payment from the Trust's available cash, as provided below, 30 days after the judgment is final and non-appealable, subject to Section H.3 below. However, under no circumstances shall the Trust pay any punitive damages which may be awarded to a claimant.

**G. Creation of Two Pools.**

**1. Pool A.** Trust Beneficiaries will be compensated through two pools of funds. A Trust Beneficiary who accepts an offer from the Trust based on (i) a Scheduled Value for a Scheduled Disease, (ii) a value based on individual evaluation by the Trust, or (iii) an arbitration award, will receive a pro rata share of that liquidated value from Pool A. A Trust Beneficiary who rejects an award in non-binding arbitration, and who returns to the tort system and obtains a judgment for money damages, will also enter Pool A after the claim has been reduced to a final, non-appealable judgment. The liquidated value of a judgment creditor's claim entered in Pool A, however, will not exceed (i) the Maximum Value for the judgment Scheduled Disease, or (ii) such higher amount as may have been offered by the Trust or awarded through arbitration with respect to an Extraordinary Claim as described in Section C above.

**2. Pool B.** Judgment creditors with verdicts in excess of the limits set forth above and Trust Beneficiaries who have received less than 100 percent of the liquidated value of their claims entered in Pool A will enter Pool B where they may receive compensation for the excess amount of their respective verdicts and claims after all claims entered in Pool A have been paid 50 percent of their liquidated value.

**3. Distribution of Trust Funds Between the Pools.** The Trust's available cash for general distribution to Trust Beneficiaries shall be held by the Trust for distribution to Beneficiaries with liquidated Pool A claims until all such Beneficiaries have received 50 percent of the liquidated value of their claims entered in Pool A. Pool B shall not receive any funds available for distribution until all claims entered in Pool A have been paid 50 percent of the liquidated value of their claims. It is doubtful that Pool B will ever be funded.

**4. Extinguishment of Unpaid Trust Claims.** Upon the termination of the Trust in accordance with the provisions of the Trust Agreement and/or upon the distribution of all Trust Assets, any and all Trust Claims shall be extinguished.

## H. Payment of Claims.

### 1. Pro Rata Share to be Paid.

(a) With the exception of claimants accepting a Cash Discount Payment pursuant to Section D, Level I, it is intended that all Trust Beneficiaries shall share in the Trust estate on a pro rata basis, with each Trust Beneficiary receiving a pro rata share of his or her claim's liquidated value, arbitration award, or judgment as equivalent as possible to the pro rata share received by all other Trust Beneficiaries under this TDP.

(b) The initial pro rata share has been set at ten percent (10%) by the Trust with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor. To determine the initial pro rata share, the Trust has forecast its anticipated annual sources and uses of cash until the last projected future claim has been paid or assets have been reserved for its payment. The Trust has calculated the appropriate pro rata share for all claims so that the Trust will have no remaining assets or liabilities after the last Trust Beneficiary has received his or her pro rata share.

(c) The initial pro rata share is based on information both with respect to valuations of the Trust's assets and expectations about the value of present and future Trust liabilities. It may be possible to make additional payments in the future to previously settled Trust Beneficiaries while simultaneously protecting future claimants from unreasonable risks.

(d) In order to ensure, as best as possible, that the basic assumptions which underlie this TDP remain valid so that all Trust Beneficiaries will be treated equally, the Trust shall, at least every 3 years, but as often and for so long as the Trust, the SCB, or the Legal Representative deem necessary, re-estimate the values of its total assets and its total liabilities and determine whether a revised pro rata percentage should be applied to past, present or future claims.

(e) The Trust shall determine (i) if the anticipated values of assets have been so reduced and/or the expectation of the value of present or future claims so increased that a new lower pro rata share should be applied to all future claim payments, or (ii) if the anticipated values of assets have been so increased and/or the expectation of the value of present or future claims so reduced that a new higher pro rata share should be applied to all future claim payments, as well as any past settlements paid a lower pro rata share.

(f) Estimates have been and shall be performed in a flexible and pragmatic manner that considers the circumstances of the present claimants, the future claimants, the practical limitations imposed by the inability to predict with precision the future assets and liabilities of the Trust and the risks to all Trust Beneficiaries in not reaching agreement.

## **2. Equalization of Pro Rata Shares.**

(a) Payment of pro rata amounts may be limited from time to time by available cash. When the TDP was adopted in 1995, it contained a provision that in such case, or in the event a new higher pro rata share is applied, the Trust shall make, as cash is available, a subsequent additional pro rata payment to all Trust Beneficiaries with liquidated claims whose previous cumulative pro rata share was less than the existing or the new higher estimate. When that provision was adopted, it was not anticipated that circumstances might later be such, as they are now, that changes in the pro rata share might be accompanied by changes in categorization criteria and a decrease in the Scheduled Values for some claims. Given this change in circumstances, additional payments to claimants who have already received ten percent (10%) of the liquidated value of their claims are increasingly unlikely and may no longer serve this TDP's goal to treat all claimants equitably. If the pro rata share is increased to more than ten percent (10%), the Trust, the SCB and the Legal Representative will review the impact of this provision as part of the periodic pro rata review required by Section H.1(d). The purpose of such payment shall be to equalize Trust Beneficiaries' cumulative pro rata share. However, the Trust shall not be obligated to make such a catch-up pro rata adjustment more than once a year, or if in the judgment of the Trust with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor, the amount of any such catch-up pro rata adjustment is so small as not to justify its administrative burden.

(b) The Trust shall provide the SCB, the Legal Representative, and the Special Advisor with any proposal for adjusting the pro rata share supported by the results of the Trust's analysis and any valuations prepared by the Trust's investment bankers and other consultants. The proposal(s) shall take effect upon the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor.

**3. Order of Payment.** The Trust shall pay claims in the order in which the claims are liquidated (the "FIFO Payment Queue"), each such payment occurring within 30 days of the Trust's receipt of an executed release from the subject claimant; provided, however, that (a) if at any time, the Trust has insufficient available funds to pay any claim, payment shall be suspended until such time as the Trust monetizes additional assets and (b) all claims payments are subject to the Maximum Annual Payment provisions set forth in Section H.8 below, which provisions may result in a payment not occurring within the 30-day period following the Trust's receipt of an executed release. No Trust Claim shall be preferred over any other for purposes of payment, regardless of which processing queue the Trust Claim is in.



**4. Management of Assets.**

(a) The Trust shall manage its assets in a manner consistent with its obligation to preserve and enhance the value of the Trust estate and further the prompt, fair and equitable distribution of Trust assets to all present and future Trust Beneficiaries.

(b) If in the future the SCB or the Legal Representative disagree with or are dissatisfied with the advice received from the Trust's financial or investment advisors concerning any matter as to which the SCB or the Legal Representative have concurrence rights, the SCB or the Legal Representative may notify the Trust in writing that they are withholding concurrence with respect to such matter on such ground, setting forth the reasons for such disagreement or dissatisfaction. Thereafter, either the Trust, on the one hand, or the SCB or the Legal Representative, on the other hand, shall have the right to request that the dispute with respect to such concurrence be resolved pursuant to the procedure set forth in Section K.3 below. If it is determined in such dispute resolution procedure that there is a reasonable basis for the disagreement or dissatisfaction of the SCB or the Legal Representative with such financial or investment advice, the SCB or the Legal Representative shall have the right to appoint their own financial or investment advisor to review the disputed issue, and in such case, the reasonable fees and expenses of such financial or investment advisor shall be paid for by the Trust; provided, however, that in any case where both the SCB and the Legal Representative withhold concurrence on the ground that they disagree or are dissatisfied with the financial or investment advice received by the Trust on a matter as to which they both have concurrence rights and it is determined in the dispute resolution procedure that there is a reasonable basis for such disagreement or dissatisfaction by both the SCB and the Legal Representative, the Trust shall have the right to have determined in such dispute resolution procedure the issue of whether it is reasonable and necessary for the Trust to bear the fees and expenses of separate financial or investment advisors for the SCB and for the Legal Representative or whether instead the Trust's obligations in such case shall be limited to paying the fees and expenses of a single financial or investment advisor that may be consulted jointly or separately by both the SCB and the Legal Representative.

**5. Access to Financial Information.** Subject to entry into an appropriate confidentiality agreement where applicable, the Trust shall make available to the SCB, the Legal Representative, and the Special Advisor any other investment banking or other financial, accounting or statistical information available to the Trust relating to issues to be discussed with and/or as to which concurrence is required of the SCB or the Legal Representative.

**6. Amendments to Procedures Involving the Pro Rata Share.** The procedures set forth herein governing the pro rata share may be amended, altered, or adjusted to reflect changed circumstances, greater information, and/or improved procedures, with the concurrence of the Trust, the SCB, and the Legal Representative, after consultation with the Special Advisor.

7. **Resolution of Disputes Involving the Pro Rata Share.** Any dispute among or between the Trust, the SCB, and the Legal Representative, regarding any matter on which the Legal Representative's concurrence is required, shall be resolved in accordance with the dispute resolution process in Section K, and the Legal Representative shall have a role in the dispute resolution procedures equal to that of the SCB on such matters.

8. **Trust's Determination of the Maximum Annual Payment.** After calculating the pro rata share, the Trust shall model the cash flow, principal and income year-by-year to be paid over its entire life to ensure that all present and future claimants are compensated at the pro rata share (other than claimants accepting a Cash Discount Payment pursuant to Section D, Level I). In each year, based upon that model of the cash flow, the Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the "Maximum Annual Payment"). The Trust's distributions to all claimants for that year shall not exceed the Maximum Annual Payment.

The pro rata share and the Maximum Annual Payment figures are based on projections over the lifetime of the Trust. As noted in Section H.1 above, if such long-term projections are revised, the pro rata share may be adjusted accordingly, which would result in a new model of the Trust's anticipated cash flow and a new calculation of the Maximum Annual Payment figures. However, year-to-year variations in the Trust's flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the Trust's long-term projections.

If, in a given year, however, asset values, including earnings thereon, are below projections, the Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the Trust as measured on a specified date during the year is less than the present value of the assets of the Trust projected for that date by the cash flow model described in the foregoing paragraph. The Trust shall make such a comparison whenever the Trustees become aware of any information that suggests that such a comparison should be made and, in any event, no less frequently than once every six months.

If the Trust determines that as of the date in question, the present value of the Trust's assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year-by-year to be paid over the life of the Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the Temporary Maximum Annual Payment (additional reductions in the



Maximum Annual Payment can occur during the course of that year based upon subsequent calculations).

If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the Trust's assets and the actual present value of its assets has decreased, the Temporary Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the original Maximum Annual Payment.

As a further safeguard, the Trust's distribution to all claimants for the first nine months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for such year is not in effect, the original Maximum Annual Payment for the following year shall be reduced proportionately.

In the event there are insufficient funds in any year to pay the total number of outstanding liquidated claims, the available funds shall be paid to the maximum extent to claimants based on their place in the FIFO Payment Queue. Claims for which there are insufficient funds shall be carried over to the next year, and placed at the head of the FIFO Payment Queue. If there is a decrease in the pro rata share prior to the payment of such claims, such claims shall nevertheless be entitled to be paid at the pro rata share that they would have been entitled to receive but for the application of the Maximum Annual Payment. Notwithstanding any other provision hereof, if, at the end of a calendar year, there is an excess amount of Maximum Annual Payment funds (or Temporary Maximum Annual Payment funds if a Temporary Maximum Annual Payment is in effect at the end of the calendar year) because there is an insufficient amount of liquidated claims to exhaust the Maximum Annual Payment (or Temporary Maximum Annual Payment), the excess amount shall be rolled over into the next calendar year and shall be available for use by the Trust to pay claims.

#### **I. All Trust Beneficiaries Treated Alike.**

In order to conserve the assets of the Trust, except as set forth below, Trust Beneficiaries – both plaintiffs and defendants – will dismiss, without prejudice, all present cases, are enjoined from filing future litigation against Manville<sup>10</sup> or the Trust, and are

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<sup>10</sup> As used herein, Manville shall mean the Debtors, their successors, and their subsidiaries and affiliates. To the extent that Trust Beneficiaries assert claims against third parties which a court of competent jurisdiction determines by order give rise to Indemnification Liabilities on the part of the Trust, those Trust Beneficiaries agree to reduce such claims and/or judgments on such claims, on a dollar-for-dollar basis, to the full extent necessary to extinguish any such Indemnification Liabilities. Provided, however, that this provision is not intended to otherwise

required to pursue their claims against the Trust only as provided in this TDP. Except as provided in Section F above and subsection 1(c) below, the Trust will make no appearance in any court, and no Trust Beneficiary will be permitted to proceed in any manner against the Trust or Manville in any state or federal court.

**1. Litigation between Trust Beneficiaries.**

(a) **Section I Applicable Only to Trust Beneficiaries.** The provisions of this Section I, including those relating to set-offs, are applicable only to Trust Beneficiaries. Asbestos health plaintiffs who are not Trust Beneficiaries because they were not exposed to Manville asbestos or asbestos-containing products shall not be subject to any of the provisions of this Section I and judgments they obtain against defendants shall not be governed by the provisions of this Section I, including the provisions relating to set-offs. Any dispute over whether an asbestos health plaintiff is a Trust Beneficiary whose claim is governed by this Section I shall be resolved by the trial court hearing the asbestos health plaintiff's case against defendants. The parties shall retain whatever rights of appellate review may be available under applicable law in respect of such ruling.

(b) **Right to introduce evidence.** In any litigation between Trust Beneficiaries, all Beneficiaries shall retain their respective rights provided by applicable law to introduce evidence at trial in state or federal court.

(c) **Where third-party claims permissible.** Third-party claims may be asserted against the Trust for the sole purpose of listing the Trust on a verdict form or otherwise as necessary to ensure that any verdict reduction in respect of the Manville (or Trust) liability share is made pursuant to applicable law. No objection shall be made by the Trust or the claimant to the filing by a Co-Defendant of a third-party complaint or to the joinder of the Trust as a party for this limited purpose only. However, the Trust shall not be required to enter an appearance as to third-party or any other claims, nor shall it be subject to party discovery or to default judgment or levy and execution on any judgment. Under no circumstances shall the Trust be required to pay claims, whether for asbestos-related conditions or for contribution or indemnification, except in accordance with this TDP. Without enlarging any substantive rights accorded them by this TDP, Co-Defendants shall have such procedural rights (relating to procedural issues not expressly dealt with by this TDP) reasonably necessary to pursue or defend rights accorded them by this TDP.

(d) **Status of the Trust.** In return for limiting the right of Co-Defendants to implead the Trust, except under the circumstances described in subsection 3(d)(ii)(B), below, the Trust shall be treated in litigation between Beneficiaries of the Trust as a legally responsible

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restrict or interfere with the rights of Trust Beneficiaries to proceed against third parties.

tortfeasor under applicable law, without the introduction of further proof. Under no circumstances shall the Trust be treated as a bankrupt unless:

- (i) formal bankruptcy, liquidation or insolvency proceedings are commenced by the Trust; or
- (ii) such proceedings are commenced against the Trust and applicable law provides for treating the Trust as a bankrupt in such circumstances.

(e) **Discovery and informational issues.** The Trust shall comply with the rules of discovery pertaining to non-parties under applicable law.

(f) **Verification of settlement information.** In response to a Co-Defendant request, the Trust and the claimant shall promptly verify, no later than the start of jury selection in the trial of an action by the claimant against the Co-Defendant, the fact of any settlement or any filing by the claimant of a claim with the Trust; and shall provide information regarding the amount and terms of any such settlement at the time and with the detail required by applicable law.

## 2. **Co-Defendant Contribution Claims against the Trust.**

(a) **General principles.** Co-Defendant Contribution Claims against the Trust may be satisfied in two ways: (i) in the circumstances set forth in subsection 4, below, Contribution Claims may be brought against the Trust and processed in accordance with this TDP and subsection 4, below, or (ii) Co-Defendants may receive credit at trial for the Trust (or Manville) share in the form of a set-off (defined herein as a reduction in the amount of a judgment) under the circumstances described in subsection 3, below, and calculated pursuant to applicable law. Except as described below, in order to preserve the Trust's assets for payment of claims asserted by asbestos health claimants and to limit transaction costs of all parties, set-off credit shall be the preferred method of satisfying Co-Defendant claims, regardless of whether the Trust and claimant have liquidated the underlying claim.

3. **Calculation of set-off.** The manner of calculating set-off shall be based on whether the claim has been liquidated by the Trust and the applicable law of contribution and verdict reduction or settlement credit.

(a) **Calculation of Trust's payment.** In situations where the amount of the Trust's payment or expected payment to a claimant is relevant to the set-off calculation, that amount shall be determined as follows:

(i) **For liquidated claims.** Where the underlying claim has been liquidated, the amount of the Trust's payment to the claimant (the "Liquidated Trust Payment") shall be (a) the actual amount received to date by the claimant or (b) if no funds have yet been received, the amount of the liquidated value agreed to by the claimant and the Trust, multiplied by the pro rata share in effect at the time the set-off is being applied (as described above in Section H).

(ii) **Unliquidated claims.** Where the claim has not been liquidated, the amount of the Trust's payment to the claimant (the "Unliquidated Trust Payment") shall be the amount of the Scheduled Value, as further described in this TDP, for the applicable disease category, multiplied by the pro rata share in effect at the time the set-off is being applied (as described above in Section H).

(iii) **Entitlement to subsequent Trust payment.** Where the amount of a set-off is calculated on the basis of subsection 3(a)(i) or (ii), above, and a Co-Defendant has paid a judgment based on joint and several liability or entered into a post-judgment settlement with the claimant, the Co-Defendant shall receive that portion of any future payment made by the Trust in respect of the underlying asbestos health claim which is: 1) beyond the amount of the set-off calculated pursuant to subsections 3(a)(i) or (ii); and 2) attributable to that part of claims tried against the Co-Defendant for which the Trust is jointly and severally liable. The Co-Defendant shall have no entitlement to subsequent Trust payments when the amount of a set-off is calculated on the basis of the Trust's pro rata share or its allocated liability share.

(b) **Pro tanto states.** Pro tanto states are those in which any judgment against a non-settling defendant is reduced by the amount paid or agreed to be paid by a released party.

(i) **Liquidated claims.** Where the underlying claim has been liquidated, the amount of set-off shall be the Liquidated Trust Payment.

(ii) **Unliquidated claims.** Where the claim has not been liquidated, the amount of set-off shall be the Unliquidated Trust Payment.

(c) **Pro rata states.** In pro rata states, total liability is divided equally among all defendants found by the fact finder to be legally responsible tortfeasors (or agreed by the parties to be legally responsible tortfeasors, if applicable law so provides), including released parties. In such states, judgments against nonsettling defendants are reduced, as provided by applicable law, by either the pro rata share attributable to released parties or the amount paid or agreed to be paid by released parties. Solely for the purposes of obtaining a set-off in a pro rata state pursuant to this subsection 3(c), regardless of whether the Trust has been given a release, or the wording of any such release, claimants in pro rata states shall be deemed to have given the Trust a joint tortfeasor release and indemnified the Trust against contribution and indemnity claims by Co-Defendants against the Trust arising from a judgment obtained by such claimants.

(i) **Liquidated claims.** Where the underlying claim has been liquidated, the set-off amount shall be either (A) the Liquidated Trust Payment, or (B) the Trust's pro rata share of the judgment, as provided by applicable law.

(ii) **Unliquidated claims.** Where the underlying claim has not been liquidated, the set-off amount shall be either (A) the Unliquidated Trust Payment, or (B) the Trust's pro rata share of the judgment, as provided by applicable law.

(d) **Allocation or apportionment states.** Allocation or apportionment states provide that the amount of any judgment shall be reduced with reference to the apportioned share of released or absent parties. The burden of proving the percentage liability share of the Trust or Manville shall be allocated as provided by applicable law.

(i) **Liquidated claims.** Where the underlying claim has been liquidated, the set-off shall be the larger of (a) the Liquidated Trust Payment, or (b) the liability share allocated by the fact finder to the Trust or Manville.

(ii) **Unliquidated claims.** Where the underlying claim has not been liquidated, the claimant shall make the following election:

(A) To pursue his or her claim against the Trust, in which event any Co-Defendant(s) against whom a judgment is returned shall receive a set-off equal to the larger of (I) the Unliquidated Trust Payment, or (II) the liability share allocated by the fact finder to the Trust or Manville. If there are multiple settling tortfeasors, state law shall govern whether the set-offs attributable to such settlements are calculated in the aggregate or individually for each settling tortfeasor; or

(B) To agree not to pursue his or her claim against the Trust in which event there shall be no set-off in respect of the Trust, except in the circumstances set forth in subsection 3(d)(ii)(E), below. At such time as a Co-Defendant remaining at verdict<sup>11</sup> pays the resulting judgment or enters into a post-verdict or post-judgment settlement with the claimant, the Co-Defendant shall have the right to bring a Contribution Claim against the Trust, as set forth in subsection 4, below. Nothing in this paragraph shall modify the several liability of the Trust or Co-Defendants in jurisdictions providing for several liability as set forth by subsection 3(e) below.

(C) The election required under this subparagraph shall be made by the claimant either (I) in open court on the record, or (II) in writing to the Trust and to those Co-Defendants then remaining at trial no later than the point in time described in subsection 3(d)(ii)(D), below.

(D) The election required under this subparagraph shall be made after the completion of jury selection and before opening argument, unless the claimant chooses to make the election earlier. In the case of bifurcated or multiphase trials, the claimant shall make the required election before opening argument (or, if no opening argument is had as to that phase, before the presentation of evidence commences) in the first trial phase addressing any issue, such as damages, product exposure or identification, or specific causation, which is individual to that claimant. For this purpose, issues such as Co-Defendant negligence, product defect and liability for punitive damages shall not be considered issues individual to a particular claimant.

(E) Notwithstanding any other provision of this subparagraph, a claimant may elect to pursue his or her claim against the Trust following a previous election not to do so if any of the Co-Defendants that went to judgment declare bankruptcy before paying the judgment or entering into a post-judgment settlement with the claimant. The plaintiff shall be required to make such election within 60 days of the Co-Defendant's bankruptcy filing and shall notify the Trust and the Co-Defendant of such election in writing. If the claimant makes such an election, any other nonbankrupt Co-Defendant(s) that went to judgment shall receive a set-off pursuant to subsection 3(d)(ii)(A) above, except that a nonbankrupt Co-Defendant which had previously paid the judgment or entered into a post-judgment settlement prior to the plaintiff's revised election shall retain its rights to make a Contribution Claim against the Trust under subsection 4, below.

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<sup>11</sup> As used in this Section I, the term "post-verdict settlement," shall refer to a settlement reached after the fact-finder has rendered a verdict establishing the amount of the claimant's compensatory damages.

(F) The beneficiaries of the Trust disagree as to whether the provisions of this TDP will render the Trust a party over whom plaintiffs are unable to obtain jurisdiction within the meaning of NY CPLR § 1601. To resolve this controversy, the parties stipulate and agree for themselves and all members of their respective classes, that in cases to which the limitation on joint liability provided by NY CPLR § 1601 would apply they shall divide the Trust's or Manville's share of liability among themselves as follows, notwithstanding any contrary provision of this Section I (including subsection 1(d) above to the extent, if any, it may be deemed to be contrary to this subsection), law or judicial decision: 80% of the Trust's or Manville's share shall be allocated as if the Trust were a party over whom jurisdiction could not be obtained, and the other 20% shall be borne by the plaintiffs. The burden of proving the Trust's or Manville's share of liability shall be allocated as provided by applicable law.

(e) **Several liability states.** Where the applicable state or other law provides for several liability (as distinguished from joint and several liability) for all or part of a cause of action, applicable law shall determine the effect of the several liability of the Trust and/or the Co-Defendants on the amount of any set-off and the entitlement of Co-Defendants to future payments from the Trust. In such jurisdictions, claimants shall retain their claims against the Trust to the extent those claims are based on several liability regardless of the other provisions of this Section I, and Co-Defendants shall bear no responsibility for the several liability of the Trust, except as mandated by applicable law.

(f) **States with multiple set-off rules.** In some states, different set-off rules (pro tanto, pro rata or apportionment) govern different causes of action or parts thereof or different elements of damages. In such states, applicable law shall govern which set-off rules apply to each cause of action or part thereof and each element of damages.

(g) **Application of set-off to claims tried and categories of damages.** Where the judgment against Co-Defendant(s) resolves only a portion of the claimant's Trust Claim (for example, personal injury as distinct from wrongful death claims), the dollar amount of the Liquidated Trust Payment used in calculation of any reduction or set-off shall reflect any apportionment made by the Trust and the claimant reasonably and in good faith with regard to rights of the Co-Defendants under this TDP, provided that the Co-Defendants shall retain any rights available to them under applicable law to challenge such apportionment. If the claimant has not liquidated his or her Trust Claim, the trial court shall allocate the Unliquidated Trust Payment between claims tried and not tried for purposes of calculating the set-off. In addition, wherever applicable law calls for apportionment of economic and non-economic damages, the value assigned to the set-off in respect of the Trust's share shall be allocated between economic and non-economic damages in the same proportion that the judgment or underlying verdict against the Co-Defendant allocated such damages, notwithstanding any apportionment set forth in individual settlement documents between the Trust and the claimant.



(h) **Determination of disease category.** Unless the plaintiff elects otherwise prior to the time the verdict is returned, the disease category to be used for purposes of calculating set-off shall be as set forth below:

- (i). If the plaintiff claimed at trial that the disease was mesothelioma, Level VIII;
- (ii). If the plaintiff claimed at trial that the disease was lung cancer, Level VII;
- (iii). If the plaintiff claimed at trial that the disease was other cancer, Level V;
- (iv). If the plaintiff claimed at trial that the disease was a non-malignant condition caused by asbestos, Level III.

In the event the plaintiff claimed two diseases at trial, the categorization shall be that of the disease with the higher Scheduled Value, unless the jury specifically finds that the plaintiff does not have that disease.

If the plaintiff elects not to follow the procedure set forth above for determining the disease category to be used in calculating set-off, the following procedures shall govern. At or before the verdict molding stage, Co-Defendant and claimant Beneficiaries shall use their best efforts to agree on the appropriate disease category for purposes of establishing the Unliquidated Trust Payment of a claim. In the event of disagreements, the issue shall be decided by the trial court, based on the disease criteria set forth at Section D and the medical records and testimony submitted by plaintiff at trial. The parties shall give notice to the Trust of the agreed-upon disease category or of the submission of the issue to the trial court. The Trust shall be bound by the court's ruling or the parties' agreed-upon determination.

#### 4. **Contribution Claims.**

(a) **Right to pursue Contribution Claims retained.** Co-Defendants shall have the right to pursue Contribution Claims (i) in connection with claims arising under the circumstances described in subsection 3(d)(ii)(B) above; and (ii) in any circumstance where no set-off credit is allowed by the trial court although this TDP would provide for a set-off. In addition, in cases where the claimant and the Trust have not liquidated the claim, a Co-Defendant may, at its sole discretion, pursue a Contribution Claim against the Trust, rather than taking a set-off credit, provided that if the Co-Defendant chooses to appeal the judgment in respect of the claim, the Co-Defendant shall have first paid an amount equal to the Unliquidated Trust Payment to the claimant. Any such choice by a Co-Defendant need not be made until the amount of the set-off credit is calculated by the trial court, and the Co-Defendant shall not be eligible to make the Contribution Claim until it has paid the judgment or entered into a post-judgment or post-verdict settlement with the claimant. Under no circumstances shall the right to make any Contribution Claim under this TDP be lost by virtue of the fact that a Co-Defendant has paid the judgment against it or entered into a post-judgment or post-verdict settlement with the claimant.



(b) **Notification of Contribution Claims.** If a claimant accepts a Trust settlement, having obtained a verdict establishing the amount of the claimants' compensatory damages and one or more of Co-defendants' liability therefor, or a judgment against Co-defendant(s), and thereafter the Trust pays a Contribution Claim arising from such verdict or judgment, the claimant shall be liable to the Trust for the amount of the Trust payment to the claimant. Co-defendants shall notify the Trust within 60 days of the return of a verdict or a judgment in favor of a claimant on which they may base a Contribution Claim. If a Co-defendant fails to notify the Trust within the 60-day period, the Co-defendant's right to be paid with respect to the Contribution Claim is preserved only if such notice is received by the Trust prior to the Trust making a payment to the claimant who obtained the verdict or judgment against Co-defendant(s). The Trust shall notify Co-defendants of the asbestos health claimants to whom it intends to make offers no later than 60 days before such offers are made.

(c) **Processing, valuation and payment of Contribution Claims.** Contribution Claims made to the Trust based on payment or settlement of a judgment shall be processed in FIFO order of their receipt by the Trust, without reference to any queue established for claims of asbestos health claimants. Contribution Claims shall be processed in the same fashion as claims of asbestos health claimants except that all arbitrations of Contribution Claims shall be binding. Such claims shall be valued as if the Co-Defendant(s) had stepped into the shoes of the claimant whose verdict against Co-Defendant(s) gave rise to the claim for contribution; all Co-Defendant(s) with valid Contribution Claims shall therefore be entitled to recover from the Trust on their Contribution Claim(s) the same amount, in aggregate, the claimant could have recovered from the Trust. In determining the value of the claim, the Trust may take into account the size of the verdict returned against the Co-Defendant(s). Contribution Claims shall be paid in the same manner as claims of asbestos health claimants are paid pursuant to Sections G and H, above, and shall be subject to the same pro rata share provisions applicable to all other claims by Trust Beneficiaries. Any information submitted by a Co-Defendant to the Trust pursuant to this subsection 4 shall be kept confidential by the Trust and shall not be disclosed to any other Beneficiary.

(d) **Co-Defendants' Contribution Claims pursued jointly.** All Co-Defendants with Contribution Claims arising from the same judgment by a claimant shall use their best efforts to pursue such contribution claims in a coordinated fashion.

5. **Right to make individual allocation agreements.** Nothing in this Section I shall prevent claimants and Co-Defendants from agreeing in writing in individual cases to allocate their respective claims against the Trust in such manner as they deem appropriate.

6. **Indemnity Claims.** Any Trust Beneficiary holding an Indemnity Claim valid under applicable law, which was not waived pursuant to the applicable provisions of the Co-Defendants' Procedures, and who is not a Distributor within the meaning of subsection 8 below, may assert such Indemnity Claim either in the Cases, as provided by the Co-Defendants' Procedures, or may present it to the Trust. If a Beneficiary elects to present an Indemnity Claim to the Trust, it shall be processed in the same fashion as Contribution Claims are processed under subsection 4, above. Indemnity Claims shall be valued by the Trust as provided by applicable law and shall be subject to the provisions relating to payment and pro rata shares that are set forth in Sections G and H, above.

7. **Distributor Indemnity Claims.** Any Trust Beneficiary that is a Distributor may present Distributor Indemnity Claims to the Trust for processing and payment pursuant to the provisions of this subsection 7.

(a) **Definitions.** A Distributor is any entity that: (i) was engaged in the business of distributing Manville asbestos or asbestos-containing products; (ii) was not engaged in the business of mining asbestos or manufacturing asbestos-containing products; and (iii) is not a member of the MacArthur Subclass. A Distributor Indemnity Claim means any Indemnity Claim by a Distributor which constitutes a valid claim for indemnification under applicable law. Distribution means the purchase, shipment, storage, sale and delivery of asbestos or asbestos-containing products which were not remanufactured, altered, re-labelled or installed by the Distributor.

(b) **Distributor Indemnity Claims Not Waived.** No Distributor shall be deemed to have waived Distributor Indemnity Claims by any of the following: (i) failing to comply with the provisions of Sections II and III.D.1 of the Co-Defendants' Procedures, including not filing a timely proof of claim for Indemnity in the Cases; (ii) the making of the Contribution Claim Election; or (iii) the expungement of any Proof of Claim for Indemnity by the Bankruptcy Court.

(c) **Distributor Indemnity Claim Percentage.** The Distributor Indemnity Claim percentage is the proportion of a Distributor's asbestos-related loss in any particular case which shall be treated by the Trust as constituting a Distributor Indemnity Claim. Distributors who meet the following two requirements shall have the right to process Indemnity Claims against the Trust using the Distributor Indemnity Claim percentage described below: (i) 35% or more of the asbestos or asbestos-containing products purchased by the Distributor were distributed by it; and (ii) 35% or more of the asbestos or asbestos-containing products distributed by the Distributor were purchased from Manville.

Except as specifically provided otherwise in the Stipulation of Settlement, the Distributor Indemnity Claim percentage shall be equal to the product of: (i) the percentage of asbestos or asbestos-containing products distributed by the Distributor that it purchased from Manville; (ii) the percentage of asbestos or asbestos-containing products purchased by the Distributor which were distributed by it; and (iii) 95% if the Distributor filed a proof of claim for indemnity in Manville's bankruptcy which was not expunged and 86% otherwise.<sup>12</sup> Thus, by way of example only, a Distributor that purchased 50% of the asbestos it dealt in from Manville, and which distributed 50% of the asbestos it purchased, and that filed a timely proof of claim would be assigned a Distributor Indemnity Claim percentage of 23.75% (50% x 50% x 95%).

**(d) Setting a Distributor Indemnity Claim Percentage.** The Distributor Indemnity Claim percentage applicable to a particular Distributor shall be determined by the following procedures.

First, a Distributor must make a written submission to the Trust setting forth its position concerning the proper Distributor Indemnity Claim percentage for that Distributor and each component of that percentage. The Trust shall promptly notify the SCB of the Distributor's submission, the proposed Distributor Indemnity Claim percentage and each component thereof. The SCB may share such information only with those persons necessary to enable the SCB to respond to the Distributor's submission. The SCB shall have 45 days from receipt of such notice to make its own written submission to the Trust concerning the proper Distributor Indemnity Claim percentage for the Distributor, together with such supporting documents as the SCB deems appropriate.

By the same date the SCB's submission is due, the Distributor shall submit to the Trust all documents in support of its position it wishes the Trust to consider. Such information provided by the Distributor shall be kept confidential by the Trust and shall not be shared with any other Beneficiary. Within 10 days following the date the SCB's submission is due, the Trust shall determine the Distributor Indemnity Claim percentage, and shall notify the Distributor and the SCB of its determination. If either is dissatisfied, they may present the issue to the Special Advisor for mediation.

The Special Advisor shall receive copies of all submissions presented to the Trust. If the Special Advisor is unable to resolve the issue through mediation, it shall be resolved by binding arbitration. The Special Advisor shall nominate three potential arbitrators (none of whom shall be counsel representing any Trust Beneficiary), each party shall strike one and the remaining nominee shall be the arbitrator. If both parties strike the same nominee, the Special Advisor shall select the arbitrator from the remaining two nominees. The arbitrator shall determine the procedures for the arbitration. The arbitrator's determination of the appropriate Distributor Indemnity Claim percentage shall be final and binding on the Distributor, the Trust and the SCB.

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<sup>12</sup> These three factors are hereinafter referred to as the components of the Distributor Indemnity Claim percentage.

If this process results in a determination that less than 35% of the asbestos purchased by a Distributor was distributed by it or less than 35% of the asbestos or asbestos-containing products it purchased was from Manville, the Distributor shall not have the right to process its claims using a Distributor Indemnity Claim percentage (unless special circumstances are presented to and accepted by the Trust, as described below) and shall instead process its claims on a case-by-case basis as provided by subsection 7(f), below. Upon demonstration of special circumstances warranting such treatment, the Trust may in its discretion permit a Distributor to process its claims using a Distributor Indemnity Claim percentage even if the Distributor fails to meet the requirement set forth in the preceding sentence.

(e) **Processing Distributor Indemnity Claims with a Percentage.** Once a Distributor Indemnity Claim percentage has been established for a Distributor, the Distributor shall make any Distributor Indemnity Claims by submitting proof to the Trust that it has sustained an asbestos-related loss in a case which has been finally resolved by settlement, judgment or otherwise. Upon proof of such a loss, the Trust shall process and pay, in accordance with the procedures set forth in Section G, an amount equal to the Distributor Indemnity Claim percentage of such loss times the same pro rata share applicable to all Trust Claims, as described in Section H.

Distributor Indemnity Claims shall be processed and paid by the Trust in FIFO order in a queue separate from the queues for other Trust Claims. The Trust, in consultation with counsel for the Manville Distributors Subclass, shall establish appropriate forms and procedures for processing Distributor Indemnity Claims.

(f) **Processing Distributor Indemnity Claims With No Percentage.** Distributors who do not have the right to process claims using a Distributor Indemnity Claim percentage shall present any Indemnity Claims to the Trust on a case-by-case basis. The Distributor must establish that the particular loss it suffered gives rise to a right of indemnity against the Trust under applicable law. The Trust shall value such claims as provided by applicable law. They shall be processed and paid their pro rata share in FIFO order, in accordance with the procedures set forth in Sections G and H. The Trust, in consultation with counsel for the Manville Distributors Subclass, shall establish appropriate forms and procedures for processing such Distributor Indemnity Claims.

(g) **Distributor Information Confidential.** Any information submitted by a Distributor to the Trust pursuant to this subsection 7 (other than a proposed Distributor Indemnity Claim percentage and the components thereof) shall be kept confidential by the Trust and shall not be disclosed to any other Beneficiary.

**8. No Modifications Without Consent.** The terms of this Section I of this TDP may not be modified without the concurrence of the SCB and the Legal Representative. In addition, subsections 1-5 and 8-9 of this Section I may not be modified without the concurrence of counsel for the Co-Defendant Manufacturers Subclass and subsections 7-10 may not be modified without the concurrence of counsel for the Manville Distributors Subclass. In addition, any changes to subsections 1-5 of this Section I which would explicitly treat members of the Manville Distributors Subclass less favorably than members of the Co-defendant Manufacturers Subclass shall also require the concurrence of counsel for the Manville Distributors Subclass. No procedures relating to arbitration of Trust Claims, to be established pursuant to Section E of this TDP, shall be instituted or modified without the concurrence of counsel for the Co-Defendant Manufacturer Subclass; such counsel shall also receive the same notice, in the same form and at the same time, given to the SCB and the Legal Representative with respect to any matter for which the Trust must consult with, or seek the concurrence of, the SCB and the Legal Representative.

**9. Applicable Claims.** The provisions of this Section I shall apply to all Contribution Claims and Indemnity Claims except those resolved pursuant to the Stipulation of Settlement, executed on July 25, 1994. The set-off provisions of this Section I, set forth in subsection 3, shall apply with respect to all cases tried among Trust beneficiaries after the effective date of this TDP, regardless of whether the plaintiff's Trust Claim was liquidated or otherwise resolved by the Trust prior to or after that date.

**10. Concurrence and Consultation Procedures.** The procedures set forth in Section K shall apply with respect to any matter as to which counsel for the Co-Defendant Manufacturers Subclass or the Manville Distributors Subclass have concurrence or consultation rights under this Section I.

**J. Attorneys' Fees.**

Attorneys' fees payable in connection with Trust Claims liquidated and paid through this TDP after this TDP is finally approved by the Courts, where calculated as a percentage of recovery, shall be the lower of the fee provided in the contract between claimant and counsel or 25%, exclusive of costs chargeable to the claimant. The recovery shall be measured by the actual payments from the Trust to the claimant, not the liquidated value of the claim. Legal fees shall be paid as payments to claimants are made by the Trust.

**K. Consultation Procedures; Concurrence Procedures; Resolution of Disputes Involving Concurrence of the SCB and the Legal Representative.**

**1. Consultation Procedures.** With respect to any matter relating to the Trust as to which the SCB and the Legal Representative have expressly been given the right to be consulted, the Trust shall provide to the SCB, through their counsel, and the Legal Representative as much advance notice of such matter as is reasonably practicable in the circumstances. Upon such notice, the Trust will provide the SCB and the Legal Representative with such reasonable access to experts retained by the Trust and to the Trust staff as the SCB and the Legal Representative may reasonably request during the time that the Trust is considering such matter and will provide the SCB and the Legal Representative with the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such matter with one or more Trustees and senior management of the Trust. In determining when to give such advance notice to the SCB and the Legal Representative with respect to a matter as to which the SCB and the Legal Representative have such consultation rights, the Trust will take into consideration the time required for the SCB and the Legal Representative, if they so wish, to engage and consult with their own independent financial or investment advisors as to such matter and to ask the Trust whether the Trust would be willing to bear the cost of such engagement and consultation (it being expressly understood and agreed that the Trust shall have no obligation or duty of any kind whatsoever to bear any such cost or otherwise to provide any such independent financial or investment advice). Unless the Trust shall, in its sole and absolute discretion, expressly elect in writing to bear some or all of such cost, any such engagement of or consultation with financial or investment advisors shall be at the SCB's and the Legal Representative's sole cost and expense.

**2. Concurrence Procedures.** "Concurrence" means the unconditional consent (expressed to the Trust in writing, if requested by the Trust, in form and substance reasonably satisfactory to the Trust) to a Trust action or decision as described by the Trust in its request for such concurrence. In any circumstance hereunder where the Trust makes a decision with respect to matters which require the concurrence of the SCB and the Legal Representative, the Trust shall:

- (i) provide the SCB, the Legal Representative and the Special Advisor with reasonable access to experts retained by the Trust and Trust staff during such time as the decision is being made;
- (ii) bring the proposed decision to the attention of the SCB, the Legal Representative and the Special Advisor; and
- (iii) provide the SCB and the Legal Representative no fewer than 45 days to comment with respect to such proposed decision.

In the event the SCB or the Legal Representative disagree with the Trust's decision, they shall express their views as fully as possible to the Trust and make such counterproposal as may be appropriate. The Trust, the SCB and the Legal Representative shall thereupon consult together with the Special Advisor in an effort to reach concurrence.

**3. Dispute Resolution.**

(a) While it is anticipated that the mutual interests of the Trust, the SCB and the Legal Representative together with the sharing of information which is envisioned under this TDP, are likely to yield concurrence whenever called for under this TDP, there may be situations where a genuine disagreement arises which would have the effect of preventing or permitting steps to be taken to which the Trust, the SCB or the Legal Representative do not agree. In such event, the Trust, the SCB or the Legal Representative may request that the dispute be resolved and, pending resolution of the dispute, the actions in questions shall remain in abeyance.

(b) If and when the Trust, the SCB or the Legal Representative shall ask that a dispute be resolved, the following procedure shall be applied:

(i) the Trust, the SCB and the Legal Representative may agree upon an individual to serve as a dispute resolver;

(ii) if there is no agreement, the Special Advisor shall nominate four separate individuals to serve as the dispute resolver, selecting them based upon the Special Advisor's knowledge of the issues in dispute and of the competencies of the individuals to be selected;

(iii) the Trust shall strike one of the four nominees;

(iv) the SCB shall next strike one of the remaining three nominees;

(v) the Legal Representative shall next strike one of the remaining two nominees; and

(vi) the remaining nominee shall serve as the dispute resolver and his/her decision shall be final and binding on the Trust, the SCB and the Legal Representative.



(c) If the dispute resolver finds in favor of the Trust, the SCB and/or the Legal Representative shall be deemed upon the issuance of such finding to have given their concurrence to the matter for which their concurrence had been sought and had been withheld, and the SCB and the Legal Representative will execute and deliver such documents, and take such other action, as the Trust may reasonably request to evidence or confirm such concurrence.

(d) In such a dispute resolution process, the Trust, the SCB and the Legal Representative shall have an opportunity to fully explain their positions to the dispute resolver and the Special Advisor shall be available to assist. The dispute resolver shall be empowered to engage such expert advice as he/she shall deem appropriate.

(e) In the event that a dispute involves distribution of Trust funds, any distribution of amounts covered by the dispute shall await conclusion of the dispute resolution process.

(f) Any dispute relating to concurrence with respect to an amendment of the Trust Agreement, or the Amended and Restated Supplemental Agreement dated as of November 15, 1990 between the Trust and the Company (the "Amended and Restated Supplemental Agreement"), will be resolved in accordance with, and will otherwise be subject to, the special provisions with respect to such disputes set forth in Section L below.

#### **L. Miscellaneous.**

1. Except as provided in the next sentence and in Section I, all aspects of this TDP may be amended, altered or adjusted by the Trust to reflect changed circumstances, greater information and/or to improve procedures with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor. The procedures set forth herein governing the pro rata share, the Scheduled Diseases, Categorization Criteria, and Scheduled Values set forth in Section D above, and the Maximum Values set forth in Attachment A, may be amended, altered or adjusted to reflect changed circumstances, greater information and/or improved procedures by the Trust, with the concurrence of the SCB and the Legal Representative, after consultation with the Special Advisor.

2. Any amendment of the Trust Agreement or the Amended and Restated Supplemental Agreement will require the concurrence of the SCB and the Legal Representative, which concurrence shall not be unreasonably withheld or delayed. If the Trust believes that the SCB and the Legal Representative are unreasonably withholding or delaying such concurrence, the Trust shall have the right, at its option, either:



- (a) to seek an Order from the Courts permitting the Trust to make such amendment without the concurrence of the SC and the Legal Representative, and if such Order is granted and becomes final and non-appealable, the Trust shall have the right to make such amendment without such concurrence; or
- (b) to request that the dispute be resolved pursuant to the procedure for final and binding resolution of disputes involving concurrence of the SCB and the Legal Representative provided in Section K above; and in the case of a request pursuant to this clause (ii), the following terms shall apply:
  - (i) the SCB, the Legal Representative, the Trust and the Special Advisor shall cause the dispute resolver to be selected within five days after such request is made, in accordance with subsection K.3(b)(i)-(v) above;
  - (ii) it shall be a condition to the selection of such dispute resolver that he/she agree to render his/her determination within ten days of his/her selection to act as dispute resolver for such dispute; and
  - (iii) the SCB, the Legal Representative and the Trust shall jointly direct such dispute resolver (and shall each use best efforts to cause and assist such dispute resolver) to make his/her final and binding determination, and to notify the parties thereof, within ten days after such selection is made.

3. In the event that the positions of the SCB are no longer filled as described in the Manville Corporation Second Amended and Restated Plan of Reorganization, the appointment of three attorneys to fill that role shall occur in the following manner: (a) when a vacancy occurs on the SCB, the vacancy shall be filled by a designee of the SCB member whose departure from the SCB created the vacancy (the "Predecessor SCB Member") so long as the Predecessor SCB Member designates his or her successor prior to or within thirty (30) days of the creation of the vacancy; (b) if the Predecessor SCB Member does not appoint a designee within the time period allotted, the remaining members of the SCB shall appoint the successor SCB member; and (c) if the remaining members of the SCB cannot agree on the identity of the successor SCB member within ninety (90) days following the creation of the vacancy, the Trustees shall appoint the successor SCB member. The Special Advisor position shall be filled if the Trustees, with the concurrence of the SCB and the Legal Representative, determine it would be beneficial to the Trust to have someone in the role. If the Special Advisor role is to be filled, the Trustees shall appoint the Special Advisor with the concurrence of the SCB and the Legal Representative.

4. Subject to the terms of subsection H.4, the reasonable expenses of the SCB and the Legal Representative, together with the reasonable fees and expenses of their counsel, and the reasonable charges and expenses of the Special Advisor and of any dispute resolver, shall be borne by the Trust; provided, however, that if the Trust believes that any concurrence with respect to an amendment of the Trust Agreement or the Amended and Restated Supplemental Agreement is being unreasonably withheld or delayed, the Trust reserves the right to refuse to pay the fees and expenses of counsel to the SCB and the Legal Representative in connection therewith (including, without limitation, counsel fees and expenses incurred in connection with any opposition or challenge by the SCB, their client, or the Legal Representative to the action(s) with respect to which such concurrence is being withheld or delayed). However, if the SCB or the Legal Representative obtain an Order from the Courts directing the Trust to pay such fees and expenses on the ground that the Trust's refusal to do so is improper, and such Order becomes final and nonappealable (or if the Trust elects to have the dispute concerning such concurrence resolved pursuant to the Section K ADR Process as provided in subclause 2(b) of this Section L and the dispute is resolved in favor of the SCB or the Legal Representative), the Trust will pay such fees and expenses as are specified in such final and nonappealable Order (or in the determination made by the dispute resolver).

5. Solely with respect to those issues on which their concurrence is required under this TDP or on which the Trust is required to consult them, the Trust shall bear the reasonable fees and expenses of counsel for the Co-Defendant Manufacturers Subclass and the Manville Distributors Subclass subject to the same reservation applicable to the fees and expenses of the SCB and the Legal Representative set forth in Section L.4 above.

6. No one acting in his/her capacity as one of the Trustees, the SCB, the Legal Representative, the Special Advisor, and/or dispute resolver shall be liable to any entity or person except for his/her own gross negligence or willful misconduct. Solely to the extent they are exercising their concurrence or consultation rights under this TDP, counsel for the Manville Distributors Subclass and the Co-Defendant Manufacturers Subclass shall have the same limitation on their liability.

#### **M. Transition Provisions.**

1. All claims with dates of diagnosis after August 31, 2002 are subject solely to the provisions of this TDP. Claimants who have previously filed claims with the Trust and who have dates of diagnosis prior to September 1, 2002 but who have FIFO numbers greater than 445,000 may elect to refile their claims and be treated under this TDP. However, any payments they have previously received from the Trust shall be offset against any amounts they would otherwise receive under this TDP.

2. All claimants whose claims are resolved pursuant to this TDP will be subject to any increase (or decrease) in the pro rata share that may be determined from time to time applicable to claims resolved pursuant to this TDP.

**ATTACHMENT A -- MAXIMUM VALUES**

The Maximum Values listed below for each of the eight Scheduled Diseases represent a ceiling or upward limit on the liquidated value of any claim settled by individual evaluation or by arbitration, except for Extraordinary Claims as described in Section C.9. In addition, if a claimant litigates a claim and obtains a judgment in excess of the Maximum Value, any pro rata payment with respect to the excess amount will be made only from Pool B, which, as described in Section G, may never contain funds from which such payment can be made.

<b><u>Level</u></b>	<b><u>Scheduled Disease</u></b>	<b><u>Maximum Value</u></b>
<b>I</b>	<b>Other Asbestos Disease (Cash Discount Payment)</b>	<b>\$ 600</b>
<b>II</b>	<b>Asbestosis/Pleural Disease</b>	<b>\$ 30,000</b>
<b>III</b>	<b>Asbestosis/Pleural Disease</b>	<b>\$ 40,000</b>
<b>IV</b>	<b>Severe Asbestosis Disease</b>	<b>\$400,000</b>
<b>V</b>	<b>Other Cancer</b>	<b>\$200,000</b>
<b>VI</b>	<b>Lung Cancer (One)</b>	<b>\$ 50,000</b>
<b>VII</b>	<b>Lung Cancer (Two)</b>	<b>\$400,000</b>
<b>VIII</b>	<b>Mesothelioma</b>	<b>\$750,000</b>

# EXHIBIT D

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re

ALDRICH PUMP LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-30608 (JCW)

(Jointly Administered)

**MOTION OF THE DEBTORS FOR AN ORDER  
AUTHORIZING THE DEBTORS TO ISSUE SUBPOENAS  
ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), hereby move the Court for the entry of an order authorizing the Debtors to issue subpoenas on (i) the Manville Personal Injury Settlement Trust (the "Manville Trust"); (ii) the Delaware Claims Processing Facility ("DCPF") with respect to the ten asbestos personal injury trusts for which it processes claims (the "DCPF Trusts"); (iii) Verus Claims Services, LLC ("Verus")<sup>2</sup> with respect to 8 asbestos personal injury trusts for which it processes claims (the "Verus Trusts" and, collectively with the Manville Trust and the DCPF Trusts, the "Trusts"); and (iv) Paddock Enterprises, LLC ("Paddock" and, collectively with the Manville Trust, DCPF, and Verus, the "Producing Parties") requesting production of limited data concerning approximately 12,000 individuals whose mesothelioma claims the

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

<sup>2</sup> To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term "Verus" shall include such entity.

Debtors or their predecessors resolved through settlement or verdict between January 1, 2005 and June 18, 2020 (collectively, the "Claimants").

### **Preliminary Statement**

The Debtors' goal in these cases is to establish a trust under section 524(g) of the Bankruptcy Code to fairly and efficiently resolve present and future asbestos claims against them. To date, the Debtors have made substantial progress towards that goal, having reached a settlement with the Future Claimants' Representative (the "FCR")—the fiduciary representative for the largest claimant constituency in these cases—on a plan and section 524(g) trust funded in the amount of \$545 million. If approved, both present and future claimants will have access to a streamlined process for equitable compensation without further delay.

To achieve this result and, in the absence of agreement with the Official Committee of Asbestos Personal Injury Claimants (the "ACC"), the Debtors sought and obtained Court approval of a process to estimate their asbestos liabilities, which will inform the merits of the settlement reached and the plan proposed by the Debtors and the FCR. Although no order has yet been entered, the Court approved an estimation process. To arrive at a reasonable estimate of the Debtors' liabilities, however, the parties will require certain information beyond that available in the Debtors' claims database. Some of that information will be provided by the bar date and personal injury questionnaire process already approved by the Court. But that information, in and of itself, will not be sufficient, as it provides little to no information on claimants with respect to the Debtors' settlement history.

Based on positions taken in other asbestos bankruptcies, the Debtors expect that the ACC will argue that historical settlements are an accurate and appropriate guide to measure the Debtors' liability for current and future claims. Judge Hodges explicitly rejected that position in

In re Garlock Sealing Techs., LLC, 504 B.R. 71 (Bankr. W.D.N.C. 2014), where he found that Garlock's "settlement history data [did] not accurately reflect fair settlements because exposure evidence was withheld." Id. at 94. As further described in the Informational Brief (as defined below) filed at the outset of these cases, the Debtors were involved in some of the same cases where Judge Hodges found that the settlement history was tainted due to claimants' failure to disclose alternative asbestos exposures.

At present, essentially the only trust information available to the Debtors derives from the public record of the Garlock estimation proceeding, which only includes trust claim information from a limited number of trusts for claims asserted against Garlock more than ten years ago. While, from this limited information, the Debtors have identified instances where they were co-defendants with Garlock and claimants failed to disclose alternate exposures during their tort cases, the Garlock data provides no information in regard to the extent to which claimants' lack of disclosure continued in the decade (or more) that post-dates the Garlock data.

Through this Motion, the Debtors seek authority to conduct limited discovery to both properly assess the usefulness of the Debtors' settlement history in valuing their asbestos liabilities and to inform the Debtors and their experts as to the full breadth of claims made by claimants with whom the Debtors settled in the tort system. The Debtors seek discrete data from asbestos trusts established to pay the liabilities of the historically prominent defendants in asbestos litigation. Similarly, the Debtors seek substantially the same data from Paddock,<sup>3</sup> as

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<sup>3</sup> Paddock is the successor-by-merger to Owens-Illinois, Inc., and, prior to filing for bankruptcy in 2020, was subject to claims alleging exposure to asbestos contained in products manufactured under the "Kaylo" brand. See *Declaration of David J. Gordon, President and Chief Restructuring Officer of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings, In re Paddock Enterprises, LLC*, No. 20-10028 (Bankr. D. Del. Jan. 6, 2020) [Dkt. 2] (the "Gordon Decl."), ¶ 7 (attached as Exhibit B). For purposes of this Motion, where appropriate, the term "Paddock" may refer to Paddock and/or its predecessor, Owens-Illinois, Inc.

Paddock resolved asbestos claims largely outside of the tort system, much like a bankruptcy trust.<sup>4</sup> The data requests, themselves, are narrowly tailored to identify whether and the extent to which claimants settled with the Debtors without disclosing claims against and recoveries (actual or potential) from the Trusts or Paddock. This information is not only important to an estimate of the Debtors' asbestos liability, it is relevant to other purposes in these cases, including potential estimates of other recoveries received by creditors and the formulation and assessment of trust distribution procedures established to compensate claimants.

The Debtors have specifically tailored their request to be consistent with relief recently granted by this Court in DBMP. Indeed, the Debtors seek the same type of data from the Producing Parties, subject to the same anonymization, notice, and confidentiality requirements and the strict access and use restrictions approved in that case. The Debtors do seek data from a few additional sources than those identified in DBMP, but this is a function of the nature of the Debtors' products and is directly supported by the benefits that will be derived in these cases from access to that additional information.

For the forgoing reasons and others set forth herein, the requested discovery is necessary and appropriate and should be approved.

### **Jurisdiction**

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

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<sup>4</sup> See id. at ¶ 10.



## Background

2. On June 18, 2020, the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

3. A comprehensive description of the Debtors, their history, their assets and liabilities, and the events leading to the commencement of these cases can be found in the *Declaration of Ray Pittard in Support of First Day Pleadings* [Dkt. 27] and the *Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief, Related Motions, and the Chapter 11 Cases* [Dkt. 29] (the "Tananbaum Declaration"), which declarations were filed on the petition date. On the petition date, the Debtors also filed the *Informational Brief of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 5] (the "Informational Brief") to provide additional information about their asbestos litigation, related costs, and plans to address these matters in these chapter 11 cases.

4. On December 14, 2020, the Debtors and the FCR filed a joint motion to (a) establish a bar date for certain asbestos personal injury claims asserted against either Debtor or its predecessors prior to the petition date and (b) approve a personal injury questionnaire to be submitted by those claimants who file a proof of claim [Dkt. 471].

5. On September 24, 2021, after several months of negotiations, the Debtors, their non-debtor affiliates Trane Technologies Company LLC and Trane U.S. Inc., and the FCR reached agreement on a Settlement Term Sheet and *Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 832]. The proposed plan contemplates the establishment of a trust to resolve current and future asbestos claims that would be funded by an

"Initial Cash Funding" of \$540 million and a \$5 million promissory note. See Settlement Term Sheet at 2-6.

6. Also on September 24, 2021, the Debtors filed a motion [Dkt. 833], seeking a limited estimation proceeding with respect to certain asbestos-related claims based on disease manifesting before the petition date.

7. At a hearing held on January 27, 2022, the Court issued rulings: (a) to establish a bar date for mesothelioma claims asserted prior to the petition date; (b) requiring claimants who file a proof of claim on account of such claims to complete a personal injury questionnaire; and (c) approving a proceeding to estimate the Debtors' aggregate liability for current and future asbestos-related claims.

8. On April 4, 2022, the Court entered the *Order (I) Establishing a Bar Date for Certain Known Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Granting Related Relief* [Dkt. 1093]. The Debtors, the ACC, and the FCR continue to negotiate forms of orders with respect to approval of the personal injury questionnaire and the estimation proceeding and, ultimately, will need to negotiate a case management order for the estimation proceeding. Accordingly, as of the date hereof, the Court has not entered orders granting relief with respect to such matters.

#### **The Debtors' Experience in the Tort System Prior to These Chapter 11 Cases**<sup>5</sup>

9. As explained in greater detail in the Debtors' first day filings, the Debtors never mined or used asbestos to manufacture products. Informational Br. at 1. Rather, the Debtors made industrial equipment that, in some instances, incorporated certain asbestos-containing

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<sup>5</sup> When discussing historical matters preceding the 2020 corporate restructuring that formed Aldrich and Murray, the terms "Aldrich," "Murray," and "the Debtors" refer to the Debtors herein and their historical predecessors.

components manufactured and designed by third parties. Id. Asbestos-related claims brought against Aldrich typically related to alleged exposure to asbestos from sealing products (i.e., gaskets and some packing) incorporated into Aldrich pumps and compressors. Id. at 1, 9. Generally, the asbestos used in such sealing product components was the chrysotile form of asbestos—a form of asbestos widely recognized as far less likely than other forms of asbestos (such as amphibole asbestos) to cause mesothelioma—and was encapsulated, which significantly reduced potential exposure to the asbestos fibers. Id. at 2-3, 9-10, 14-16. Aldrich largely eliminated the use of asbestos-containing components by the mid-1980s. Id. at 11.

10. Asbestos-related claims brought against Murray typically related to climate control, or HVAC equipment, and some boiler equipment. Id. at 3, 11-12. As with Aldrich, these claims largely concerned gaskets incorporated into Murray equipment. Id. In addition, a limited number of claims were asserted against Murray on account of boilers manufactured in the 1950s and earlier, which were jacketed externally with asbestos-containing products. Id. at 3, 12. Murray also largely eliminated asbestos-containing components from Murray equipment by the mid-1980s. Id.

11. The Debtors were served with their first asbestos complaints in the 1980s. Id. at 17. Until the early 2000s, the Debtors were not material asbestos defendants. Id. Together, Aldrich and Murray paid less than \$4 million to settle mesothelioma claims in the tort system from the mid-1980s through 2000. Id. at 4, 18. The primary payors of mesothelioma claims were instead the miners, sellers, and manufacturers of asbestos and asbestos-containing products, particularly the "big dusty" thermal insulation manufacturers, who, collectively, were paying hundreds of millions—if not billions—of dollars annually to resolve mesothelioma and other asbestos claims in the tort system. Id. at 4, 17-18. As these "big dusty" targets for asbestos

plaintiffs filed for bankruptcy protection and exited the tort system primarily in the early 2000s (the so-called "Bankruptcy Wave"), the Debtors experienced an immediate and permanent spike in their defense and indemnity costs. Id. at 18-20. Mesothelioma claims were by far the largest driver of these increased costs. Id. at 19. Over the four years before the petition date, the Debtors annually were paying to resolve mesothelioma claims 15 times what they paid to resolve such claims during the entire 15-year period prior to the Bankruptcy Wave. Id. at 20.

12. By the late 2000s, over 2,500 mesothelioma claims were being asserted against the Debtors annually. Id. at 5, 19. In 2019, Aldrich was pursued in roughly 80% and Murray was pursued in almost 60% of all mesothelioma claims estimated to have been brought in the tort system in the United States. Id. at 19. Given the nature of the Debtors' products and the thousands of other asbestos-containing products that were in the market, this extensive naming of the Debtors in mesothelioma claims is unsupportable. Id. at 5-7, 19, 32. The Debtors' records currently reflect in excess of 65,000<sup>6</sup> asbestos-related claims as pending against them.

13. The Debtors believe that the explosion of the asbestos litigation against them was attributable, in substantial part, to the absence in the tort system of alternative defendants much more likely to have caused plaintiffs' diseases,<sup>7</sup> and litigation practices that had evolved as a result of the absence of those defendants. See id. at 17-20. These litigation practices included,

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<sup>6</sup> On the petition date, the Debtors' records reflected a total of approximately 100,000 claims pending against them on various dockets in courts across the country. See Tananbaum Decl. ¶¶ 20, 42; Informational Br. at 3. Since that time, however, the Debtors have updated their claims database to reflect a large number of prepetition dismissals that were not yet posted in the Debtors' claims database at the time of the petition date. On April 4, 2022, the Debtors amended their schedules of assets and liabilities and statements of financial affairs to, among other things, reflect these changes in the Debtors' claims database. See Murray Dkts. 60 and 61; Aldrich Dkts. 1096 and 1097.

<sup>7</sup> Plaintiffs asserting exposure to the Debtors' products on U.S. Navy ships, in industrial facilities, or in other commercial buildings were almost certainly exposed to a variety of alternative asbestos products. Informational Br. at 17. In light of the low potency of chrysotile and the minimal exposure risk attributable to gaskets and packing, it is much more likely that exposure to other potent, friable asbestos products was the cause of mesothelioma or other asbestos-related disease. Id.

among other things, the naming of the Debtors as defendants without a sufficient basis to do so and—of particular relevance to this Motion—a lack of transparency and disclosure of claimants' exposure to asbestos products of companies not participating in the tort system litigation. *Id.* at 20. The Debtors provide examples in the Informational Brief of cases where the Debtors have been subject to such practices. *See id.* at 20-29.

### **Relief Requested**

14. By this Motion, the Debtors seek the entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), authorizing the Debtors to issue subpoenas on the Producing Parties requesting the information described below with respect to the approximately 12,000<sup>8</sup> Claimants.

15. The Debtors seek the following categories of information from the Trusts:

- a. Claimant's law firm (with email and address of contact person);
- b. Date claim filed against Trust;
- c. Date claim approved by Trust, if approved;
- d. Date claim paid by Trust, if paid;
- e. If not approved or paid, status of claim; and
- f. All exposure-related fields, including:
  - i. Date(s) exposure(s) began;
  - ii. Date(s) exposure(s) ended;
  - iii. Manner of exposure;
  - iv. Occupation and industry when exposed; and
  - v. Products to which exposed.

16. In addition to the Manville Trust, the Debtors seek authority to issue the subpoenas seeking the information described above from DCPF and Verus with respect to the DCPF Trusts and Verus Trusts listed below.<sup>9</sup>

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<sup>8</sup> Because Owens-Illinois, Inc. stopped manufacturing asbestos-containing products in 1958, data for only a subset of the approximately 12,000 Claimants will be needed from Paddock, as many of the Claimants were unlikely to be exposed to asbestos prior to 1958.

<sup>9</sup> By this Motion, the Debtors also seek authority to issue subpoenas directly to the Trusts themselves, in the event DCPF or Verus asserts that such subpoenas are necessary to secure production. The Debtors reserve

- a. DCPF Trusts:
  - i. Armstrong World Industries Asbestos Personal Injury Settlement Trust
  - ii. Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust
  - iii. Celotex Asbestos Settlement Trust
  - iv. DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds)
  - v. Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo)
  - vi. Flintkote Asbestos Trust
  - vii. Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds)
  - viii. Pittsburgh Corning Corporation Asbestos PI Trust
  - ix. United States Gypsum Asbestos Personal Injury Settlement Trust
  - x. WRG Asbestos PI Trust
  
- b. Verus Trusts:
  - i. ACandS Asbestos Settlement Trust
  - ii. Combustion Engineering 524(g) Asbestos PI Trust
  - iii. G-I Holdings Inc. Asbestos Personal Injury Settlement Trust
  - iv. GST Settlement Facility
  - v. Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust
  - vi. Quigley Company, Inc. Asbestos PI Trust
  - vii. T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust
  - viii. Yarway Asbestos Personal Injury Trust

17. The Debtors seek essentially the same information from Paddock:

- a. Claimant's law firm (with email and address of contact person);
- b. Date claim filed or otherwise asserted;
- c. Jurisdiction and state of filing (if applicable);
- d. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- e. Date claim resolved, if resolved;
- f. Date claim paid, if paid; and
- g. All exposure-related fields, including:
  - i. Date(s) exposure(s) began;

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all rights to seek further discovery from other claims processing facilities, trusts, and other parties to the extent it becomes necessary and relevant in these cases.

- ii. Date(s) exposure(s) ended;
- iii. Manner of exposure;
- iv. Occupation and industry when exposed; and
- v. Products to which exposed.

18. The production of the data will be subject to the anonymization, notice, and confidentiality requirements, and strict access and use restrictions, set forth in the Proposed Order—substantially identical to those approved by the Court in DBMP.

### Argument

#### **A. The Requested Discovery Is Relevant to Estimation of the Debtors' Asbestos Liabilities and Effectuation of a Successful Plan and Is Appropriate and Necessary Under the Circumstances.**

##### *The Nature of the Discovery Sought is Relevant and Appropriate*

19. The process of valuing the Debtors' present and future asbestos liabilities will be the cornerstone of these cases. And, whether in an estimation proceeding or confirming a plan, the Debtors will need to demonstrate to their constituencies and to this Court why the values proposed to fund a trust and compensate creditors are credible.

20. Based on arguments made in prior cases by similar constituencies, the Debtors anticipate asbestos claimants' representatives and experts to argue that the Debtors' settlement history is the only appropriate metric for estimating their present and future liabilities. The Debtors, however, contend that their prepetition settlement history is an improper basis upon which to estimate their aggregate liability for present and future asbestos claims.<sup>10</sup> This is exactly the conclusion reached by the court in Garlock. Indeed, the Garlock court found that

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<sup>10</sup> See S. Elizabeth Gibson, Fed. Judicial Ctr., Judicial Management of Mass Tort Bankruptcy Cases at 97 (2005) (noting that if past settlements are proffered at estimation, debtor "should have the opportunity prior to a judicial estimation to establish the invalidity of past settlement values as a basis for valuing present and future claims"). Any attempt to equate settlements with expected liability also would violate the prohibition in Federal Rule of Evidence 408 on using settlements to "prove or disprove the validity or amount of a disputed claim."

"[t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the effect of unfairly inflating the recoveries against Garlock . . . ." In re Garlock Sealing Techs. LLC, 504 B.R. 71, 86 (Bankr. W.D.N.C. 2014). The court further determined that "the practice was sufficiently widespread to render Garlock's settlements unreliable as a predictor of its true liability." Id. at 87. As a consequence of these and other factors, rather than value Garlock's present and future liabilities based upon past settlements, the court concluded that "[t]he best evidence of Garlock's aggregate responsibility [was] the projection of its legal liability that takes into consideration causation, limited exposure and the contribution of exposures to other products." Id. at 73.

21. In reaching its conclusions, the Garlock court relied heavily on information obtained from section 524(g) trusts. The Court determined that the claimants' failure to disclose exposure evidence impacted the debtor's historical claims resolutions, and that lack of disclosure is a material consideration when one is evaluating whether a debtor's settlement history could provide a reliable basis upon which to estimate that debtor's asbestos liability.

22. In Garlock, the court ordered certain trusts and trust sub-funds then handled by DCPF to produce data concerning claims made by approximately 11,000 mesothelioma claimants who had settled with Garlock between 1999 and 2010. See Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures, and Governing the Confidentiality of Information Provided in Response to the Subpoena, In re Garlock Sealing Techs. LLC, No. 10-31607 (Bankr. W.D.N.C. Aug. 7, 2012) [Dkt. 2430] (attached as Exhibit C). The court ultimately relied on the data obtained through the trust discovery in finding the "startling pattern of misrepresentation" in cases Garlock had resolved before its petition. In re



Garlock Sealing Techs., 504 B.R. at 86. In part for this reason, the court rejected the claimant experts' reliance on Garlock's past settlements, concluding that the "settlement history data does not accurately reflect fair settlements because exposure evidence was withheld." Id. at 94.

These findings were not based solely on evidence from 15 of Garlock's most significant cases where the court granted wide-ranging discovery, which revealed that "exposure evidence was withheld in *each and every one of them.*" Id. at 84 (emphasis in original). The court also used the data from the trust discovery to find that, in hundreds of Garlock's cases, "the plaintiff's discovery responses conflicted with one of the Trust claim processing facilities or balloting in bankruptcy cases." Id. at 85-86. Based on this and other evidence, the court concluded "[i]t appears certain that more extensive discovery would show more extensive abuse." Id. at 86.

23. More recently in this jurisdiction, Judge Beyer in Bestwall and this Court in DBMP also have approved requests for trust discovery in those cases. See Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response, In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C. Feb. 17, 2022) [Dkt. 1340] (the "DBMP Order") (attached as Exhibit D); Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. Mar. 24, 2021) [Dkt. 1672] (attached as Exhibit E). Judge Beyer ordered trust discovery after finding that the trust data were relevant to various purposes in the case, including "the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the debtor's asbestos liability," and "Dr. Bates' estimation of the debtor's liability." Transcript of Mar. 4, 2021 Hearing at 13, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C.) [Dkt. 1647] (excerpts attached as Exhibit F). Likewise, Judge Beyer

found that the trust data "will assist the debtor in developing its trust distribution procedures and evaluating those procedures proposed by the ACC and the FCR in their plan." Id.

24. In its ruling approving trust discovery in DBMP, this Court concluded, "I think it's relevant. Other courts have found that. . . . I think we've got information that is necessary and relevant to an estimation here." Transcript of Dec. 16, 2021 Hearing at 133, In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C.) [Dkt. 1260] (excerpts attached as Exhibit G).<sup>11</sup> The Court expressly noted that "the fact that Judge Hodges relied on this heavily in his estimation decision, I think, accentuates both the relevance and the need for the information." Id. at 134. And, the DBMP Order specifically provides that the requested discovery seeks evidence that is "relevant and necessary" not only to estimation of the debtor's liability, but also to the effectuation of a plan:

The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with a potential estimation of the Debtor's liability for mesothelioma claims and the negotiation, formulation, and confirmation of a plan of reorganization in this case, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtor's asbestos liability; the estimation of the Debtor's asbestos liability; and the development and evaluation of trust distribution procedures in any plan of reorganization . . . .

DBMP Order, ¶ 3.

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<sup>11</sup> The Court further adopted Judge Beyer's ruling in Bestwall, subject to modifications to address certain privacy and similar concerns in response to rulings made by the District Court for the District of Delaware in connection with efforts to quash or modify the Bestwall trust discovery in that court:

I agree with Bestwall on this, as modified. I think we've got to bear in mind what Judge Connolly has done. So I'm inclined to grant this motion without the PII, effectively allowing the proposed keying with the, the relevant [information] so that it can be matched up when it comes back to the debtor, but anonymized when it's produced. . . . Basically, I'm adopting Judge Beyer's original ruling, but modified for the requirements that the district court has. . . . [E]ffectively, on the things other than the technical issues I'm foursquare with Judge Beyer on this.

Id. at 133-34.

25. The information requested is plainly relevant and necessary in these cases for the same reasons as in Bestwall and DBMP. These cases are moving towards an estimation hearing that will require the Court to determine whether the Debtors' prepetition settlements provide a reliable basis for estimating their aggregate liability. And, the Debtors have filed a plan for which trust distribution procedures must be formulated. Ultimately, any plan and trust distribution procedures must be approved by the Debtors' constituencies and the Court. The information that will be obtained through the requested discovery will be material to each of these efforts.

26. The "relevance and the need for the information" found by the Court in DBMP in light of the Garlock ruling is even more applicable in these cases given the significant overlap between the Debtors' asbestos litigation history and Garlock's. The majority of asbestos claims against the Debtors concern products (i.e., gaskets) similar to those at issue in Garlock—indeed, Garlock was a substantial supplier of gaskets to the Debtors. See Informational Br. at 25-26. In fact, over three quarters of the mesothelioma claims filed against the Debtors in the decade prior to Garlock's petition date also were filed against Garlock. Id. at 22. And, 90% of the dollars associated with mesothelioma claims resolved by the Debtors during that same time period relate to claims that also were filed against Garlock. Moreover, as described in detail in the Informational Brief, based on the public record of the Garlock estimation proceeding, the Debtors already have identified examples where claimants failed to disclose to either Garlock or the Debtors alternative exposures during their tort cases. See id. at 23-29.



30. There are over 70 active asbestos bankruptcy trusts. Only 30 of those 70+ active trusts have received over \$300 million in total assets. The DCPF Trusts and the Manville Trust represent only 11 out of those 30. With the addition of the GST Settlement Facility and the seven other Verus Trusts requested here, the parties and the Court will benefit from trust claims data from 19 out of the 30 currently active trusts with more than \$300 million in assets. In sum, although the parties and the Court will only be provided with information from less than 30% of the active trusts, the requested discovery will capture over 60% of the active trusts with a substantial asset history. Collectively, the Manville Trust, the DCPF Trusts, and the Verus Trusts process claims for most of the prominent asbestos defendants whose liabilities derive—like the Debtors—predominantly from industrial settings. Discovery from this subset of the many asbestos trusts in operation will produce a more broad-based, comprehensive, sampling of key trust claim information that will lead to a more precise analysis of the Debtors' settlement history and, thus, a more reliable estimate of the Debtors' present and future liabilities.

Paddock

31. Likewise, the Debtors seek substantially the same data from Paddock, which is relevant in these cases for the same reasons that trust claims data is relevant. Paddock is the successor-by-merger to Owens-Illinois, Inc. See Gordon Decl., ¶ 7. Prior to filing for bankruptcy in 2020, Paddock was subject to claims alleging personal injuries and death from exposure to asbestos contained in products manufactured under the "Kaylo" brand between 1948 and 1958. Id. These were primarily pipe covering and block insulation products, which contained either chrysotile or amosite asbestos fibers, depending on the year of manufacture. Id. Paddock historically resolved claims outside of the tort system, much like an asbestos trust. Id. at ¶ 10 ("In contrast to many other companies' pure litigation approach, however, most Asbestos

Claims are presented to the Debtor through a variety of administrative claims-handling agreements"). Because Paddock generally was not named in tort litigation, the Debtors have little, if any, visibility into whether claimants claimed exposure to Kaylo products and recovered on those claims from Paddock. This information is plainly relevant to any analysis of the Debtors' past settlements given that, prior to its recent bankruptcy, Paddock was "one of the only remaining solvent 'amosite' defendants." *Id.* Indeed, because of the relevance of this information, Bestwall recently issued a subpoena seeking similar information from Paddock.

**B. The Requested Discovery Will Pose Minimal Burden and Will Protect Claimant Privacy.**

32. As with the DBMP Order, the Debtors have limited their requests to information directly relevant to evaluating the extent to which claimants alleged, and sought recovery for, alternative asbestos exposures separately from their tort cases. These requests are designed to impose minimal burden on the Producing Parties. All of the information requested is maintained by these parties in database form and can be retrieved and produced using electronic searches, with minimal expense. As with virtually all sophisticated databases, the Producing Parties can access software that will quickly and easily compile the requested data fields after being provided with a list of claimants. The Debtors have further limited any burden on the Producing Parties by requesting data solely for claimants for whom the Debtors already have Social Security numbers. This will permit a simple matching protocol and will minimize the risk of false positive matches. In addition, as in DBMP, the Debtors' retained expert, Bates White, LLC ("Bates White"), will be charged with creating the "Matching Key" for the anonymization process further described below. And, the Debtors will reimburse reasonable costs associated with complying with the subpoenas, which the Debtors anticipate will be minimal.

33. Producing information of this nature creates minimal burden. For example, in Garlock, data requested from certain trusts and trust sub-funds then handled by DCPF was produced less than a month after the Court's order overruling certain objections was entered.<sup>12</sup> Similarly, during discovery relating to plan confirmation and estimation of non-mesothelioma claims, the Garlock court ordered the Manville Trust to produce asbestos exposure and medical data fields, as well as copies of certain medical and exposure records submitted to the Manville Trust, pertaining to over 90,000 Garlock non-mesothelioma claimants, a little more than a month after the order on that discovery was entered. *See Order Granting in Part and Denying in Part Debtors' Motion for Leave to Serve Subpoena on Manville Trust*, ¶ 5, In re Garlock Sealing Techs. LLC, No. 10-31607 (Bankr. W.D.N.C. July 24, 2015) [Dkt. 4721] (attached as Exhibit I).

34. Moreover, the Proposed Order includes robust protections governing production of all requested data. These include the same anonymization, notice, and confidentiality requirements approved in DBMP. As a result of the anonymization protocol, including use of a numerical "Claimant Pseudonym" that Bates White will generate and assign to each claimant preproduction, no claimant identifying information (e.g., names, Social Security numbers, dates of birth) will be subject to production. The only claimant data that will be produced are the fields relevant to the Debtors' analysis (such as the dates of the claims, whether or not they were compensated, and available exposure information). This data will not be able to be tied to any individual absent access to the "Matching Key" created by Bates White. The Proposed Order further includes stringent confidentiality, access, and use restrictions for the data, including prohibitions on introducing claimant-specific data in the public record absent court order, and a requirement that the produced data be destroyed promptly after the bankruptcy case ends. And,

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<sup>12</sup> Compare Exhibit F with GST-1601, Letter from Stephen M. Juris to Garland S. Cassada dated Sept. 5, 2012 (attached as Exhibit H).

the Proposed Order provides that only claimants who receive notice will have their data subject to production and data relating to *pro se* claimants will be excluded from production.

35. For all of the foregoing reasons, the requested discovery is properly tailored to the needs of these cases. The relevance of the requested information and the Debtors' need for it far outweigh any burden that may be imposed on the Producing Parties. In light of the central role that estimating the Debtors' present and future liabilities will play, and the importance of ensuring that any estimate is reasonable and reliable for the benefit of present and future claimants, the Debtors respectfully request that the Court grant the relief sought herein.

#### Notice

36. Notice of this Motion has been provided to: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) counsel to the ACC; (c) counsel to the FCR; (d) counsel to the Debtors' non-debtor affiliates, Trane Technologies Company LLC and Trane U.S. Inc.; (e) DCPF and counsel to DCPF, as reflected in public filings; (f) Verus Claims Services, LLC; (g) Verus, LLC and counsel to Verus, LLC, as reflected in public filings; (h) Paddock and counsel to Paddock; (i) the Trusts; (j) the registered agents for the Trusts, where available; (k) counsel to the Trusts, as reflected in public filings or other public sources, where available; (l) counsel of record for all known claimants who have asserted asbestos-related personal injury claims against the Debtors, as reflected in their schedules of assets and liabilities and statements of financial affairs; and (m) the other parties on the Service List established by the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. 123]. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.



**No Prior Request**

37. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court: (a) enter the Proposed Order granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem just and proper.

Dated: April 7, 2022  
Charlotte, North Carolina

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**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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In re	:	Chapter 11
ALDRICH PUMP LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 20-30608 (JCW)
Debtors.	:	(Jointly Administered)

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**ORDER GRANTING MOTION OF THE DEBTORS  
FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

This matter coming before the Court pursuant to the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. \_\_\_] (the “Motion”),<sup>2</sup> filed by Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”), as debtors and debtors-in-possession in the above-captioned cases (together, the “Debtors”). Based upon a review of the Motion, the evidence presented, and the arguments

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

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

of counsel at the hearing on this matter, the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. The Motion is GRANTED on the terms and conditions set forth herein.

3. The Debtors are authorized to issue and serve subpoenas requesting the data described in paragraph 10 below on:

- a. the Manville Personal Injury Settlement Trust (“Manville Trust”);
- b. the Delaware Claims Processing Facility (“DCPF”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “DCPF Trusts”):<sup>3</sup>
  - (i) Armstrong World Industries Asbestos Personal Injury Settlement Trust;
  - (ii) Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
  - (iii) Celotex Asbestos Settlement Trust;
  - (iv) DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);
  - (v) Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
  - (vi) Flintkote Asbestos Trust;
  - (vii) Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);

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<sup>3</sup> The Debtors also may subpoena the DCPF Trusts to effectuate this Order.

- (viii) Pittsburgh Corning Corporation Asbestos PI Trust;
  - (ix) United States Gypsum Asbestos Personal Injury Settlement Trust; and
  - (x) WRG Asbestos PI Trust;
- c. Verus Claims Services, LLC (“Verus”)<sup>4</sup> with respect to the following asbestos personal injury trusts whose claims are handled by Verus (the “Verus Trusts” and, collectively with the Manville Trust and the DCPF Trusts, the “Trusts”):<sup>5</sup>
- (i) ACandS Asbestos Settlement Trust;
  - (ii) Combustion Engineering 524(g) Asbestos PI Trust;
  - (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust;
  - (iv) GST Settlement Facility;
  - (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
  - (vi) Quigley Company, Inc. Asbestos PI Trust;
  - (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and
  - (viii) Yarway Asbestos Personal Injury Trust.

4. The Debtors are authorized to issue and serve a subpoena requesting the data described in paragraph 11 below on Paddock Enterprises, LLC (“Paddock”).

5. The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors’ liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements

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<sup>4</sup> To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term “Verus” shall include such entity.

<sup>5</sup> The Debtors also may subpoena the Verus Trusts to effectuate this Order.



7. On or before the twenty-first (21st) day following the Service Date,<sup>6</sup> DCPF, the Manville Trust, and Verus shall identify the claimants in the Trusts' databases, and Paddock shall identify the claimants in any claims database within Paddocks' possession, custody, or control whose purpose is or was to track asbestos personal injury claims asserted against Paddock or Owens-Illinois, Inc. (the "Paddock Database"), whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Claimant and who did not file their Trust claims *pro se* or, in the case of Paddock, who are listed in the Paddock Database as having a claim that was not asserted *pro se* (the "Matching Claimants"). In performing this match, the Producing Parties shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name ("executor," "deceased," "dec," etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., "Van" or "De") as necessary to ensure the most comprehensive initial match.

8. On or before the twenty-first (21st) day following the Service Date, the Producing Parties shall also provide to counsel for the Debtors a list of the first and last names and SSN of claimants in the Trusts' databases or, in the case of Paddock, in the Paddock Database, who match the nine-digit SSN of any Claimant but who (a) filed their Trust claims *pro se* or, in the case of Paddock, who appear in the Paddock Database as having asserted a claim *pro se*, (and identify such claimants on the list) or (b) in the view of the Producing Party do not match the last name associated with the Claimant (the "Meet and Confer List"). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Data

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<sup>6</sup> If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.



(as defined herein). On or before the thirty-fifth (35th) day following the Service Date, the Debtors and the Producing Parties shall meet and confer concerning whether any of the claimants on the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the Service Date, the Debtors (and the Debtors' Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide the Producing Parties with written confirmation of such deletion; provided, however, that such deletion deadline shall be extended for each day the meet and confer process between the Debtors, on the one hand, and the Producing Parties, on the other hand, continues after the sixtieth (60th) day following the Service Date. In the event the Debtors and the Producing Parties cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

9. Within seven (7) days of the identification of Matching Claimants, whether pursuant to paragraph 7 or paragraph 8 (and this paragraph 9, as applicable), the Producing Parties shall notify the Matching Claimants' counsel of record that the relevant Trusts (or Paddock, as applicable) have received a subpoena from the Debtors. The notice from the Producing Parties shall state that the data associated with the Matching Claimants, as described in paragraphs 10 and 11 below (as applicable), will be produced if they do not file a motion to quash the subpoena in the court of compliance for the Producing Party by the later of the forty-ninth (49th) day following the Service Date, or the fourteenth (14th) day following the provision of notice to their counsel of record by the Producing Party. The Producing Parties shall exercise reasonable efforts to provide actual notice to counsel of record in connection with the claim that is the subject of disclosure. If, despite their reasonable efforts, the Producing Party is unable to provide actual notice to counsel of record for a Matching Claimant, including without limitation



and Verus, separately for each Trust) the following information pertaining to each Matching Claimant<sup>7</sup> (to the extent the relevant Trust databases contain such information) (the “Trust Anonymized Matched Production”):

- a. Claimant Pseudonym;
- b. Claimant’s law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields,<sup>8</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

11. On or before the applicable Production Date, Paddock shall produce to Bates White (in electronic database format) the following information pertaining to each Matching Claimant (to the extent the Paddock Database contains such information)

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<sup>7</sup> For the avoidance of doubt, the term “Matching Claimants” referenced in paragraphs 10 and 11 of this Order includes any claimants on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as Matching Claimants.

<sup>8</sup> To the extent any names or SSNs appear in any exposure-related field, the Manville Trust, DCPF, and Verus may redact such names and SSNs prior to production of the Trust Anonymized Matched Production. In addition, prior to delivery of the Trust Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Trust Anonymized Matched Production.

(the “Paddock Anonymized Matched Production” and, together with the Trust Anonymized Matched Production, the “Anonymized Matched Productions”):

- a. Claimant Pseudonym;
- b. Claimant’s law firm (with email and address of contact person);
- c. Date claim filed or otherwise asserted;
- d. Jurisdiction and state of filing (if applicable);
- e. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- f. Date claim resolved, if resolved;
- g. Date claim paid, if paid; and
- h. All exposure-related fields,<sup>9</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

12. The Anonymized Matched Productions shall be used as follows:

- a. Subject to and without in any way limiting the restrictions described in paragraph 13(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtors, the ACC, the FCR, Trane Technologies Company LLC (“New Trane Technologies”) and Trane U.S., Inc. (“New Trane” and, together with the

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<sup>9</sup> To the extent any names or SSNs appear in any exposure-related field, Paddock may redact such names and SSNs prior to production of the Paddock Anonymized Matched Production. In addition, prior to delivery of the Paddock Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Paddock Anonymized Matched Production.





thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order.

Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Data conferred by paragraph 13(a) above, each entity whose Authorized Representatives will receive access to the Confidential Data and any other Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Data in the performance of the entity's duties with respect to these bankruptcy cases. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.

c. Any entity whose Authorized Representatives receive access to any Confidential Data and any Authorized Representative who receives access to any Confidential Data in their individual capacity as provided in this Order shall provide for physical, managerial, and electronic security thereof such that the Confidential Data are reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission, and storage. Any electronic transmission of the Confidential Data (including without limitation the Matching Key or any information

derived therefrom) must be through a secure encrypted service, and not as an ordinary email attachment.

d. Notwithstanding anything in this Order to the contrary, access to the Matching Key shall be limited to (i) Bates White, LAS, and Ankura, each in its capacity as a retained claims expert for the Debtors, the ACC, and the FCR, respectively, and (ii) to the professional staff employed by such experts (each of (i) and (ii), a “Retained Expert”), and (iii) such other persons as the Parties and the Producing Parties may agree to in writing from time to time; provided, however, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 13(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 13(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

e. No claimant-specific data from or derived from any Confidential Data shall be (i) offered as evidence in these bankruptcy cases, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to the Producing Parties and claimants provided to their attorneys at the addresses contained in the data produced by the Producing Parties) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or



use. The restrictions of this paragraph 13(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant's identity.

f. If, in connection with a motion pursuant to paragraph 13(e), or any response to such motion, a Party proposes to place any Confidential Data under seal, that Party shall have the burden of making the showing required for sealing under applicable law.

g. In addition to, and without diminution of any other use restrictions in this Order, unless otherwise ordered by the Court, the Confidential Data shall be used only in connection with a Permitted Purpose.

h. Notwithstanding the foregoing, a Party may use in connection with a Permitted Purpose in this Court, or any reviewing court, summaries or analyses derived from the Confidential Data if such material is redacted so as not to reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

i. Likewise, nothing herein shall prohibit a Retained Expert with access to the Confidential Data from using or referring to the Confidential Data (in connection with a Permitted Purpose) in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning the Confidential Data, so long as any such testimony, summary, or report does not reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

14. Pursuant to section 105(a) of the Bankruptcy Code, no Confidential Data shall be subject to subpoena or otherwise discoverable by any person or entity other than the Parties.

15. Within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall permanently delete such Confidential Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Data or any excerpts thereof; provided, however, that any such data stored on a Party’s or Authorized Representative’s back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party’s or Authorized Representative’s operations.

16. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 13(g); and (d)

complied with the requirements in paragraph 15 concerning the deletion of any Confidential Data.

17. Subject to the requirements of paragraphs 12 and 13 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in these bankruptcy cases in conformity with this Order, or any data or material that is or becomes publicly available other than by a breach of this Order; or
- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Data.

18. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Claimants, including where such Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Productions.

19. The Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.

20. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.  
The Judge's signature and Court's seal appear  
at the top of the Order.

United States Bankruptcy Court

**EXHIBIT A.1 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

On behalf of my employer, \_\_\_\_\_ [write in name of employer] (“Employer”), I and Authorized Representatives of Employer may be given access to Confidential Data. The Confidential Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer’s Authorized Representatives who are to receive access to any Confidential Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), Employer will destroy any Confidential Data. Within 30 days after the Deletion Date, Employer will file a declaration in compliance with paragraph 16 of the Order.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_

**EXHIBIT A.2 TO ORDER GRANTING MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), I will destroy any Confidential Data. Within 30 days after the Deletion Date, I will file a declaration in compliance with paragraph 16 of the Order.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_

**EXHIBIT B**







3. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). The Debtor will continue to operate its business and manage its property as debtor-in-possession.

4. I submit this First Day Declaration on behalf of the Debtor in support of the Debtor’s (a) voluntary petition for relief and (b) “first-day” pleadings, which are being filed concurrently herewith (collectively, the “**First Day Pleadings**”). I have reviewed the Debtor’s petition and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to avoid immediate and irreparable harm to the Debtor and to successfully maximize the value of the Debtor’s estate. References to the Bankruptcy Code, the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on explanations provided by, and the advice of, counsel.

5. The primary purpose of this case (the “**Chapter 11 Case**”) is to address and comprehensively resolve the Debtor’s legacy asbestos-related liabilities, which arise out of the production and distribution of certain asbestos-containing products by a former business unit of the Debtor’s predecessor from 1948 to 1958, when that business unit was sold. The Debtor intends to achieve this goal by promptly negotiating—and ultimately confirming—a plan of reorganization pursuant to sections 524(g) and 1129 of the Bankruptcy Code. The Debtor believes that creation of a section 524(g) trust would be the fairest and most expeditious way for the Debtor to ensure that holders of current and future Asbestos Claims (as defined below) are treated in a fair and just manner. The Debtor is confident that the tools and protections available in chapter 11 will facilitate negotiations that will ultimately result in a court-approved plan.



524(g) trust in September of 2006. The Owens Corning 524(g) trust has been making payments on account of Kaylo-related asbestos claims since then.

9. Despite having only produced Kaylo products for a fraction of the total production window, the Debtor continues to fund an outsized share of tort recoveries. This situation arises in part because the section 524(g) trust system operates independently of the tort system, which allows for plaintiffs to recover from defendants in the tort system, collect their full damages, and then collect significant damages from trusts based on evidence they subsequently submit, even when it alleges exposure to the same product. It also arises because the cost of defending asbestos claims in the tort system has risen. The Debtor currently has approximately 900 personal injury lawsuits pending against it throughout the country, many of which are currently dormant in status. These lawsuits typically allege various theories of liability, including negligence, gross negligence and strict liability, and seek compensatory and, in some cases, punitive damages. Each lawsuit requires the Debtor to incur a range of tens to hundreds of thousands of dollars or more in attorneys' fees and costs alone.

10. In contrast to many other companies' pure litigation approach, however, most Asbestos Claims are presented to the Debtor through a variety of administrative claims-handling agreements ("**Administrative Claims Agreements**"). The Company long believed that it and its various stakeholders were best served by proactively managing its asbestos-related liabilities outside of the tort system through such agreements. This strategy has historically allowed the Debtor more predictability in managing risk and its annual asbestos-related financial obligations. However, the Company's ability to reasonably estimate and reserve for the Debtor's asbestos-related tort expenditures has been significantly affected by, among other factors, changes in claiming patterns; changes in the law, procedure, and asbestos docket management; and pressure



deteriorated generally for mass tort defendants and Administrative Claims Agreements are becoming less reliable.

13. What is certain is the incredible disparity between what the Debtor has historically paid, and is now being asked to pay, for Asbestos Claims, given the extent of its historical asbestos-related operations. As of September 30, 2019, the Debtor had disposed of over 400,000 Asbestos Claims, and had incurred gross expense of approximately \$5 billion for asbestos-related costs. In contrast, its total Kaylo sales for the 10-year period in which it sold the product were approximately \$40 million. Asbestos-related cash payments for 2018, 2017, and 2016 alone were \$105 million, \$110 million, and \$125 million, respectively. Although these cash payments show a modest decline, the overall volume and claimed value of Asbestos Claims asserted against the Debtor has not declined in proportion to the facts that (i) over 60 years have passed since the Debtor exited the Kaylo business, (ii) the average age of the vast majority of its claimants is now over 83 years old, (iii) these demographics produce increasingly limited opportunities to demonstrate legitimate occupational Kaylo exposures, and (iv) other recoveries are available from trusts established by other asbestos defendants. Rather, increasing settlement values have been demanded of the Debtor. And because the Debtor has settled or otherwise exhausted all insurance that might cover Asbestos Claims, it must satisfy all asbestos-related expenses out of Company cash flows.

14. For years, the Debtor has paid more for its Asbestos Claims than its industry peers whose liabilities are paid by section 524(g) trusts. This is principally due to the inherent differences between the tort system and section 524(g) trust distribution procedures. The procedural and legal differences even among different jurisdictions in the tort system—such as joint-and-several liability—allow these disparities to exist in the extreme, which usually results in

the Debtor paying different claim amounts to otherwise similarly-situated plaintiffs. This situation is neither fair to the Company and its stakeholders nor to asbestos claimants.

15. The Debtor remains committed—as it has since the first Asbestos Claim brought against it—to fairly and equitably compensating claimants who are ill and have legitimate exposure to Kaylo products that the Debtor’s predecessor last manufactured more than 60 years ago. However, because the Company continues to face claims that increase in value, despite the fact that one would reasonably expect claims arising from the relevant manufacturing period to tail off and become more difficult to prove, the Debtor has concluded—consistent with the Company’s overall strategy of rationalizing and streamlining expenses—that the best path for fairness, certainty, and finality is only available through this Chapter 11 Case.

**B. Engagement of Professionals**

16. In order to explore potential alternatives to the status quo, the Debtor engaged its outside counsel, Latham & Watkins LLP (“**Latham**”), to assist it in evaluating a number of strategic options. It also retained Bates White LLC (“**Bates White**”) to provide estimation-related guidance with respect to its Asbestos Claims. The Debtor believes that guidance from both Latham and Bates White will assist it in reaching a consensual resolution in this Chapter 11 Case.

17. As part of this exploratory effort and to facilitate the implementation of a potential chapter 11 strategy if and when authorized to do so, the Debtor also entered into an engagement letter with James L. Patton, Jr. of Young, Conaway, Stargatt & Taylor, LLP (“**Young Conaway**”) on October 30, 2019 to serve as a proposed future claims representative (the “**Proposed FCR**”) to represent the interests of individuals who may assert Asbestos Claims in the future. The Debtor chose the Proposed FCR after interviewing and considering several qualified candidates, ultimately selecting James Patton based upon his qualifications and experience. The Proposed FCR retained Young Conaway as counsel and Ankura Consulting Group LLC as claims analyst to





21. Based on my experience, I believe that chapter 11 provides the only avenue for all of the Asbestos Claims asserted, and to be asserted, against the Debtor to be comprehensively addressed in a single forum under a process that fosters integrity through application of the rules of evidence and the rule of law. It will avoid the unending process inherent in the state court system and, perhaps more importantly, avoid the risk that some claimants who are otherwise similarly-situated may fare better than others, based only on when their claim is asserted, where, and by which law firm. In short, chapter 11 will provide the Debtor with the statutory framework and tools necessary to finally and fairly resolve its liability for Asbestos Claims, while unlocking the growth potential for the Company and its businesses, and for the benefit of all stakeholders.

## II. THE DEBTOR'S RELEVANT CORPORATE HISTORY AND ATTRIBUTES

### A. The Debtor's Organizational Structure

22. There is one Debtor in this case. The Debtor was incorporated in Delaware in 2019 and maintains its headquarters in Perrysburg, Ohio. The Debtor has one operating subsidiary, Meigs. As shown in the simplified corporate organization chart attached as Exhibit A and as described in further detail below, the Debtor is a direct, wholly owned subsidiary of O-I Glass, Inc. ("**Current Parent**"). Current Parent is a public company with shares traded on the New York Stock Exchange. Current Parent holds 100% of the interests in Owens-Illinois Group, Inc. ("**O-I Group**"), which in turn directly or indirectly holds all of the Company's subsidiaries other than the Debtor and Meigs.

23. The Company is the largest manufacturer of glass container products in the world, with 78 glass manufacturing plants in 23 countries. The Company's principal product lines are glass containers for alcoholic beverages, including beer, flavored malt beverages, spirits and wine, a variety of food items, soft drinks, teas, juices and pharmaceuticals. The Company's segments include Europe, the Americas and Asia Pacific. It also provides engineering support for its glass

manufacturing operations through facilities located in the United States, Australia, France, Poland and Peru. As of December 31, 2019, the Company employed approximately 27,500 individuals worldwide.

**B. Corporate Modernization Transaction**

24. Recognizing that, within its corporate structure, the Company's asbestos-related liability was located at the level of the Debtor's predecessor, Owens-Illinois, Inc., the Company underwent a corporate restructuring pursuant to section 251(g) of the Delaware General Corporation Law (the "**Corporate Modernization Transaction**") in December 2019. The Company undertook the Corporate Modernization Transaction to structurally separate the legacy liabilities of the Debtor's predecessor, Owens-Illinois, Inc., from the active operations of Owens-Illinois, Inc.'s subsidiaries, while fully maintaining the Debtor's ability to access the value of those operations to support its legacy liabilities. I understand that, as a result of the Corporate Modernization Transaction, Owens-Illinois, Inc. ceased to exist for corporate purposes under Delaware law and two new entities were created: (i) the Debtor, into which Owens-Illinois, Inc. merged, and (ii) Current Parent, which became the Company's new publicly traded parent. I understand that, for all U.S. federal tax purposes, Current Parent is treated as a continuation of Owens-Illinois, Inc. In addition, (x) certain assets of Owens-Illinois, Inc., which became assets of the Debtor as a matter of law upon the Merger (as defined below), were distributed as a dividend to Current Parent, (y) certain obligations of Owens-Illinois, Inc., which became obligations of the Debtor by operation of Delaware law upon the Merger, were assumed by Current Parent, and (z) Debtor and Current Parent entered into a Support Agreement and a Services Agreement providing the Debtor with corporate and other shared services. These steps are further described below.

25. First, Owens-Illinois, Inc. undertook a holding company reorganization under the General Corporation Law of the State of Delaware, pursuant to which Owens-Illinois, Inc. formed



for all parties. The Corporate Modernization Transaction also helped ensure that the Debtor has the same ability to fund the costs of defending and resolving present and future Asbestos Claims as Owens-Illinois, Inc. did, through Debtor's retention of (i) its own assets to satisfy these claims and (ii) access to additional funds from the Company through the Support Agreement. In short, the Corporate Modernization Transaction made good sense on a standalone, operational basis, and was also consistent with any bankruptcy strategy the Debtor might undertake.

### **C. Support Agreement**

28. As part of the Corporate Modernization Transaction, Current Parent entered into a support agreement with the Debtor (the "**Support Agreement**"), a true and correct copy of which is attached as Exhibit B. The Support Agreement is not a loan agreement. Instead, without any corresponding repayment obligation by the Debtor, it requires Current Parent to provide funding for all "Permitted Uses", subject to the terms of the Support Agreement. The key objective of the Support Agreement is to ensure that the Debtor has the same ability to fund the costs of managing and paying Asbestos Claims as Owens-Illinois, Inc., which funded asbestos-related liabilities out of cash funded from its subsidiaries.

### **D. Services Agreement**

29. In connection with the Corporate Modernization Transaction and to ensure that the Debtor has access to the necessary resources and services to operate its business, the Debtor and Current Parent entered into a services agreement (the "**Services Agreement**"), pursuant to which Current Parent provides the Debtor with certain centralized corporate and administrative services, including, but not limited to, legal, accounting, tax, human resources, information technology, risk management and other support services (including information retention and records management) as are necessary to operate the Debtor's business and support its operations (including any needed

support of Meigs) (the “**Services**”). The Debtor is invoiced quarterly, on an allocated basis, for Services expenses based on a projected annual budget, which is trued-up at the end of each year based on actual costs. Amounts due under the Services Agreement are included as Permitted Uses under the Support Agreement.

#### **E. The Debtor’s Business Operations and Assets**

30. The Debtor’s business operations are exclusively focused on (1) owning and managing certain real property and (2) owning interests in, and managing the operations of, its non-Debtor subsidiary, Meigs, which is developing an active real estate business. In addition, the Debtor is responsible for managing its historical asbestos and environmental liabilities through resources available under the Services Agreement and outside advisors. In addition to amounts due under the Services Agreement, the Debtor also incurs certain direct costs related to independent director fees, consulting costs, legal fees, and other charges. The Debtor has no employees.

31. The Debtor owns one parcel of real property in Lapel, Indiana, on which an affiliate owns and operates a glass manufacturing plant (the “**Lapel Property**”). The Debtor acquired the Lapel Property from Owens-Brockway Glass Container Inc. (“**OBGC**”) prior to the Petition Date and leased it back to OBGC under a 15-year triple net lease, subject to renewal (the “**Ground Lease**”). The Ground Lease is expected to generate net rents totaling approximately \$110,000 in annual revenue. In connection with the sale and leaseback of the Lapel Property, the Debtor obtained an appraisal and capitalization rates from CBRE. The Debtor intends to manage and derive revenue from the Ground Lease business during the Chapter 11 Case and after emergence.

32. In addition to the Ground Lease, through Meigs, the Debtor holds one property and is under contract to purchase another property, both subject to triple-net leases of quick-service

restaurants with national, third-party quick-service restaurant brands (the “**Existing Properties**”). The Existing Properties are expected to generate net rents totaling approximately \$216,000 in revenue in 2020, subject to increase in later years. In connection with owning and managing the Existing Properties, Meigs (as directed by the Debtor, as its sole member) performs the various tasks associated with its property management business, including periodic inspections of the properties for compliance with lease terms, management of tenants’ lease obligations such as tax, common area charges and insurance, and resolving disputes, if any. The Debtor will continue to assess opportunities to expand Meigs’ portfolio to provide income and asset value growth to its real estate business during the Chapter 11 Case.

33. In addition to these assets, the Debtor held approximately \$40.6 million in cash in its bank account as of the Petition Date. These funds derived from a combination of (i) an initial payment under the Support Agreement and (ii) additional cash left behind at Owens-Illinois, Inc. in the Corporate Modernization Transaction, which became cash of the Debtor upon the Merger. The Debtor may also hold *de minimis* other assets to which it became entitled as a matter of Delaware law pursuant to the Merger.

#### **F. Debtor’s Capital Structure and Liabilities**

34. As noted above, the Debtor is a wholly owned subsidiary of Current Parent. The Debtor has no funded debt as of the Petition Date. The Debtor’s most significant liabilities relate to its Asbestos Claims (as discussed in greater detail in Part I.A above). The Debtor also has legacy environmental liabilities (which are dwarfed by asserted Asbestos Claims) and has *de minimis* other contested prepetition liabilities arising from pending non-asbestos-related litigation.

35. Environmental Liabilities. The Debtor has historical environmental liabilities related to, among other things, Owens-Illinois, Inc.’s prior operation of certain facilities, including,

but not limited to, in Ohio, Kentucky, Connecticut, New Jersey, and Georgia. The Debtor's liabilities with respect to these facilities relate to penalties for site closures, remediation expenses, exposure for cleanup of contamination, and alleged noncompliance with regulations. The Debtor also has liabilities associated with Owens-Illinois, Inc.'s involvement in a number of other administrative and legal proceedings regarding the responsibility for the cleanup of hazardous waste or damages claimed to be associated with it and with Owens-Illinois, Inc.'s involvement in some minor claims for environmental remediation of properties sold to third parties.

### III. FIRST DAY PLEADINGS<sup>2</sup>

36. To preserve value for all stakeholders, the Debtor has sought approval of the First Day Pleadings and related orders (the "**Proposed Orders**"), and respectfully requests that the Court consider entering the Proposed Orders granting such First Day Pleadings. The Debtor seeks authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in any of the First Day Pleadings.

37. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtor to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to its business or loss of value and (b) constitutes a critical element in the Debtor's being able to successfully maximize value for the benefit of its estate.

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms in this Section shall have the meanings ascribed to them in the applicable First Day Pleadings.









publicly available discovery materials do not contain identifying contact information for such plaintiffs.

44. Instead, I understand that the Debtor typically tracks the address information of the counsel and/or law firm of record for the Asbestos Claimants in the tort system and named counsel party to the Administrative Claims Agreements, and conducts all communications regarding the related litigation and/or pending claims and Asbestos Claims through such counsel. Collecting the individual addresses of the Asbestos Claimants, I believe, would require a massive, expensive and time-consuming effort, including a search beyond the Debtor's existing books and records. Even if the Debtor did undergo this effort, I believe that it would likely be near impossible to locate and ensure the accuracy of such information for each Asbestos Claimant. As a result, the Debtor requests authority to list the addresses of the counsel of record for each Asbestos Claimant and named counsel under the Administrative Claims Agreements instead of the addresses of individual Asbestos Claimants on the Debtor's creditor matrix.

45. In addition, I understand that throughout the course of the Chapter 11 Case, various notices, mailings, and other communications will need to be sent to the Asbestos Claimants. In order to ensure that these claimants receive proper and timely notice of filings and critical events in the Chapter 11 Case, the Debtor requests authority to direct Prime Clerk, LLC, the Debtor's proposed claims and noticing agent (the "**Claims and Noticing Agent**"), to send required notices, mailings, and other communications to the counsel of record for the Asbestos Claimants and named counsel under the Administrative Claims Agreements, in the manner required pursuant to otherwise applicable noticing procedures in effect in the Chapter 11 Case, *provided* that the Debtor will (or will direct the Claims and Noticing Agent to) send required notices, mailings, and other communications directly to any Asbestos Claimants who so request such direct notice from the





(i) an initial payment under the Support Agreement and (ii) additional cash left behind at Owens-Illinois, Inc. in the Corporate Modernization Transaction, which became cash of the Debtor upon the Merger. Additionally, I understand that, pursuant to the Support Agreement, Current Parent is required to make available funding to maintain a balance of at least \$5 million in the Bank Account. All proceeds from the Debtor's operations (and funding provided pursuant to the Support Agreement) are deposited into the Bank Account, and all disbursements, including checks, drafts, wires, and automated clearing house transfers, are issued from the Bank Account. The Bank Account was established in connection with the Corporate Modernization Transaction and it is my understanding that the Debtor has never held a bank account other than the Bank Account.

50. The Debtor may use a variety of preprinted business forms, including checks, letterhead, correspondence forms, invoices, and other business forms in the ordinary course of business (collectively, and as they may be modified from time to time, the "**Business Forms**"). To avoid a significant disruption to the Debtor's operations that would result from a disruption of the Debtor's cash management system (the "**Cash Management System**"), and to avoid unnecessary expense, the Debtor is requesting authority to continue using all Business Forms in use before the Petition Date, including with respect to the Debtor's ability to update authorized signatories and services, as needed—without reference to the Debtor's status as a chapter 11 debtor-in-possession—rather than requiring the Debtor to incur the expense and delay of ordering or printing new Business Forms. I understand that the Debtor will use reasonable efforts to have the designation "Debtor-in-Possession" and the corresponding bankruptcy case number printed on any Business Forms reordered after the Debtor exhausts its existing supply.

51. I have been informed that the Debtor incurs periodic service charges and other fees in connection with maintenance of the Cash Management System (the "**Bank Fees**"). The Bank











**EXHIBIT C**

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
Aug 07 2012  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*George R. Hodges*  
George R. Hodges  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Charlotte Division**

IN RE:

GARLOCK SEALING TECHNOLOGIES  
LLC, et al.,

Debtors.<sup>1</sup>

Case No. 10-BK-31607

Chapter 11

Jointly Administered

**ORDER GRANTING IN PART AND OVERRULING IN PART OBJECTIONS TO  
SUBPOENA BY DELAWARE CLAIMS PROCESSING FACILITY, LLC AND  
ASSOCIATED TRUSTS, ESTABLISHING CLAIMANT OBJECTION PROCEDURES,  
AND GOVERNING THE CONFIDENTIALITY OF INFORMATION PROVIDED IN  
RESPONSE TO THE SUBPOENA**

This matter came before the Court on the Emergency Application of Multiple Asbestos Personal Injury Settlement Trusts to Impose Reasonable Privacy Protections on Trusts' Responses to Debtors' Subpoena *Duces Tecum* for Information Regarding Settled Claims, and to Require Debtors to Cover the Full Costs and Expenses of Complying with Debtors' Subpoena (Docket No. 2366) (the "Emergency Application"). In addition, six trusts (the "Trusts"),<sup>2</sup>

<sup>1</sup> The debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company (hereinafter "Garlock" or "Debtors").

<sup>2</sup> The Trusts are the Armstrong World Industries Asbestos Personal Injury Settlement Trust, the Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust, the DII Industries, LLC Asbestos PI Trust, the Federal Mogul



Based upon a review of the Emergency Application, the Motion to Compel, any supporting or opposing submissions of the parties, the evidence presented, and the arguments of counsel, the Court hereby ORDERS, ADJUDGES, AND DECREES that:

1. This Court has jurisdiction over the Emergency Application, Motion to Compel, and other matters related to the Subpoena pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157.

2. As used in this Order, the term “Settled Claimants” shall mean all individuals listed in Exhibit 1 of the Subpoena, consisting of mesothelioma claimants who (according to Debtors’ records) entered into a settlement with Garlock between 1999 and 2010.

3. On July 27, 2012, Debtors served notice on lawyers who, according to data maintained by DCPF and the Trusts, represented potentially affected claimants. That notice informed such lawyers that on August 16, 2012, the Court will hear objections to the Subpoena that Settled Claimants may wish to raise. Subject to any such objections by Settled Claimants, it does not appear that further or different notice will be required.

4. Settled Claimants shall have until August 14, 2012 to file an objection with this Court to the disclosure of the information sought in the Subpoena. Subject to the right of Settled Claimants to be heard pursuant to the above-described objection procedure, (i) the Trusts and DCPF shall not be subject to any actions, claims, or demands by Settled Claimants or any other party as a result of their good faith compliance with this Order and (ii) the Court shall retain exclusive jurisdiction to hear any objections filed by the Settled Claimants to the Subpoena.

5. Subject to the outcome of this Court’s hearing on August 16, DCPF and the Trusts shall produce the following information with respect to each Trust (collectively, the







reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission and storage. Should any unauthorized breach of the confidentiality of Trust Data occur, the entity whose agents or representatives were involved in the breach shall notify the Estimation Parties, as well as any Settled Claimants to which the subject information pertains, as soon as reasonably practicable, but not later than two (2) business days after such entity first becomes aware of such breach.

13. Neither Trust Data, nor any analyses, conclusions, summaries, excerpts, redacted copies derived therefrom, nor any knowledge obtained therefrom, shall be used for any purpose whatsoever other than the Estimation Proceeding in this case.

14. Neither Trust Data nor any analyses, conclusions, summaries, excerpts, or redacted copies derived therefrom may be (a) publicly disclosed except pursuant to this Order, (b) used as a disclosed or undisclosed source in any article, study, research, editorial, publication or scholarly work, or (c) incorporated into or merged with any preexisting database that is to be used or maintained for any purpose other than the Estimation Proceeding.

15. To the extent Trust Data are maintained in or converted to electronic form, they must be maintained in a separate file, database, or physical storage medium. If Trust Data maintained or converted to electronic form are incorporated into or merged with any preexisting electronic information or database (a “**Merged Database**”), the Merged Database must itself be treated as confidential to the same extent as the underlying Trust Data themselves, shall be maintained in a separate file, database, or physical storage medium, and shall be subject to the same use restrictions that this Order imposes on the Trust Data themselves.

16. Nothing in this Order shall restrict any person’s right to make lawful use of:







related liability in the aggregate is the avoidance of disputes that would implicate the due process rights of absent asbestos personal injury and wrongful death claimants.

21. As a precautionary measure, but not as a precondition to protection, the file names of all Trust Data and Merged Database(s) shall contain the following legend: “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

22. This Court shall retain jurisdiction to interpret, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.  
The Judge’s signature and court’s seal  
appear at the top of the Order.

United States Bankruptcy Court

## EXHIBIT A.1

**Re: *In re Garlock Sealing Technologies LLC, et al.*,**  
**Case No. 10-BK-31607 (Jointly Administered)**  
**United States Bankruptcy Court**  
**for the Western District of North Carolina**

***Instructions:*** *This Acknowledgment must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute an Acknowledgment pursuant to paragraph 9 of the above-referenced Order.*

### ACKNOWLEDGEMENT

On behalf of my employer, \_\_\_\_\_ [write in name of employer] (“**Employer**”), I and other employees, agents, and representatives of Employer may be given access to Trust Data. The Trust Data constitute confidential and protected information in connection with the above- referenced Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures and Governing the Confidentiality of Information Provided in Response to the Subpoena (the “**Order**”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “**Bankruptcy Court**”) in the above-referenced jointly-administered Chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [write in name of the Estimation Party or other client for whom Employer is rendering services in connection with the Estimation Proceeding]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to Trust Data. By my signature below, Employer, for itself and all of its employees, agents, and representatives who receive access to Trust Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this Acknowledgment known in advance to all of Employer’s employees, agents, and representatives who are to receive access to Trust Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer, its employees, agents, and representatives will not disclose any Trust Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use Trust Data for any purpose other than the Estimation Proceeding, except as may be specifically authorized by further order of the Bankruptcy Court.

Pursuant to paragraph 19 of the Order, Employer will destroy or cause to be destroyed all Trust Data and Merged Database(s) within one year of the date of substantial consummation of a confirmed Chapter 11 plan of reorganization for the Debtors (the “**Plan**”), and will promptly

certify such destruction in writing to counsel of record for the Debtors, the Committee, and the FCR.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this Acknowledgment and for no other purposes.

I represent that I am duly authorized to execute this Acknowledgment on behalf of Employer.

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Employer: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Dated: \_\_\_\_\_  
 Relationship to Employer: \_\_\_\_\_

## EXHIBIT A.2

**Re: *In re Garlock Sealing Technologies LLC, et al.*,  
Case No. 10-BK-31607 (Jointly Administered)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions:*** *This Acknowledgment must be executed by any individual required to execute an Acknowledgment in his or her individual capacity pursuant to the paragraph 9 of the above-referenced Order (for example, a self-employed expert or a witness).*

### ACKNOWLEDGEMENT

I may be given access to certain confidential and protected information in connection with the above-referenced Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures and Governing the Confidentiality of Information Provided in Response to the Subpoena (the “**Order**”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “**Bankruptcy Court**”) in the above-referenced jointly-administered Chapter 11 cases.

I have read the Order. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to Trust Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Trust Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use Trust Data for any purpose other than the Estimation Proceeding, except as may be specifically authorized by further order of the Bankruptcy Court pursuant to paragraph 20 of the Order.

Pursuant to paragraph 19 of the Order, I will destroy all Trust Data and Merged Database(s) within one year of the date of substantial consummation of a confirmed Chapter 11 plan of reorganization for the Debtors (the “**Plan**”), and will promptly certify such destruction in writing to counsel of record for the Debtors, the Committee, and the FCR.



I consent to the jurisdiction of the Bankruptcy Court for any action to enforce the terms of the Order and this Acknowledgment and for no other purposes.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Dated: \_\_\_\_\_

**EXHIBIT D**

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
February 17 2022  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*J. Craig Whitley*  
J. Craig Whitley  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re  
  
DBMP LLC,<sup>1</sup>  
  
Debtor.

Chapter 11  
  
Case No. 20-30080 (JCW)

**ORDER GRANTING DEBTOR’S MOTION FOR BANKRUPTCY RULE 2004  
EXAMINATION OF ASBESTOS TRUSTS AND GOVERNING CONFIDENTIALITY  
OF INFORMATION PROVIDED IN RESPONSE**

This matter came before the Court pursuant to *Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* (Dkt. 416), filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**DBMP**”) on August 19, 2020, as modified by the Debtor’s revised forms of order filed on June 9, 2021 (Dkt. 859) and July 29, 2021 (Dkt. 949, Ex. A) (collectively,

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

the “**Motion**”).<sup>2</sup> Based upon a review of the Motion,<sup>3</sup> the further submissions of the parties, the evidence presented, and the arguments of counsel at the hearing on this matter, and for the reasons stated on the record at the December 16, 2021 hearing (which record is incorporated herein), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. The Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated by the Court on the record at the December 16, 2021 hearing.

3. Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016, the Debtor is authorized to issue and serve subpoenas requesting the data described in paragraph 7 below on the Manville Personal Injury Settlement Trust (“**Manville Trust**”) and on the Delaware Claims Processing Facility (“**DCPF**”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “**DCPF Trusts**,” and together with the Manville Trust, the “**Trusts**”):<sup>4</sup>

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<sup>2</sup> On June 9, 2021 the Debtor filed a revised form of order to incorporate the privacy and security protections in the order entered by Judge Beyer in the Bestwall case, *Order Granting Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response, In re Bestwall LLC*, No. 17-31795 (Dkt. 1672) (Bankr. W.D.N.C. Mar. 24, 2021) (Bestwall Order (Dkt. 859)). Subsequently, the Debtor further modified the relief sought in its Motion by filing a second revised form of order on July 29, 2021 (Dkt 949, Ex. A) in which the Debtor (1) deleted from its request all of the data fields requiring production of personal identifying information regarding any claimant; and (2) proposed a protocol for the anonymization of the remaining requested data by the Trusts before production to the Debtor.

<sup>3</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

<sup>4</sup> The Debtor also may subpoena the DCPF Trusts to effectuate this Order.

- a. Armstrong World Industries Asbestos Personal Injury Settlement Trust;
- b. Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
- c. Celotex Asbestos Settlement Trust;
- d. DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);
- e. Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
- f. Flintkote Asbestos Trust;
- g. Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);
- h. Pittsburgh Corning Corporation Asbestos PI Trust;
- i. United States Gypsum Asbestos Personal Injury Settlement Trust; and
- j. WRG Asbestos PI Trust.

The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with a potential estimation of the Debtor’s liability for mesothelioma claims and the negotiation, formulation, and confirmation of a plan of reorganization in this case, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtor’s asbestos liability; the estimation of the Debtor’s asbestos liability; and the development and evaluation of trust distribution procedures in any plan of reorganization proposed by the Debtor, the Official Committee of Asbestos Personal Injury Claimants (the “**ACC**”) and/or the Future Claimants’ Representative (the “**FCR**”) (collectively, such purposes, the “**Permitted Purposes**”).

4. Bates White, in its capacity as a Retained Expert (as defined herein) for DBMP, shall create a “**Matching Key**”, which shall be a list (in electronic, text searchable format) of last names and Social Security numbers (“**SSNs**”), in separate fields, for claimants who asserted mesothelioma claims against the Debtor or the former CertainTeed Corporation (“**Old CT**”) that were resolved by settlement or verdict and for whom DBMP possesses SSNs, as well as the corresponding last names and SSNs of any injured party if different from the claimant (the “**DBMP Claimants**”), as well as a unique numerical pseudonym (the “**Claimant Pseudonym**”) assigned by Bates White and corresponding to each DBMP Claimant. On the same day the Debtor effects

service of the subpoenas authorized by this order (the “**Service Date**”), Bates White shall provide the Matching Key to the Manville Trust and DCPF. Bates White shall also provide the Matching Key to Legal Analysis Systems, Inc. (“**LAS**”), and Ankura Consulting Group, LLC (“**Ankura**”), each in its capacity as a Retained Expert (as defined herein) for the ACC, and the FCR, respectively.

5. On or before the twenty-first (21st) day following the Service Date,<sup>5</sup> DCPF and the Manville Trust shall identify the claimants in the Trusts’ databases whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a DBMP Claimant and who did not file their Trust claims *pro se* (the “**Matching Claimants**”). In performing this match, DCPF and the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match. On or before the twenty-first (21st) day following the Service Date, DCPF and the Manville Trust shall also provide to counsel for the Debtor a list of the first and last names and SSN of claimants in the Trusts’ databases who match the nine-digit SSN of any DBMP Claimant but who (a) filed their Trust claims *pro se* (and identify such claimants on the list) or (b) in the view of DCPF or the Manville Trust do not match the last name associated with the DBMP Claimant (the “**Meet and Confer List**”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Trust Data (as defined herein). On or before the thirty-fifth (35th) day following the Service Date, the Debtor, DCPF, and the Manville Trust shall meet and confer concerning whether any of the claimants on

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<sup>5</sup> If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.

the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the Service Date, the Debtor (and the Debtor's Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide DCPF and the Manville Trust with written confirmation of such deletion; *provided, however*, that such deletion deadline shall be extended for each day the meet and confer process between the Debtor, on the one hand, and DCPF and the Manville Trust, on the other hand, continues after the sixtieth (60th) day following the Service Date. In the event the Debtor, DCPF and Manville Trust cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

6. DCPF and the Manville Trust shall notify the Matching Claimants' counsel of record that the relevant Trusts have received a subpoena from the Debtor. The notice from DCPF and the Manville Trust shall state that the data associated with the Matching Claimants, as described in paragraph 7 below, will be produced if they do not file a motion to quash the subpoena by the later of the forty-ninth (49th) day following the Service Date, or the fourteenth (14th) day following the provisions of notice to their counsel of record by DCPF or the Manville Trust. DCPF and the Manville Trust shall exercise reasonable efforts to provide actual notice to counsel of record in connection with the claim that is the subject of disclosure. If, despite their reasonable efforts, DCPF or the Manville Trust, as applicable, is unable to provide actual notice to counsel of record for a Matching Claimant, including without limitation because counsel of record is unreachable (for example, counsel of record has died, retired, or closed or dissolved his, her or its legal practice), they shall not be required to make a production of data relating to such Matching Claimant (such Matching Claimants being the "**Unnoticeable Claimants**"). DCPF and the Manville Trust shall provide the Debtor on or before the thirtieth (30th) day following the Service

Date with a list of such Unnoticeable Claimants identifying the counsel that filed the trust claim and counsel of record, if different, and the reasons such counsel of record is unreachable. Unnoticeable Claimants will be added to the Meet and Confer List to enable the Debtor, DCPF, and Manville Trust to discuss other means, if any, of providing notice to such Matching Claimants. Any Matching Claimant for whom the Debtor and DCPF or the Debtor and Manville Trust are able to agree on another means of providing notice will no longer be classified as Unnoticeable Claimants. As to all Matching Claimants other than the Unnoticeable Claimants, if a motion to quash is filed by a Matching Claimant before the applicable deadlines set forth above in this paragraph 6, DCPF and the Manville Trust will stay the production of any data relating to such Matching Claimant until such motion is resolved. If a motion to quash is not filed by a Matching Claimant before the applicable deadlines set forth above in this paragraph 6, DCPF and the Manville Trust shall produce to the Debtor the data described in paragraph 7 below relating to the Matching Claimant (other than the Unnoticeable Claimants) on or before the seventh (7th) day after the date by which any motion to quash must be filed (the “**Production Date**”).

7. On or before the applicable Production Date, DCPF and the Manville Trust shall produce to Bates White (in electronic database format and, with respect to DCPF, separately for each Trust) the following information pertaining to each Matching Claimant<sup>6</sup> (to the extent the relevant Trust databases contain such information) (the “**Anonymized Matched Production**”):

- a. Claimant Pseudonym;
- b. Claimant’s law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;

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<sup>6</sup> For the avoidance of doubt, the term “Matching Claimants” referenced here includes any claimants on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as Matching Claimants.



- e. Date claim paid by Trust, if paid;
  - f. If not approved or paid, status of claim; and
  - g. All exposure-related fields<sup>7</sup>, including:
    - i. Date(s) exposure(s) began;
    - ii. Date(s) exposure(s) ended;
    - iii. Manner of exposure;
    - iv. Occupation and industry when exposed; and
    - v. Products to which exposed.
8. The Anonymized Matched Production shall be used as follows:
- a. Subject to and without in any way limiting the restrictions described in paragraph 9(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtor, the ACC, the FCR, and CertainTeed LLC (“**New CT**” and, together with the Debtor, the ACC, and the FCR, the “**Parties**”), if otherwise entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Production.
  - b. The Retained Experts (as defined in paragraph 9(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Production, on a claimant-by-claimant basis, with data from the Debtor’s database or other

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<sup>7</sup> DCPF’s Chief Operating Officer testified that, when claimants describe how they were exposed to products for which a DCPF Trust is responsible, it is possible that they may list individuals by name and/or SSN. To the extent any names or SSNs appear in any exposure-related field, DCPF and the Manville Trust may redact such names and SSNs prior to production of the Anonymized Matched Production. In addition, prior to delivery of the Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Anonymized Matched Production.

sources; (ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Production with and analyze individual claims (*provided that* such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Production that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, *provided, however*, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. No Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the complete set of Claimant Pseudonyms in the Anonymized Matched Production to the Matching Key.

- c. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Production, on a claimant-by-claimant basis, to the Debtor's database or other sources of information, such Retained Expert shall delete from any resulting database the names and SSNs of injured parties and any related claimants (any such database being an "**Anonymized Database**").

9. The Matching Key (and any portion or extract thereof), the Anonymized Matched Production, and any Anonymized Databases (together, the “**Confidential Trust Data**”) shall be deemed “Confidential” pursuant to the *Agreed Protective Order Governing Confidential Information* (Dkt. 251) (the “**Protective Order**”). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

- a. No Confidential Trust Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know or access the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with this case, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party’s Retained Expert (defined below) in this case (collectively, the “**Authorized Representatives**”); *provided, however*, that the right of access to the Confidential Trust Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 9(b) immediately below.
- b. Any person exercising a right of access to the Confidential Trust Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Trust Data conferred by paragraph 9(a) above, each entity whose Authorized Representatives will receive

access to the Confidential Trust Data and any other Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Trust Data under paragraph 9(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Trust Data in the performance of the entity's duties with respect to this bankruptcy case. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Trust Data under paragraph 9(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.

- c. Any entity whose Authorized Representatives receive access to any Confidential Trust Data and any Authorized Representative who receives access to any Confidential Trust Data in their individual capacity as provided in this Order shall provide for physical, managerial, and electronic security thereof such that the Confidential Trust Data are reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission, and storage. Any electronic transmission of the Confidential Trust Data (including without limitation the Matching Key or any information derived therefrom) must be through a secure encrypted service, and not as an ordinary email attachment.
- d. Notwithstanding anything in this Order to the contrary, access to the Matching Key shall be limited to (i) Bates White, LAS, and Ankura, each in its capacity as a

retained claims expert for the Debtor, the ACC, and the FCR, respectively, and (ii) to the professional staff employed by such experts (each of (i) and (ii), a “**Retained Expert**”), and (iii) such other persons as the Parties, DCPF, and the Manville Trust may agree to in writing from time to time; *provided, however*, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 9(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 9(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

- e. No claimant-specific data from or derived from any Confidential Trust Data shall be (i) offered as evidence in this bankruptcy case, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to DCPF, the Manville Trust, and claimants provided to their attorneys at the addresses contained in the data produced by the Manville Trust and DCPF) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 9(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Trust Data that could

reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant's identity.

- f. If, in connection with a motion pursuant to paragraph 9(e), or any response to such motion, a Party proposes to place any Confidential Trust Data under seal, that Party shall have the burden of making the showing required for sealing under applicable law.
  - g. In addition to, and without diminution of any other use restrictions in this Order, unless otherwise ordered by the Court, the Confidential Trust Data shall be used only in connection with a Permitted Purpose.
  - h. Notwithstanding the foregoing, a Party may use in connection with a Permitted Purpose in this Court, or any reviewing court, summaries or analyses derived from the Confidential Trust Data if such material is redacted so as not to reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 9(e) above.
  - i. Likewise, nothing herein shall prohibit a Retained Expert with access to the Confidential Trust Data from using or referring to the Confidential Trust Data (in connection with a Permitted Purpose) in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning the Confidential Trust Data, so long as any such testimony, summary, or report does not reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 9(e) above.
10. Pursuant to section 105(a) of the Bankruptcy Code, no Confidential Trust Data shall be subject to subpoena or otherwise discoverable by any person or entity other than the Parties.

11. Within 30 days after the effective date of a confirmed plan for the Debtor or the entry of a final order confirming such a plan, whichever is later (the “**Deletion Date**”), the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Trust Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall (i) permanently delete such Confidential Trust Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Trust Data or any excerpts thereof, and (ii) attest in the declaration specified in paragraph 12 that they have permanently deleted such files and any excerpts thereof in compliance with this Order; *provided, however*, that any such data stored on a Party’s or Authorized Representative’s back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party’s or Authorized Representative’s operations.

12. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Trust Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Trust Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Trust Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 9(g); and (d) complied with the requirements in paragraph 11 concerning the deletion of any Confidential Trust Data.

13. Subject to the requirements of paragraphs 8 and 9 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in this bankruptcy case in conformity with this Order, or any data or material that is or becomes publicly available other than by a breach of this Order; or
- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Trust Data.

14. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular DBMP Claimants, including where such DBMP Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Production.

15. The Debtor shall reimburse DCPF and the Manville Trust for their reasonable and documented expenses in complying with this Order and the subpoenas. DCPF and the Manville Trust shall have no liability in connection with their compliance with the subpoenas described in this Order.

16. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court



**EXHIBIT A.1 TO ORDER GRANTING DEBTOR'S MOTION FOR BANKRUPTCY  
RULE 2004 EXAMINATION OF ASBESTOS TRUSTS AND GOVERNING  
CONFIDENTIALITY OF INFORMATION PROVIDED IN RESPONSE**

**Re: *In re DBMP LLC*  
Case No. 20-30080 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions:*** *This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 9(b) of the above-referenced Order.*

**A C K N O W L E D G E M E N T**

On behalf of my employer, \_\_\_\_\_ [write in name of employer] (“**Employer**”), I and Authorized Representatives of Employer may be given access to Confidential Trust Data. The Confidential Trust Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response* (the “**Order**”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “**Bankruptcy Court**”) in the above-referenced chapter 11 case. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Trust Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Trust Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer’s Authorized Representatives who are to receive access to any Confidential Trust Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Trust Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Trust Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 11 of the Order, Employer will destroy any Confidential Trust Data within 30 days after the effective date of a confirmed plan for the Debtor or the entry of a final order confirming such a plan, whichever is later, and will promptly certify such destruction in writing to counsel of record for DCPF and the Manville Trust.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_

**EXHIBIT A.2 TO ORDER GRANTING DEBTOR'S MOTION FOR BANKRUPTCY  
RULE 2004 EXAMINATION OF ASBESTOS TRUSTS AND GOVERNING  
CONFIDENTIALITY OF INFORMATION PROVIDED IN RESPONSE**

**Re: *In re DBMP LLC*  
Case No. 20-30080 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions:*** *This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 9(b) of the above-referenced Order.*

**A C K N O W L E D G E M E N T**

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response* (the "**Order**"), entered by the United States Bankruptcy Court for the Western District of North Carolina (the "**Bankruptcy Court**") in the above-referenced chapter 11 case.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Trust Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Trust Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Trust Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 11 of the Order, I will destroy any Confidential Trust Data within 30 days after the effective date of a confirmed plan for the Debtor, or the entry of a final order confirming such a plan, whichever is later, and will promptly certify such destruction in writing to counsel of record for DCPF and the Manville Trust.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
Dated: \_\_\_\_\_

**EXHIBIT E**

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
March 24 2021  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*Laura T Beyer*  
\_\_\_\_\_  
Laura T. Beyer  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

IN RE:

BESTWALL LLC,<sup>1</sup>

Debtor.

Case No. 17-BK-31795 (LTB)

Chapter 11

**ORDER GRANTING DEBTOR’S MOTION FOR BANKRUPTCY RULE 2004  
EXAMINATION OF ASBESTOS TRUSTS AND GOVERNING CONFIDENTIALITY  
OF INFORMATION PROVIDED IN RESPONSE**

This matter came before the Court pursuant to *Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* (Dkt. 1237) (the “**Motion**”), filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**Bestwall**”).<sup>2</sup> Based upon a review of the Motion, the further submissions of the parties,<sup>3</sup> the evidence presented, and the arguments of

<sup>1</sup> The last four digits of debtor’s taxpayer identification number are 5815. The Debtor’s address is 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

<sup>3</sup> The parties submitted the following with respect to the Motion: *Response and Objection of Nonparties Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility to the Debtor’s Motion for Bankruptcy*

counsel at the hearing before the Court on January 21, 2021, and for the reasons stated in the Court’s bench ruling at the hearing on March 4, 2021 (the “**March 4, 2021 Ruling**”) (which ruling is incorporated herein by reference), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).
2. The Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated in the March 4, 2021 Ruling.
3. Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9016, the Debtor is authorized to issue and serve subpoenas requesting the data described in paragraph 8 below on

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*Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response (Dkt. 1321); Objection of the Official Committee of Asbestos Claimants to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1327); Objection of the Future Claimants’ Representative to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1328); Buck Law Firm’s Clients’ Joinder to Objection Filed by the Official Committee of Asbestos Claimants to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1330); Joinder to Objection Filed by the Official Committee of Asbestos Claimants to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1332); Reply in Support of Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1354); Supplemental Objection of the Future Claimants’ Representative to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. No. 1510); Supplemental Brief and Objection of the Official Committee of Asbestos Claimants to (I) Debtor’s Motion for Order Pursuant to Bankruptcy Rule 2004 Directing Submission of Personal Injury Questionnaires By Pending Mesothelioma Claimants and (II) Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1511); Statement of Interest on Behalf of the United States of America Regarding Estimation of Asbestos Claims (Dkt. 1557); Debtor’s Omnibus Supplemental Reply in Support of (I) Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and (II) Debtor’s Motion for Order Pursuant to Bankruptcy Rule 2004 Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants (Dkt. 1565); The Official Committee of Asbestos Claimants Response to United States Statement of Interest (Dkt. 1581); Supplemental Submission by Nonparties Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility in Further Opposition to the Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts (Dkt. 1612); The Official Committee of Asbestos Claimants’ Post-Hearing Brief Regarding Estimation-Related Motions (Dkt. No. 1614); Debtor’s Supplemental Brief on Discovery and Limiting Motions (Dkt. 1615); Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility Letter to the Court (Dkt. No. 1616); Debtor’s Reply to Trusts’ Letter Regarding Trust Discovery (Dkt. 1622).*

the Manville Personal Injury Settlement Trust (“**Manville Trust**”) and the Delaware Claims Processing Facility (“**DCPF**”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “**DCPF Trusts**,” and together with the Manville Trust, the “**Trusts**”):<sup>4</sup>

- a. Armstrong World Industries Asbestos Personal Injury Settlement Trust
- b. Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust
- c. Celotex Asbestos Settlement Trust
- d. DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds)
- e. Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo)
- f. Flintkote Asbestos Trust
- g. Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds)
- h. Pittsburgh Corning Corporation Asbestos PI Trust
- i. United States Gypsum Asbestos Personal Injury Settlement Trust
- j. WRG Asbestos PI Trust

The subpoenas seek evidence that is relevant to specific purposes in connection with estimation and the negotiation, formulation, and confirmation of a plan of reorganization in this case, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtor’s asbestos liability; the estimation of the Debtor’s asbestos liability; and the Debtor’s development of its trust distribution procedures and evaluation of the procedures proposed by the Official Committee of Asbestos Personal Injury Claimants (the “**ACC**”) and the Future Claimants’ Representative (the “**FCR**”) in their proposed chapter 11 plan (collectively, the “**Permitted Purposes**”).

4. On or before March 31, 2021, the Debtor shall provide to the Manville Trust and DCPF a list (in electronic, text searchable format) of last names and Social Security numbers (“**SSNs**”), in separate fields, for claimants who asserted mesothelioma claims against the Debtor or the former Georgia-Pacific LLC (“**Old GP**”) that were resolved by settlement or verdict and

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<sup>4</sup> The Debtor may also subpoena the DCPF Trusts if necessary to effectuate this Order.



for whom Debtor possesses SSNs, as well as the corresponding last names and SSNs of the injured parties if different from the claimant (the “**Bestwall Claimants**”). The list referenced in this paragraph may delete punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in the last name field, and may also close spaces between parts of a name (e.g., “Van” or “De”).

5. On or before April 21, 2021, DCPF and the Manville Trust shall identify the claimants in the Trusts’ databases whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Bestwall Claimant in the Debtor’s claims database and who did not file their Trust claims *pro se* (the “**Matching Claimants**”). In performing this match, DCPF and the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match. On or before April 21, 2021, DCPF and the Manville Trust shall also provide to counsel for the Debtor a list of the first and last names and SSN of claimants in the Trusts’ databases who match the nine-digit SSN of any Bestwall Claimant but who (a) filed their Trust claims *pro se* (and identify such claimants on the list) or (b) in the view of DCPF or the Manville Trust do not match the last name associated with the Bestwall Claimant (the “**Meet and Confer List**”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Trust Data (as defined herein). On or before April 30, 2021, the Debtor, DCPF, and the Manville Trust shall meet and confer concerning whether any of the claimants on the Meet and Confer List should

instead be classified as Matching Claimants. On or before May 26, 2021, the Debtor (and the Debtor's Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide DCPF and the Manville Trust with written confirmation of such deletion; *provided, however,* that such deletion deadline shall be extended for each day the meet and confer process between the Debtor, on the one hand, and DCPF and the Manville Trust, on the other hand, continues after May 26, 2021.

6. DCPF and the Manville Trust (through its claims processing agent, Claims Resolution Management Corporation (“**CRMC**”)) shall notify the Matching Claimants' counsel of record that the relevant Trusts have received a subpoena from the Debtor. DCPF and CRMC (each, a “**Notifying Facility**”) shall inform such counsel that the Matching Claimants' data described in paragraph 8 below will be produced if they do not notify the Notifying Facility and the Debtor in writing by May 12, 2021 that the Matching Claimant intends to file a motion to quash.

- a. If counsel for any Matching Claimant communicates to the Notifying Facility and the Debtor by May 12, 2021 an intent to file a motion to quash the subpoena, the Notifying Facility shall stay the production of any data relating to such Matching Claimant for an additional two weeks. If a motion to quash is filed by May 24, 2021, the Notifying Facility will stay the production of any data relating to such Matching Claimant until such motion is resolved.
- b. If a motion to quash is not filed by May 24, 2021, the Notifying Facility shall produce to Debtor the data described in paragraph 8 below relating to the Matching Claimant on or before May 28, 2021.





For the avoidance of doubt, nothing in this paragraph 9(b) should be construed as modifying or expanding the scope of DCPF's and the Manville Trust's disclosure obligations under paragraph 8.

- c. After creating the Matching Key, Bates White shall permanently delete from the Matched Production the datafields contained within the Matching Key (except the unique identifier and the year of the date of birth and the year of any date of death). The resulting database will be the “**Anonymized Matched Production.**” Bates White shall then provide a copy of the Matching Key and the Anonymized Matched Production to Legal Analysis Systems, Inc. and Ankura Consulting Group, LLC, each in its capacity as a Retained Expert (as defined herein) for the ACC and the FCR, respectively. Within four weeks after the final production of any Matching Claimant's data or the resolution of all pending motions to quash described in paragraph 6, whichever is later, Bates White shall serve a declaration on DCPF, the Manville Trust, and the other Parties (as defined herein) that attests to the creation of the Anonymized Matched Production and the Matching Key pursuant to this Order; and attests to the storage of the Matching Key in a separate password-protected network folder. The declaration shall be deemed “Confidential” pursuant to the Protective Order (as defined herein).
- d. Subject to and without in any way limiting the restrictions described in paragraph 10(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtor, the ACC, the FCR, and Georgia-Pacific LLC (“**New GP**” and, together with the Debtor, the ACC, and the FCR, the “**Parties**”), if otherwise

entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Production upon request to Bates White.

- e. The Retained Experts (as defined in paragraph 10(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Production, on a claimant-by-claimant basis, with data from the Debtor's database or other sources; (ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Production with and analyze individual claims (provided that such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Production that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, *provided, however*, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. Absent further order by this Court, no Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other

record of any kind linking the complete set of unique identifiers in the Anonymized Matched Production to the Matching Key.

- f. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Production, on a claimant-by-claimant basis, to the Debtor's database or other sources of information, such Retained Expert shall delete from any resulting database any datafields or information of the type contained within paragraphs 9(b)(i) to 9(b)(v), without regard to whether such information was derived from data produced by DCPF or the Manville Trust or other sources of information (any such database being an "**Anonymized Database**").

10. The Matching Key (and any portion or extract thereof), the Anonymized Matched Production, any Anonymized Databases, and (while it exists) the Matched Production (together, the "**Confidential Trust Data**") shall be deemed "Confidential" pursuant to the *Agreed Protective Order Governing Confidential Information* (Dkt. 337) (the "**Protective Order**"). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

- a. No Confidential Trust Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with this case, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party's Retained Expert (defined below) in this case (collectively, the "**Authorized Representatives**"); *provided, however*, that the right of access to

the Confidential Trust Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 10(b) immediately below.

- b. Any person exercising a right of access to the Confidential Trust Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Trust Data conferred by paragraph 10(a) above, each entity whose Authorized Representatives will receive access to the Confidential Trust Data and any other Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Trust Data under paragraph 10(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Trust Data in the performance of the entity's duties with respect to this bankruptcy case. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Trust Data under paragraph 10(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.





any other person granted access to the Matching Key under this paragraph 10(d).

Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

- e. No claimant-specific data from or derived from any Confidential Trust Data, including without limitation the kinds of claimant data listed in paragraphs 9(b)(i) to 9(b)(v) above, shall be (i) offered as evidence in this bankruptcy case, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to DCPF, the Manville Trust, and claimants provided to their attorneys at the addresses contained in the data produced by the Manville Trust and DCPF) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 10(e) shall also apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Trust Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant's identity.
- f. If, in connection with a motion pursuant to paragraph 10(e), or any response to such motion, a Party proposes to place any Confidential Trust Data under seal, that Party shall have the burden of making the showing required for sealing under applicable law.

- g. In addition to, and without diminution of any other use restrictions in this Order, unless otherwise ordered by the Court, the Confidential Trust Data shall be used only in connection with a Permitted Purpose.
  - h. Notwithstanding the foregoing, a Party may use in connection with a Permitted Purpose in this Court, or any reviewing court, summaries or analyses derived from the Confidential Trust Data if such material is redacted so as not to reveal any identifying detail of any individual claimant, including without limitation any of the identifying details subject to the restrictions of paragraph 10(e) above.
  - i. Likewise, nothing herein shall prohibit a Retained Expert with access to the Confidential Trust Data from using or referring to the Confidential Trust Data (in connection with a Permitted Purpose) in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning the Confidential Trust Data, so long as any such testimony, summary, or report does not reveal any identifying detail of any individual claimant, including without limitation any of the identifying details subject to the restrictions of paragraph 10(e) above.
11. Pursuant to section 105(a) of the Bankruptcy Code, no Confidential Trust Data shall be subject to subpoena or otherwise discoverable by any person or entity other than the Parties.
12. Within 90 days after the effective date of a confirmed plan for the Debtor or the entry of a final order confirming such a plan, whichever is later, the Parties and any Authorized Representatives (and any of their associated entities), including without limitation any Retained Experts, who received access to or who possess any Confidential Trust Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form

annexed to this Order as Exhibit A.1 or Exhibit A.2, shall (i) permanently delete such Confidential Trust Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Trust Data or any excerpts thereof, and (ii) certify in writing to DCPF and the Manville Trust that they have permanently deleted such files and any excerpts thereof.

13. Subject to the requirements of paragraphs 9 and 10 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in this bankruptcy case in conformity with this Order, or any data or material that is or becomes publicly available other than by a breach of this Order; or
- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Trust Data.

14. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Bestwall Claimants, including where such Bestwall Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Matched Production.

15. Debtor shall reimburse DCPF and the Manville Trust their reasonable and documented expenses in complying with this Order and the subpoenas. DCPF and the Manville Trust shall have no liability in connection with their compliance with the subpoenas described in this Order.





final order confirming such a plan, whichever is later, and will promptly certify such destruction in writing to counsel of record for DCPF and the Manville Trust.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_





I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_





1 APPEARANCES (via ZoomGov continued):

2 For the Debtor: J. JOEL MERCER, ESQ.  
133 Peachtree Street, 39th Floor  
3 Atlanta, GA 30303

4 King & Spalding LLP  
5 BY: RICHARD A. SCHNEIDER, ESQ.  
1180 Peachtree Street, NE, #1600  
6 Atlanta, GA 30309

7 For Official Committee of Asbestos Claimants: Robinson & Cole LLP  
8 BY: NATALIE D. RAMSEY, ESQ.  
DAVIS LEE WRIGHT, ESQ.  
1201 N. Market Street, Suite 1406  
9 Wilmington, DE 19801

10 For Rick Bankston, Member of ACC: Shepard Law, P.C.  
11 BY: MICHAEL SHEPARD, ESQ.  
160 Federal Street  
Boston, MA 02110

12 For Georgia-Pacific LLC: Debevoise & Plimpton LLP  
13 BY: MARK P. GOODMAN, ESQ.  
M. NATASHA LABOVITZ, ESQ.  
919 Third Avenue  
14 New York, NY 10022

15 Rayburn Cooper & Durham, P.A.  
16 BY: JOHN R. MILLER, JR., ESQ.  
227 West Trade St., Suite 1200  
Charlotte, NC 28202

17 For Georgia-Pacific Holdings: Reed Smith LLP  
18 BY: DEREK J. BAKER, ESQ.  
1717 Arch Street, Suite 3100  
19 Philadelphia, PA 19103

20 For Asbestos Claimants: Buck Law Firm  
21 BY: ROBERT C. BUCK, ESQ.  
3930 East Jones Bridge Road, #360  
Peachtree Corners, GA 30092

22 For the United States: U. S. Department of Justice  
23 BY: SETH B. SHAPIRO, ESQ.  
1100 L Street, NW, Room 7114  
24 Washington DC 20005

25

1 APPEARANCES (via ZoomGov continued):

2 For Future Claimants' Alexander Ricks, PLLC  
3 Representative, Sander L. BY: FELTON PARRISH, ESQ.  
4 Esserman: 1420 E. 7th Street, Suite 100  
Charlotte, NC 28204

5 Young Conaway  
6 BY: EDWIN J. HARRON, JR., ESQ.  
7 SHARON ZIEG, ESQ.  
1000 North King Street  
Wilmington, DE 19801

8 For Manville Personal Injury Friedman Kaplan  
9 Settlement Trust and Delaware BY: JASON C. RUBINSTEIN, ESQ.  
10 Claims Processing Facility: 7 Times Square  
New York, NY 10036-6516

11 ALSO PRESENT (via ZoomGov): SANDER L. ESSERMAN  
12 Future Claimants' Representative  
2323 Bryan Street, Suite 2200  
13 Dallas, TX 75201-2689

14 SHELLEY K. ABEL  
15 Bankruptcy Administrator  
402 West Trade Street, Suite 200  
Charlotte, NC 28202

16  
17 JON INT-HOUT  
Technology Consultant

18  
19  
20  
21  
22  
23  
24  
25

1 counsel. I am convinced, however, based on comparing the  
2 debtor's questionnaire to those used in prior asbestos cases  
3 that it is consistent with those questionnaires, if not more  
4 finely well tuned in light of experience gained from prior  
5 cases.

6 In addition, the debtor has taken steps to minimize  
7 the burden of completing the questionnaire by allowing  
8 claimants' firms to attach documents in lieu of providing  
9 explanation on the questionnaire, by creating a fillable PDF in  
10 which claimants can type their answers, and, hopefully, by the  
11 use of an electronic portal to which the claimants can submit  
12 the questionnaires.

13 Finally, with respect to delay, the questionnaire  
14 requires that it be returned within four months of service,  
15 which is consistent with every questionnaire attached to the  
16 debtor's motion and the Court's timeline for getting to an  
17 estimation proceeding.

18 The Court grants the personal injury questionnaire  
19 motion, subject to the concessions that were agreed to by the  
20 debtor at the conclusion of the hearings in January. The  
21 debtor has agreed to limit the questionnaire to the pre-1978  
22 joint compound products and also agreed to having a product  
23 list go out with the questionnaires.

24 With respect to the motion for Rule 2004 examination  
25 of bankruptcy trusts, I conclude I should grant the debtor's

1 motion for Rule 2004 exam of bankruptcy trusts pursuant to Rule  
2 2004 and that the debtors have met their burden of showing that  
3 the information sought is both relevant and necessary to the  
4 case. The information is relevant to the determination of  
5 whether pre-petition settlements of mesothelioma claims provide  
6 a reliable basis for estimating the debtor's asbestos liability  
7 which has been put at issue by the ACC and the FCR. It's  
8 relevant to Dr. Bates' estimation of the debtor's liability and  
9 it will assist the debtor in developing its trust distribution  
10 procedures and evaluating those procedures proposed by the ACC  
11 and the FCR in their plan. And I'm sufficiently convinced  
12 based on the evidence introduced by the debtor regarding the  
13 eight cases in which it alleges there was a failure to disclose  
14 material exposure evidence that there's a good faith basis for  
15 the trust discovery it seeks.

16 But I share Mr. Rubinstein's concerns about the  
17 confidential, proprietary, and inherently sensitive nature of  
18 the data that would be collected by the debtor. So I will  
19 grant the motion subject to the following conditions:

20 Particularly in light of the lessons the Court learned  
21 in Garlock, it would be appropriate to order the production of  
22 information from the trusts be anonymized by Bates White after  
23 it is produced, as Judge Whitley ordered in the confirmation  
24 phase of the Garlock case.

25 With respect to the matching protocol, the Court will

1 require the debtor to provide the trusts with a full Social  
2 Security number, plus another identifier. I understood  
3 Mr. Cassada to suggest last name and Mr. Rubinstein seemed to  
4 be in agreement with that. So I will require Social, full  
5 Social Security number and last name to be used for the  
6 matching protocol.

7           The debtor will be limited to using the data for  
8 purposes of estimation and confirmation in this case.

9           And finally, I agree with Mr. Rubinstein that access  
10 should be limited to people who have a clear need to know.

11           Again, I grant the motion subject to the concession  
12 agreed to by the debtor, that if they get matches from the  
13 trusts for *pro se* claimants, that those matches will be  
14 excluded from the discovery or not viewed as having Bestwall  
15 claims as well as subject to the agreement reached between  
16 Mr. Cassada and Mr. Rubinstein regarding the merged database  
17 and its confidential treatment as well as the date certain for  
18 the deletion of trust data.

19           Now I'll turn to the shaping motions and I'll make  
20 just a few general comments about those motions before I rule  
21 on each specific motion.

22           With respect to estimation, I remain focused on the  
23 need to avoid undue delay utilizing estimation as an  
24 opportunity to advance the resolution of this case and due  
25 process. In the context of reminding me about the factors on



**EXHIBIT G**



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1 So he may feel differently than me, but I --

2 THE COURT: Do you want to ask him?

3 MR. EWING: Well, I, I think I have, but, but I think  
4 our position would be, you know, we are again concerned about  
5 getting ruling in this case, get the ruling in Bestwall. We  
6 share the same concern, also especially to the extent it can  
7 affect if we're forced to produce documents, you know.

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

10 MR. EWING: I mean, that's just another factor in  
11 there. Because that, you know, we could be told to produce one  
12 set of documents in this case, a slightly different thing in  
13 Bestwall, and then they could change again and again.

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

16 MR. EWING: And so we do think it would be more  
17 efficient maybe in the long run if the Court held its ruling or  
18 even if the Court didn't hold its ruling, that the Court at  
19 least held our compliance deadline until all this could be  
20 sorted out. Then we could only produce, we'd only have to  
21 produce one set of documents and essentially the same thing.

22 Thank you.

23 THE COURT: And, and potentially, that would be until  
24 the Third Circuit ruled. I was thinking more of the next time  
25 around in front of Judge Connolly, but --

1 MR. EWING: Well, you know, your Honor, the DCPF and  
2 the Manville Trust are not parties to the Delaware litigation.  
3 I don't really know where that's at, but --

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

6 MR. EWING: -- I, I assume the debtor, I assume the  
7 debtor does and I guess that may be right.

8 THE COURT: Okay. Well, all right.

9 I guess what I want to say at this point is I, I  
10 alluded to this early on about, in great measure, this is, this  
11 is procedural and Judge Beyer and I try to do our best to stay  
12 consistent on procedure, so. We don't always manage it, but  
13 we're likely to see things in the same way, having been raised  
14 in the same court and, and having similar cases here.

15 The bottom line is I'm inclined to -- I agree with  
16 Bestwall on this, as modified. I think we've got to bear in  
17 mind what Judge Connolly has done. So I'm inclined to grant  
18 this motion without the PII, effectively allowing the proposed  
19 keying with the, the relevant so that it can be matched up when  
20 it comes back to the debtor, but anonymized when it's produced.  
21 I think it's relevant. Other courts have found that.  
22 Basically, I'm adopting Judge Beyer's original ruling, but  
23 modified for the requirements that the district court has.

24 And so I think we've got information that is necessary  
25 and relevant to an estimation here. I can go through all the

1 other arguments that have been made, but effectively, on the  
2 things other than the technical issues I'm foursquare with  
3 Judge Beyer on this. Whether the debtor relied on it or not, I  
4 think it's something we sort out once we get to an estimation  
5 hearing. I don't think that's a basis to foreclose it. The  
6 debtor's -- the argument that the debtor should already know  
7 about the trusts reason, we don't need this and don't need to  
8 burden the trusts, well, it doesn't sound like it to me.

9           But I agree that with Judge Connolly's input we need  
10 to have the pre-disclosure anonymization. We'll use the  
11 debtor's arrangement where the debtor proposed to provide the  
12 list and the like and then it comes back under the pseudonyms.  
13 That, and the fact that there's no personal injury, personal  
14 identifying information now satisfies the privacy concerns, at  
15 least from my perspective. We'll see what Delaware thinks  
16 about it.

17           But the bottom line is the debtor needs to be able to  
18 match or otherwise, this is unusable to it for its purposes and  
19 it sounds like the experts all agree on that. Whether they  
20 agree that you should get it or not is something else.

21           I would say that, also, the fact that Judge Hodges  
22 relied on this heavily in his estimation decision, I think,  
23 accentuates both the relevance and the need for the  
24 information.

25           Now don't jump to any conclusions there. I think



1 Judge Beyer may have said this to you before, but from my  
2 vantage point, I have no present idea whether I will adopt  
3 Judge Hodges' methodology or not. I, I have never really tried  
4 to get down in the weeds except to the extent y'all've talked  
5 about it in court and to go wade through all 60 or 90 pages of  
6 his estimation opinion. I have a great deal of regard for his  
7 opinions, but as has been pointed out before, Judge Fitzgerald  
8 wasn't much on that theory at all and I, I think a lot of her  
9 as well. So don't, don't get too excited.

10 But the bottom line, and including the proposed  
11 stringent confidentiality use restrictions, I think that with  
12 that I, I would be inclined to grant the motion now and we'll  
13 just see where we, we go.

14 So that one, I'm going to call upon the, the debtor to  
15 propose an order consistent with the remarks.

16 All right. Time for another question. I want to talk  
17 now about the personal injury questionnaire, No. 3 on the  
18 matter.

19 It is a curiosity to me that I've got Aldrich under  
20 submission right now with the debtor wanting to use,  
21 effectively, a bar date and a, and a follow-on questionnaire  
22 and in here, we're, we're talking about a PIQ. Just from  
23 personal efficiency, I sort of hate to have two different  
24 methodologies in two very similar cases and my question is --  
25 the debtor didn't ask for the bar date -- but do the parties

**EXHIBIT H**

# MORVILLO, ABRAMOWITZ, GRAND, IASON, ANELLO & BOHRER, P. C.

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September 5, 2012

## By Federal Express

Garland S. Cassada, Esq.  
Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, North Carolina 28246

Re: *In re: Garlock Sealing Technologies LLC*, 10-BK-31607

Dear Garland:

Enclosed, on behalf of the Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, the Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust, the DII Industries, LLC Asbestos PI Trust, the Federal-Mogul Asbestos Personal Injury Trust, the Owens Corning/Fibreboard Asbestos Personal Injury Trust, and the United States Gypsum Asbestos Personal Injury Settlement Trust (collectively, the "Producing Trusts") are six separate CD-ROMs containing trust information called for by Judge Hodges's Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures, and Governing the Confidentiality of Information Provided in Response to the Subpoena, dated August 7, 2012 (the "Order").

The data fields and information being produced by the Producing Trusts have been limited to the specific categories of information required to be produced under the terms of the Order for those individuals whose names and social security numbers, as maintained by the Producing Trusts, exactly matched the names and social security numbers supplied by Debtors in connection with their subpoena and the Order. The Producing Trusts hereby designate this trust information as "Confidential" pursuant to the Order.



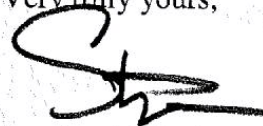
**MORVILLO, ABRAMOWITZ, GRAND, IASON, ANELLO & BOHRER, P. C.**

Garland S. Cassada, Esq.  
September 5, 2012  
Page 2

Consistent with Paragraph 6 of the Order, we will provide you with information regarding the costs associated with this production by separate correspondence.

Please do not hesitate to contact me at (212) 880-9475 if you have any questions regarding the enclosed materials or any other matter.

Very truly yours,



Stephen M. Juris

Enc.

cc: Trevor W. Swett III, Esq. (w/enclosures)  
Edwin J. Harron, Esq. (w/o enclosures)

**EXHIBIT I**

FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
Jul 24 2015  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*J. Craig Whitley*  
J. Craig Whitley  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Charlotte Division**

IN RE:  GARLOCK SEALING TECHNOLOGIES LLC, et al.,  Debtors. <sup>1</sup>	Case No. 10-BK-31607  Chapter 11  Jointly Administered
-----------------------------------------------------------------------------------------	--------------------------------------------------------------------

**ORDER GRANTING IN PART AND DENYING IN PART DEBTORS' MOTION FOR  
LEAVE TO SERVE SUBPOENA ON MANVILLE TRUST**

This matter came before the Court pursuant to Debtors' Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4599) (the "Motion"), filed to obtain discovery relevant to the hearing on confirmation of Debtors' Second Amended Plan of Reorganization (the "Confirmation Hearing"). Upon consideration of the Motion, the Objection of Non-Party Manville Personal Injury Settlement Trust to the Debtors' Motion for Leave to Serve Subpoena

<sup>1</sup>The Debtors in these jointly administered cases are Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company.

(Docket No. 4638), the Response and Limited Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtors' Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4644), Debtors' Reply in Support of Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4646), the Sur-Reply of Non-Party Manville Personal Injury Settlement Trust to Debtors' Motion for Leave to Serve Subpoena (Docket No. 4660), and the arguments of counsel at the hearing on June 17, 2015, and for the reasons stated on the record at the hearing on June 30, 2015, the Court grants the Motion in part and denies the Motion in part and hereby orders as follows:

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, and it is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given.

2. Debtors are authorized to issue and serve a subpoena on the Manville Personal Injury Settlement Trust (the "Manville Trust") forthwith, consistent with the terms and conditions of this Order. Debtors shall reimburse the Manville Trust's reasonable expenses in complying with the subpoena.

3. On or before July 15, 2015, Debtors shall provide to the Manville Trust a list (in electronic, text searchable format) of first and last names, in separate fields, for claimants listed as having pending non-mesothelioma or unknown disease claims in the latest version of Debtors' claims database. The list may delete punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name ("executor," "deceased," "dec," etc.) but that may be contained in the first and last name fields, and may also

close spaces between parts of a name (i.e., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

4. On or before July 31, 2015, the Manville Trust shall match the claimants described in the list to be provided by Debtors pursuant to paragraph 3 above with the filings in the Manville Trust database whose injured party datafield or related claimant datafield matches a first and last name in the list provided by Debtors (“Initial Matching Claimants”). In performing this match, the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.). The Manville Trust shall then notify the Initial Matching Claimants’ counsel of record of the Manville Trust’s receipt of a subpoena from Debtors, and inform such counsel that the Initial Matching Claimants’ data will be produced if they do not notify the Manville Trust and Debtors in writing, within 14 days (*i.e.*, by August 14, 2015), that the Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, or that the Initial Matching Claimant intends to file a motion to quash.

- a. If an Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, counsel for such Initial Matching Claimant shall notify both the Manville Trust and Debtors’ counsel, in writing, on or before August 14, 2015. Upon receiving such written notice, the Manville Trust shall withhold from production any records relating to such Initial Matching Claimant.
- b. If counsel for any Initial Matching Claimant communicates to the Manville Trust by August 14, 2015 an intent to file a motion to quash the subpoena, the Manville



Trust shall stay the production of any records relating to such Initial Matching Claimant for an additional two weeks (*i.e.*, until August 28, 2015). If a motion to quash is filed within that time, the Manville Trust will stay the production of any records relating to such Initial Matching Claimant until such motion is resolved.

If a motion is not filed within that time, the Manville Trust shall produce to Debtors the records described in paragraph 4(c) below relating to the Initial Matching Claimant on or before September 4, 2015.

- c. If counsel for any Initial Matching Claimants do not on or before August 14, 2015 (i) notify the Manville Trust and Debtors that the Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, or (ii) communicate to the Manville Trust an intent to file a motion to quash the subpoena, the Manville Trust shall produce to Debtors the information in paragraph 5 relating to any such Initial Matching Claimants on or before August 28, 2015, as well as a copy of the computer code the Manville Trust used to identify the Initial Matching Claimants.
  - d. The records produced by the Manville Trust relating to the Initial Matching Claimants are referred to herein as the “Initial Production.”
5. The Manville Trust shall produce to Debtors (in electronic database format) the following information pertaining to Initial Matching Claimants (to the extent the Manville Trust database contains such information):
- a. Manville POC number;
  - b. Injured party name;
  - c. Related party name;

- d. Social Security number;
- e. Date of birth;
- f. Gender;
- g. Claimant address and contact information;
- h. Date of death (if applicable);
- i. Whether death was asbestos-related (if applicable);
- j. Personal representative (if any);
- k. Law firm representing claimant;
- l. Whether Manville Trust claim has been approved or paid;
- m. Date Manville Trust claim was filed;
- n. Disease level, both as filed and as approved, and related database fields including diagnosis date, diagnosing doctor, diagnosing facility, claimant B-reader, medical audit, disease category, PFT, and ILO score(s) and related diagnosis assessment fields;
- o. Claim type (i.e., first injury claim or second injury claim);
- p. Amount paid by Manville Trust to claimant (if applicable);
- q. Database fields containing exposure information, including occupation, industry, dates of exposure, and related database fields in the “exposure” table;
- r. Database fields containing information about tort suit, including jurisdiction and other such database fields;
- s. Smoking history;
- t. Nature of co-worker’s exposure (if applicable); and

- u. Copies of medical records, exposure affidavits, death certificates, and other non-privileged documents maintained by the Manville Trust and typically provided to co-defendants pursuant to subpoena, linked to Manville POC number.
6. Debtors' claims expert (Bates White) shall use the following data fields from the Initial Production (as well as any other data fields that can reliably be used for this purpose) in conjunction with its standard matching algorithms to identify claimants in the Initial Production who do not in fact have pending claims against Debtors according to their database ("Non-Matching Claimants"):
- a. Injured party name;
  - b. Related claimant name;
  - c. Claimant address and contact information;
  - d. Personal representative (if any);
  - e. Social Security number;
  - f. Date of birth;
  - g. Date of death (if applicable);
  - h. Disease level (both as filed and as approved);
  - i. Lawsuit filing date;
  - j. Law firm representing claimant; and
  - k. Jurisdiction.
7. After identifying Non-Matching Claimants, Bates White shall perform the following tasks:
- a. Bates White shall permanently delete the records of Non-Matching Claimants from the Initial Production (thus creating the "Matched Production").

- b. Bates White shall assign a unique identifier to each claimant record in the Matched Production.
- c. Bates White shall create a separate file (the “Matching Key”) containing the unique identifier and the following fields from the Matched Production (to the extent the data produced by the Manville Trust include such information):
  - i. Manville POC number, injured party name, related claimant name, SSN, date of birth (except month and year for each claimant), claimant address and contact information;
  - ii. Personal representative name, SSN, address and contact information;
  - iii. Occupationally exposed person name, SSN, address and contact information;
  - iv. Other exposed person name, SSN, address and contact information;
  - v. Exposure affiant name;
  - vi. Dependent name;
  - vii. Dependent date of birth (except year for each dependent); and
  - viii. Lawsuit case numbers (except jurisdiction).

The Matching Key shall also contain the documents listed in paragraph 5(u) of this Order, linked to the unique identifier and other fields.

- d. After creating the Matching Key, Bates White shall permanently delete from the Matched Production the datafields and documents contained within the Matching Key. The resulting database will be the “Anonymized Matched Production.”
- e. Bates White shall store the Matching Key in a separate, password-protected folder on its network, accessible only to Bates White professionals engaged in work

relating to the Confirmation Hearing (or, in the case of the documents in paragraph 5(u), a litigation support company engaged to extract data from such documents and that signs a joinder to the Stipulated Protective Order). The Matching Key shall be used only for the following purposes: (i) matching and combining the Anonymized Matched Production, on a claimant-by-claimant basis, with data from Debtors' database or other sources, (ii) verifying the accuracy of any matching of data performed by any expert for the Committee, (iii) defending challenges to the accuracy of Bates White's matching of such data to other data sources, and (iv) in the case of the documents listed in paragraph 5(u) of this Order, to perform expert analysis relating to the Confirmation Hearing (by extracting data from those documents and adding such extracted data to the Anonymized Matched Production, so long as the extracted data does not include claimant identifying information including claimant identifying information of the type contained within paragraphs 7(c)(i) to 7(c)(viii) (which, for purposes of this Order, may also include, without limitation, information such as Medicare HIC numbers, Medicaid identification numbers, and patient record locator numbers)). Absent further order by this Court, Debtors and Bates White shall not use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the unique identifiers in the Anonymized Matched Production to the Matching Key. To the extent the Matching Key is used to match the Anonymized Matched Production, on a claimant-by-claimant basis, to Debtors' database or other sources of information, Debtors and their agents (including, without limitation, Bates White) shall delete

from any resulting database any datafields, information or documents of the type contained within paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was derived from data produced by the Manville Trust, data and information already maintained by the Debtors, or any other public or nonpublic source (any such database being an “Anonymized Database”).

8. On or before September 18, 2015, Bates White shall serve a declaration on the Manville Trust and the Official Committee of Asbestos Personal Injury Claimants (the “Committee”) that describes the process used to match claimants and identify Non-Matching Claimants, attests to the permanent deletion of the records of Non-Matching Claimants; identifies the Non-Matching Claimants whose records were deleted; attests to the creation of the Anonymized Matched Production and the Matching Key (and the deletion of the records contained in the Matching Key from the Matched Production); and attests to the storage of the Matching Key in a separate password-protected network folder. The declaration shall be designated “Confidential” pursuant to the March 22, 2011 Stipulated Protective Order as amended. Bates White shall contemporaneously serve the Manville Trust and the Committee with copies of the computer code for the matching algorithms used (“Matching Code”), Matching Key and Anonymized Matched Production, on a password-protected hard drive. The Committee and any of its experts shall likewise store the Matching Key in a separate, password-protected network folder accessible only by professionals engaged in work relating to the Confirmation Hearing. To the extent the Matching Key is used by the Committee or its agents to match the Anonymized Matched Production, on a claimant-by-claimant basis, to any other database or other sources of information, the Committee and its agents shall delete from any resulting database any datafields, information or documents of the type contained within

paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was derived from data produced by the Manville Trust, data and information already maintained by the Committee, or any other public or nonpublic source (any such database being an “Anonymized Database”).

9. On or before October 13, 2015, Debtors shall provide to the Manville Trust (in electronic, text searchable format) a list of first names, last names, and SSNs, in separate fields, for claimants and associated related claimants who filed proofs of claim in this bankruptcy case alleging non-mesothelioma or unknown disease claims and who were not in the Matched Production.

10. On or before October 27, 2015, the Manville Trust shall match the claimants described in the list to be provided by Debtors pursuant to paragraph 9 above with the following records in the Manville Trust database (together, “Supplemental Matching Claimants”): (a) Manville Trust records where the injured party or related claimant SSN matches the injured party or related claimant SSN provided by Debtors, (b) Manville Trust records where the injured party or related claimant first name, last name, and last four digits of SSN match the injured party or related claimant first name, last name, and last four digits of SSN provided by Debtors; or (c) in the case of claimants who did not provide an SSN in their proof of claim form or ballot, Manville Trust records where the injured party or related claimant first and last name matches the claimant or related claimant first and last name in the list provided by Debtors. In performing this match, the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.). The Manville Trust shall then notify the Supplemental Matching Claimants’ counsel of record of the Manville Trust’s receipt of a subpoena from Debtors, and inform such counsel that the Supplemental Matching Claimants’ data will be produced if they do

not notify the Manville Trust and Debtors in writing, within 7 days (*i.e.*, by November 3, 2015) that the Supplemental Matching Claimant has not filed a proof of claim in the above-captioned action, or that the Supplemental Matching Claimant intends to file a motion to quash.

- a. If the Supplemental Matching Claimant has not filed a proof of claim in the above-captioned action, counsel for such Supplemental Matching Claimant shall notify both the Manville Trust and Debtors' counsel, in writing, on or before November 3, 2015. Upon receiving such written notice, the Manville Trust shall withhold from production any records relating to such Supplemental Matching Claimant.
- b. If counsel for any Supplemental Matching Claimant communicates to the Manville Trust and Debtors before November 3, 2015 an intent to file a motion to quash the subpoena, the Manville Trust shall stay the production of any records relating to such Supplemental Matching Claimant for one week (*i.e.*, until November 10, 2015). If a motion to quash is filed within that time, the Manville Trust will stay the production of any records relating to such Supplemental Matching Claimant until such motion is resolved. If a motion is not filed on or before November 10, 2015, the Manville Trust shall produce to Debtors the records described in Paragraph 10(b) below relating to the Supplemental Matching Claimant on or before November 11, 2015.
- c. If counsel for any Supplemental Matching Claimants do not communicate to the Manville Trust and Debtors before November 3, 2015 (i) that the Supplemental Matching Claimant has not filed a proof of claim, or (ii) an intent to file a motion to quash the subpoena, the Manville Trust shall produce to Debtors the



information in paragraph 5 relating to any such Supplemental Matching Claimants on or before November 4, 2015, as well as a copy of the computer code the Manville Trust used to identify Supplemental Matching Claimants.

- d. The records produced by the Manville Trust relating to the Supplemental Matching Claimants are referred to herein as the “Final Production.”
- e. Promptly upon the production of the Final Production, Bates White shall follow the procedures in paragraphs 6 and 7 to identify Non-Matching Claimants in the Final Production; delete the records of Non-Matching Claimants in the Final Production; separate the Final Production into a Second Anonymized Matched Production and Second Matching Key; and then add the Second Anonymized Matched Production and Second Matching Key to the Anonymized Matched Production and Matching Key to create the “Final Anonymized Matched Production” and “Final Matching Key.”

11. For the avoidance of doubt, the requirements set forth in paragraph 7 above relating to the use and deletion of datafields, information and/or documents contained within the Matching Key apply with full force and effect to the datafields, information and/or documents contained in the Second Matching Key and Final Matching Key. Accordingly, to the extent the Second Matching Key and/or Final Matching Key are used to match the Second Anonymized Matched Production, the Final Anonymized Matched Production, and/or any other records produced by the Manville Trust on a claimant-by-claimant basis, to Debtors’ database or other sources of information, Debtors and their agents (including, without limitation, Bates White) shall delete from any resulting database any datafields, information or documents of the type contained within paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was





- f. In addition to, and without diminution of any other use restrictions in this Order, the Manville Confidential Information shall be used only in connection with the Confirmation Hearing.
  - g. Notwithstanding the foregoing, in the course of the Confirmation Hearing and solely for the purposes thereof, a party may use in the Bankruptcy Court, or any reviewing court, summaries or analyses derived from Manville Confidential Information if such material is redacted so as not to reveal any identifying detail of any individual claimant including, without limitation, information subject to the restrictions of paragraph 13(c) above.
  - h. Likewise, nothing herein shall prohibit an expert witness with access pursuant to the Stipulated Protective Order from using or referring to Manville Confidential Information in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning Manville Confidential Information, so long as such testimony, summary, or report does not reveal any identifying detail of any individual claimant including, without limitation, information subject to the restrictions of paragraph 13(c) above.
14. Pursuant to section 105(a) of the Bankruptcy Code, none of the Manville Confidential Information shall be subject to subpoena or otherwise discoverable by any person or entity other than the Debtors, the Committee, the Future Asbestos Claimants' Representative ("FCR"), or Coltec Industries Inc. ("Coltec"). If the FCR or Coltec request copies of the Manville Confidential Information, they shall be bound by all the provisions of this order that apply to the Debtors, Bates White, and the Committee.

15. Within one month after the later of the entry of a final confirmation order or the exhaustion of any appeals therefrom, the parties and any retained professionals, experts or agents possessing the Final Anonymized Matched Production and Final Matching Key (or any other Manville Confidential Information) shall (i) permanently delete those files, and any excerpts thereof, without in any way retaining, preserving, or copying the Final Anonymized Matched Production, Final Matching Key, or Manville Confidential Information, and (ii) certify in writing to the Manville Trust that they have permanently deleted such files and any excerpts thereof.

16. Subject to the requirements of paragraphs 7, 8, 11, 12, and 13 of the Order, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in the Confirmation Hearing in conformity with this Order, or any data or material that is or becomes publicly available other than by a breach of this Order; or
- c. any discrete data set or materials developed by or on behalf of such person independent of any Manville Confidential Information.

17. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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In re	:	
	:	Chapter 11
ALDRICH PUMP LLC, <i>et al.</i> ,	:	
	:	No. 20-30608 (JCW)
Debtors,	:	
	:	(Jointly Administered)
	:	
	:	

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**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that Aldrich Pump LLC., et al., Debtors in the above-captioned cases, have filed the Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC (the "Motion").

If a copy of the Motion is not included with this Notice, a copy may be viewed at the Court's website, [www.ncwb.uscourts.gov](http://www.ncwb.uscourts.gov) under Debtor Aldrich Pump LLC's name and case number, you may obtain a copy of the Motion from the Debtors' claims and noticing agent at [www.kccllc.net/aldrich](http://www.kccllc.net/aldrich), or you may request in writing a copy from the undersigned counsel to the Debtors.

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THESE BANKRUPTCY CASES. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)**

**IF YOU DO NOT WANT THE COURT TO GRANT THE RELIEF REQUESTED IN THE MOTION, OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE MOTION, THEN ON OR BEFORE THURSDAY, APRIL 21, 2022 YOU MUST:**

- (1) A. File with the Bankruptcy Court a written objection at:

Clerk, United States Bankruptcy Court  
401 W. Trade Street  
Charlotte, North Carolina 28202

- B. If you have your attorney file a written objection then the objection should be filed with the Bankruptcy Court by electronic means through the Court's website, [www.ncwb.uscourts.gov](http://www.ncwb.uscourts.gov) under the jointly administered name and case number shown above.

(2) Serve the objection pursuant to the procedures set forth in the Order Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 123).

(3) Attend the hearing scheduled for April 28, 2022, at 9:30 a.m. EDT or as soon thereafter as the matter can be heard in the Bankruptcy Courtroom 2B, 401 West Trade Street, Charlotte, North Carolina. You should attend this hearing if you file an objection.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought and may enter an Order granting the relief requested. No further notice of that hearing will be given.

This the 7<sup>th</sup> day of April, 2022.

RAYBURN COOPER & DURHAM, P.A.

/s/ John R. Miller, Jr.  
John R. Miller, Jr.  
N.C. State Bar No. 28689  
1200 Carillon, 227 W. Trade Street  
Charlotte, North Carolina 28202  
Telephone: 704-334-0891

ATTORNEYS FOR DEBTORS

# EXHIBIT E



FILED & JUDGMENT ENTERED  
Steven T. Salata  
  
July 1 2022  
  
Clerk, U.S. Bankruptcy Court  
Western District of North Carolina



*J. Craig Whitley*  
J. Craig Whitley  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

\_\_\_\_\_  
In re : Chapter 11  
ALDRICH PUMP LLC, *et al.*,<sup>1</sup> : Case No. 20-30608 (JCW)  
Debtors. : (Jointly Administered)  
\_\_\_\_\_

**ORDER GRANTING MOTION OF THE DEBTORS  
FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

This matter coming before the Court pursuant to the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the “Motion”),<sup>2</sup> filed by Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”), as debtors and debtors-in-possession in the above-captioned cases (together, the “Debtors”). Based upon a review of the Motion, the objections to the Motion filed by Paddock [Dkt. 1161] and the ACC [Dkt. 1162], the reply in support of the Motion filed by the

<sup>1</sup> The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors’ address is 800-E Beaty Street, Davidson, North Carolina 28036.  
<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

Debtors [Dkt. 1182], the evidence presented, and the arguments of counsel at the hearing on this matter held on May 26, 2022 (the “May 26 Hearing”), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. For the reasons stated on the record at the May 26 Hearing, which are incorporated herein by reference, the Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated by the Court on the record at the May 26 Hearing.

3. Upon entry of this Order, the Debtors are authorized to issue and serve subpoenas requesting the data described in paragraph 10 below on:

- a. the Manville Personal Injury Settlement Trust (“Manville Trust”);
- b. the Delaware Claims Processing Facility (“DCPF”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “DCPF Trusts”):<sup>3</sup>
  - (i) Armstrong World Industries Asbestos Personal Injury Settlement Trust;
  - (ii) Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
  - (iii) Celotex Asbestos Settlement Trust;
  - (iv) DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);

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<sup>3</sup> The Debtors also may subpoena the DCPF Trusts to effectuate this Order.

- (v) Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
  - (vi) Flintkote Asbestos Trust;
  - (vii) Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);
  - (viii) Pittsburgh Corning Corporation Asbestos PI Trust;
  - (ix) United States Gypsum Asbestos Personal Injury Settlement Trust; and
  - (x) WRG Asbestos PI Trust;
- c. Verus Claims Services, LLC (“Verus”<sup>4</sup> and, collectively with the Manville Trust and DCPF, the “Trust Producing Parties,” and each, individually, a “Trust Producing Party”) with respect to the following asbestos personal injury trusts whose claims are handled by Verus (the “Verus Trusts” and, collectively with the Manville Trust and the DCPF Trusts, the “Trusts”):<sup>5</sup>
- (i) ACandS Asbestos Settlement Trust;
  - (ii) Combustion Engineering 524(g) Asbestos PI Trust;
  - (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust;
  - (iv) GST Settlement Facility;
  - (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
  - (vi) Quigley Company, Inc. Asbestos PI Trust;
  - (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and
  - (viii) Yarway Asbestos Personal Injury Trust.

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<sup>4</sup> To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term “Verus” shall include such entity.

<sup>5</sup> The Debtors also may subpoena the Verus Trusts to effectuate this Order.

4. On or after June 30, 2022, the Debtors are authorized to issue and serve a subpoena requesting the data described in paragraph 11 below on Paddock Enterprises, LLC (“Paddock”).

5. The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors’ liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors’ asbestos liability; the estimation of the Debtors’ asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases (collectively, such purposes, the “Permitted Purposes”).

6. Bates White, in its capacity as a Retained Expert (as defined herein) for the Debtors, shall create a “Matching Key”, which shall be a list (in electronic, text searchable format) of last names and Social Security numbers (“SSNs”), in separate fields, for claimants who asserted mesothelioma claims against the Debtors, Aldrich’s predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Old IRNJ”), or Murray’s predecessor, the former Trane U.S. Inc. (“Old Trane”) that were resolved by settlement or verdict and for whom the Debtors possess SSNs, as well as the corresponding last names and SSNs of any injured party if different from the claimant (the “Claimants”), as well as a unique numerical pseudonym (the “Claimant Pseudonym”) assigned by Bates White and corresponding to each Claimant. On the same day the Debtors effect service of a subpoena authorized by this order (as applicable, the “Service Date”), Bates White shall provide the Matching Key to the Manville Trust, DCPF, Verus, and Paddock (each,

individually, a “Producing Party” and, collectively, the “Producing Parties”), as applicable. On the earliest Service Date following entry of this Order, Bates White shall also provide the Matching Key to Legal Analysis Systems, Inc. (“LAS”), and Ankura Consulting Group, LLC (“Ankura”), each in its capacity as a Retained Expert (as defined herein) for the ACC, and the FCR, respectively.

7. On or before the twenty-first (21st) day following the applicable Service Date,<sup>6</sup> DCPF, the Manville Trust, and Verus shall identify the claimants in the Trusts’ databases, and Paddock shall identify the claimants in any claims database within Paddock’s possession, custody, or control whose purpose is or was to track asbestos personal injury claims asserted against Paddock or Owens-Illinois, Inc. (the “Paddock Database”), whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Claimant and who did not file their Trust claims *pro se* or, in the case of Paddock, who are listed in the Paddock Database as having a claim that was not asserted *pro se* (the “Matching Claimants”). In performing this match, the Producing Parties shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

8. On or before the twenty-first (21st) day following the applicable Service Date, the Producing Parties shall also provide to counsel for the Debtors a list of the first and last names and SSNs of claimants in the Trusts’ databases or, in the case of Paddock, in the Paddock

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<sup>6</sup> If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.

Database, who match the nine-digit SSN of any Claimant but who (a) filed their Trust claims *pro se* or, in the case of Paddock, who appear in the Paddock Database as having asserted a claim *pro se*, (and identify such claimants on the list) or (b) in the view of the Producing Party do not match the last name associated with the Claimant (the “Meet and Confer List”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Data (as defined herein). On or before the thirty-fifth (35th) day following the applicable Service Date, the Debtors and the Producing Parties shall meet and confer concerning whether any of the claimants on the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the applicable Service Date, the Debtors (and the Debtors’ Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide the Producing Parties with written confirmation of such deletion; provided, however, that such deletion deadline shall be extended for each day the meet and confer process between the Debtors, on the one hand, and the Producing Parties, on the other hand, continues after the sixtieth (60th) day following the applicable Service Date. In the event the Debtors and the Producing Parties cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

9. Within seven (7) days of the identification of Matching Claimants in the Trusts’ databases (collectively the “Trust Matching Claimants,” and each, individually, a “Trust Matching Claimant”), whether pursuant to paragraph 7 or paragraph 8 above (and this paragraph 9, as applicable), the Trust Producing Parties shall notify the Trust Matching Claimants’ counsel of record that the relevant Trusts have received a subpoena from the Debtors. The notice from the Trust Producing Parties shall state that the data associated with the Trust Matching Claimants, as described in paragraph 10 below, will be produced if they do not file a motion to

quash the subpoena in the court of compliance for the Trust Producing Party by the later of the forty-ninth (49th) day following the applicable Service Date, or the fourteenth (14th) day following the provision of notice to their counsel of record by the Trust Producing Party. The Trust Producing Parties shall exercise reasonable efforts to provide actual notice to counsel of record in connection with the claim that is the subject of disclosure. If, despite their reasonable efforts, the Trust Producing Party is unable to provide actual notice to counsel of record for a Trust Matching Claimant, including without limitation because counsel of record is unreachable (for example, counsel of record has died, retired, or closed or dissolved his, her or its legal practice), they shall not be required to make a production of data relating to such Trust Matching Claimant (such Trust Matching Claimants being the “Unnoticeable Claimants”). The Trust Producing Parties shall provide the Debtors on or before the thirtieth (30th) day following the applicable Service Date with a list of such Unnoticeable Claimants identifying the counsel that filed the trust claim and counsel of record, if different, and the reasons such counsel of record is unreachable. Unnoticeable Claimants will be added to the Meet and Confer List to enable the Debtors and the Trust Producing Parties to discuss other means, if any, of providing notice to such Trust Matching Claimants. Any Trust Matching Claimant for whom the Debtors and the Trust Producing Party are able to agree on another means of providing notice will no longer be classified as Unnoticeable Claimants. As to all Trust Matching Claimants other than the Unnoticeable Claimants, if a motion to quash is filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the applicable deadlines set forth above in this paragraph 9, the Trust Producing Party will stay the production of any data relating to such Trust Matching Claimant until such motion is resolved. If a motion to quash is not filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the

applicable deadlines set forth above in this paragraph 9, the Trust Producing Party shall produce to the Debtors the data described in paragraph 10 below, relating to the Trust Matching Claimant (other than the Unnoticeable Claimants) on or before the seventh (7th) day after the date by which any motion to quash must be filed (as applicable, the “Trust Production Date”). As to all Matching Claimants identified in the Paddock Database (collectively, the “Paddock Matching Claimants” and each, individually, a “Paddock Matching Claimant”), Paddock shall produce to the Debtors the data described in paragraph 11 below, relating to the Paddock Matching Claimants: (a) for Paddock Matching Claimants identified pursuant to paragraph 7 of this Order, on or before the forty-ninth (49th) day following the Service Date applicable to Paddock; and (b) for any claimant on the Meet and Confer List that the Debtors and Paddock agree, after meeting and conferring, should be classified as a Paddock Matching Claimant pursuant to paragraph 8 of this Order, on or before the later of (i) the forty-ninth (49th) day following the Service Date applicable to Paddock and (ii) the seventh (7th) day following the agreement by the Debtors and Paddock that such claimant should be classified as a Paddock Matching Claimant (as applicable, the “Paddock Production Date”).

10. On or before the applicable Trust Production Date, DCPF, the Manville Trust, and Verus shall produce to Bates White (in electronic database format and, with respect to DCPF and Verus, separately for each Trust) the following information pertaining to each Trust Matching Claimant<sup>7</sup> (to the extent the relevant Trust databases contain such information) (the “Trust Anonymized Matched Production”):

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<sup>7</sup> For the avoidance of doubt, the terms “Trust Matching Claimant” and “Paddock Matching Claimant” referenced in paragraphs 10 and 11 of this Order include, as applicable, any claimant on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as a Trust Matching Claimant or Paddock Matching Claimant.



- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields,<sup>8</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

11. On or before the applicable Paddock Production Date, Paddock shall produce to Bates White (in electronic database format) the following information pertaining to each Paddock Matching Claimant (to the extent the Paddock Database contains such information) (the "Paddock Anonymized Matched Production" and, together with the Trust Anonymized Matched Production, the "Anonymized Matched Productions"):

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed or otherwise asserted;
- d. Jurisdiction and state of filing (if applicable);

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<sup>8</sup> To the extent any names or SSNs appear in any exposure-related field, the Manville Trust, DCPF, and Verus may redact such names and SSNs prior to production of the Trust Anonymized Matched Production. In addition, prior to delivery of the Trust Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Trust Anonymized Matched Production.

- e. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- f. Date claim resolved, if resolved;
- g. Date claim paid, if paid; and
- h. All exposure-related fields,<sup>9</sup> including:
  - (i) Date(s) exposure(s) began;
  - (ii) Date(s) exposure(s) ended;
  - (iii) Manner of exposure;
  - (iv) Occupation and industry when exposed; and
  - (v) Products to which exposed.

12. The Anonymized Matched Productions shall be used as follows:

a. Subject to and without in any way limiting the restrictions described in paragraph 13(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtors, the ACC, the FCR, Trane Technologies Company LLC (“New Trane Technologies”) and Trane U.S., Inc. (“New Trane” and, together with the Debtors, New Trane Technologies, the ACC, and the FCR, the “Parties”), if otherwise entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Productions.

b. The Retained Experts (as defined in paragraph 13(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Productions, on a

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<sup>9</sup> To the extent any names or SSNs appear in any exposure-related field, Paddock may redact such names and SSNs prior to production of the Paddock Anonymized Matched Production. In addition, prior to delivery of the Paddock Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Paddock Anonymized Matched Production.

claimant-by-claimant basis, with data from the Debtors' database or other sources;

(ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Productions with and analyze individual claims (provided that such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Productions that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, provided, however, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. No Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the complete set of Claimant Pseudonyms in the Anonymized Matched Productions to the Matching Key.

c. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Productions, on a claimant-by-claimant basis, to the Debtors' database or other sources of information, such Retained Expert shall delete from any resulting database the names and SSNs of injured parties and any related claimants (any such database being an "Anonymized Database").

13. The Matching Key (and any portion or extract thereof), the Anonymized Matched Productions, and any Anonymized Databases (together, the “Confidential Data”) shall be deemed “Confidential” pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 345] (the “Protective Order”). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

a. No Confidential Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know or access the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with these cases, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party’s Retained Expert (defined below) in these cases (collectively, the “Authorized Representatives”); provided, however, that the right of access to the Confidential Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 13(b) immediately below.

b. Any person exercising a right of access to the Confidential Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Data conferred by paragraph 13(a) above, each entity whose Authorized Representatives will receive access to the Confidential Data and any other

Authorized Representatives not associated with such an entity who will receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacity shall execute a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2. Exhibit A.1 shall be executed on the part of corporations, partnerships, companies, or firms whose Authorized Representatives will receive access to the Confidential Data in the performance of the entity's duties with respect to these bankruptcy cases. Exhibit A.2 shall be signed in an individual capacity by individuals (such as witnesses or self-employed experts) who receive a right of access to the Confidential Data under paragraph 13(a) above in their individual capacities, rather than as employees, agents, or representatives of an entity.

c. Any entity whose Authorized Representatives receive access to any Confidential Data and any Authorized Representative who receives access to any Confidential Data in their individual capacity as provided in this Order shall provide for physical, managerial, and electronic security thereof such that the Confidential Data are reasonably maintained and secured, ensuring that they are safe from unauthorized access or use during utilization, transmission, and storage. Any electronic transmission of the Confidential Data (including without limitation the Matching Key or any information derived therefrom) must be through a secure encrypted service, and not as an ordinary email attachment.

d. Notwithstanding anything in this Order to the contrary, access to the Matching Key shall be limited to (i) Bates White, LAS, and Ankura, each in its capacity as a retained claims expert for the Debtors, the ACC, and the FCR, respectively, and (ii) to the professional staff employed by such experts (each of (i) and (ii), a

“Retained Expert”), and (iii) such other persons as the Parties and the Producing Parties may agree to in writing from time to time; provided, however, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 13(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 13(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

e. No claimant-specific data from or derived from any Confidential Data shall be (i) offered as evidence in these bankruptcy cases, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to the Producing Parties and claimants provided to their attorneys at the addresses contained in the data produced by the Producing Parties) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 13(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant’s identity.

f. If, in connection with a motion pursuant to paragraph 13(e), or any response to such motion, a Party proposes to place any Confidential Data under seal, that

Party shall have the burden of making the showing required for sealing under applicable law.

g. In addition to, and without diminution of any other use restrictions in this Order, unless otherwise ordered by the Court, the Confidential Data shall be used only in connection with a Permitted Purpose.

h. Notwithstanding the foregoing, a Party may use in connection with a Permitted Purpose in this Court, or any reviewing court, summaries or analyses derived from the Confidential Data if such material is redacted so as not to reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

i. Likewise, nothing herein shall prohibit a Retained Expert with access to the Confidential Data from using or referring to the Confidential Data (in connection with a Permitted Purpose) in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning the Confidential Data, so long as any such testimony, summary, or report does not reveal any identifying detail of any individual claimant, including, without limitation any of the identifying details subject to the restrictions of paragraph 13(e) above.

14. Pursuant to section 105(a) of the Bankruptcy Code, no Confidential Data shall be subject to subpoena or otherwise discoverable by any person or entity other than the Parties.

15. Within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the "Deletion Date"), the Parties and any Authorized Representatives (and any of their associated entities), including,

without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall permanently delete such Confidential Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Data or any excerpts thereof; provided, however, that any such data stored on a Party's or Authorized Representative's back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party's or Authorized Representative's operations.

16. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 13(g); and (d) complied with the requirements in paragraph 15 concerning the deletion of any Confidential Data.

17. Subject to the requirements of paragraphs 12 and 13 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in these bankruptcy cases in conformity with this Order, or any data



or material that is or becomes publicly available other than by a breach of this Order; or

- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Data.

18. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Claimants, including where such Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Productions.

19. The Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.

20. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.  
The Judge's signature and Court's seal appear  
at the top of the Order.

United States Bankruptcy Court

**EXHIBIT A.1 TO ORDER GRANTING MOTION OF THE  
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE  
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

On behalf of my employer, \_\_\_\_\_ [write in name of employer] (“Employer”), I and Authorized Representatives of Employer may be given access to Confidential Data. The Confidential Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to \_\_\_\_\_ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer’s Authorized Representatives who are to receive access to any Confidential Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), Employer will destroy any Confidential Data. Within 30 days after the Deletion Date, Employer will file a declaration in compliance with paragraph 16 of the Order.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Relationship to Employer: \_\_\_\_\_

**EXHIBIT A.2 TO ORDER GRANTING MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*  
Case No. 20-30608 (JCW)  
United States Bankruptcy Court  
for the Western District of North Carolina**

***Instructions: This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 13(b) of the above-referenced Order.***

**A C K N O W L E D G E M E N T**

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), I will destroy any Confidential Data. Within 30 days after the Deletion Date, I will file a declaration in compliance with paragraph 16 of the Order.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_

# EXHIBIT F



chapter 11 case or in any other federal or state proceeding or (y) the Claimant Representatives' right to seek other privileged or work product-protected information in this case. This Motion is supported by the *Declaration of Jorge Raul Gallardo-Garcia, PhD*, attached as Exhibit B (the "Gallardo-Garcia Declaration").

Importantly, the Motion does *not* seek from this Court any ruling regarding whether the Resolved Claim Sample complies with the separate decisions of the United States District Court for the District of Delaware (the "Delaware District Court") in connection with the Debtor's service of subpoenas on certain trusts. *In re Bestwall LLC*, No. 1:21-MC-141 (CFC) (D. Del. June 1 and 17, 2021) [Orders, Dkts. 30, 33, Memorandum. Dkt. 29]. Rather, the Motion asks only that this Court enter a ruling that the Resolved Claim Sample is appropriate for use in the estimation proceeding it is overseeing both for trust discovery and disclosure of privileged information by the Debtor.

### **Preliminary Statement**

The parties already have agreed to use, and have been using for many months, a random and representative 2,700-claim sample of Bestwall Mesothelioma Claims in the estimation discovery process. The Debtor already has gathered all claim files for these 2,700 claims and produced to the Claimant Representatives all non-privileged documents from these files. This 2,700-claim sample includes 500 claims selected by the FCR's economic consultant.

The parties also have agreed that a random and representative sample should be used in connection with a Rule 502(d) order and that a narrower sample is needed to comply with orders from the Delaware District Court limiting the number of claims that can be subject to trust discovery to a roughly 1,500-claim sample. The Debtor, accordingly, has formulated the Revised Claim Sample, which consists of a 1,501-claim sample, drawn by its economic consultant, and

proposed it to the Claimant Representatives for use with the Debtor's trust discovery and a proposed 502(d) order.

The Revised Claim Sample, is a subset of the 2,700 claim sample the parties already are using and includes 358 (72%) of the claims selected by the FCR's consultant and 1,143 (76%) of the claims selected by Debtor's consultant. Using the same sub-sample for both trust discovery and production of privileged documents under a Rule 502(d) order makes sense because both the Debtor's trust discovery and the Claimant Representatives' demand for privileged materials relate to the same topic: determining the extent to which Bestwall's mesothelioma claims resolution history provides an appropriate basis for valuing current and future mesothelioma claims. In addition, because this proposed sub-sample comes from within the 2,700-claim sample the parties already are using, it will eliminate the time-consuming process of gathering and reviewing additional files and therefore is most efficient, particularly given the April 4, 2022 deadline for estimation fact discovery.

Despite numerous requests by the Debtor, commitments by counsel for the Claimant Representatives in open Court, promises by the Claimant Representatives to the Debtor and representations in Court that they are trying to be "constructive,"<sup>3</sup> the Claimant Representatives have not been constructive. Instead, it is clear they will offer no assistance in the Debtor's efforts

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<sup>3</sup> See Oct. 19, 2021 Hearing Tr. 59:5-9 (Ms. Ramsey: "I didn't want to leave the Court with the impression that we were not getting back to the debtor, that there hadn't been dialogue about this, or that we were not trying to be constructive and finding ways to, to achieve some agreement between the parties."). A true copy of relevant pages from the October 19, 2021 Hearing Transcript are annexed hereto as Exhibit C.



to obtain trust discovery,<sup>4</sup> even though counsel representing ACC members have the ability to agree to this discovery based on their representation of settled claimants.<sup>5</sup>

The Claimant Representatives have refused to meet and confer on the sample. They have refused to permit the parties' respective experts to discuss a sample. They have refused to respond to the sample or propose an alternative. They have refused to engage on a sample either for purposes of the Debtor's trust discovery or the Debtor's disclosure of certain privileged and work product-protected information. And, they have failed to respond to the revised draft Rule 502(d) order that the Debtor provided to their counsel on October 13, 2021. Accordingly, the Debtor is filing this Motion to seek the approval of this Court, as the tribunal presiding over the estimation proceeding and this case, to approve the sample drawn by the Debtor's consultant, Bates White LLC ("Bates White"), as a random, representative sample that is appropriate for use in the estimation, and to approve the form of the Rule 502(d) order attached to this Motion.

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<sup>4</sup> See Oct. 19 Hearing Tr. 58:23–24 (Ms. Ramsey: "I think both of the parties have sort of drawn a line, the Committee with no, *no assistance with trust discovery*") (emphasis added). The ACC's counsel has indicated that they do not want to be "complicit" in the Debtor's efforts to obtain discovery to test the Claimant Representatives' settlement-based estimation methodology. Sept. 29, 2021 Hearing Tr. 62:12–15 (Ms. Ramsey: "[T]hey're trying to put the claimant representatives in a position of becoming complicit, we think, in identifying files to -- that -- that are the subject of this."). A true copy of relevant pages from the September 29, 2021 Hearing Transcript are annexed hereto as Exhibit D. It is difficult to understand why the Claimants Representatives believe cooperating with the Debtor to allow it to obtain the discovery this Court has approved and ordered somehow makes them "complicit" in any resulting revelations from that discovery.

<sup>5</sup> Lawyers representing members of the ACC (many of whom also represent a significant number of the resolved claimants who are opposing the Debtor's trust discovery) and other law firms raising objections in Delaware have the ability under standard trust distribution procedures applicable to most of the Delaware trusts to consent to the release of trust claims data on behalf of their clients. This consent would permit the Delaware Claims Processing Facility to produce this information. See, e.g., *Second Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures* (attached as Exhibit E) at ¶ 6.5 (providing that "[t]he PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, *with the permission of the claimant, ... to such other persons as authorized by the claimant*, or in response to a valid subpoena of such materials issued by the Bankruptcy Court") (emphasis added). The technical distinction between the role of attorneys representing claimants on the ACC and their role in representing previously settled claimants allows them to engage in gamesmanship where they appear before this Court in one capacity and object to the trust discovery and then, having lost before this Court, appear in another capacity in Delaware and make the very same objections again.

Approval of this Motion will foster progress and avoid further delay in the estimation by enabling the Debtor to move forward in its pursuit of the trust discovery this Court authorized, while at the same time eliminating or narrowing potential disputes with respect to the Debtor's withholding of privileged information. Absent relief from the Court, the Debtor believes that disputes about discovery issues (including the Debtor's Revised Claim Sample and whether it is random and representative) may arise later and threaten the already-extended estimation schedule. The Debtor respectfully submits that this Motion should be granted.

### **Background**

1. On July 29, 2021, in an effort to comply with the rulings of the Delaware District Court quashing, without prejudice, subpoenas for trust discovery, Bestwall filed *Debtor's Motion to Authorize Issuance and Service of New Subpoenas* [Dkt. 1924] (the "New Subpoenas Motion"). This motion sought approval of subpoenas for the production of trust claim and exposure data from identified asbestos trusts (the "Trusts") for a random, representative 10% sample of approximately 15,000 Bestwall Mesothelioma Claims resolved by settlement or verdict (such proposed subpoenas, the "New Trust Subpoenas").<sup>6</sup> The principal purpose of this discovery is to determine the extent to which the Debtor's prepetition payments for resolved Bestwall Mesothelioma Claims were affected by the claimants' failure to disclose to Bestwall their exposures to products for which the Trusts are responsible.<sup>7</sup> The Claimant Representatives, who opposed the Debtor's original request for trust discovery, likewise opposed the motion for New Trust Subpoenas. *See* Dkt. 2014.

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<sup>6</sup> The Debtor sought a 10% sample of the original group of roughly 15,000 resolved Bestwall Mesothelioma Claims to comply with an order of the Delaware District Court in response to a motion to clarify its ruling quashing trust subpoenas, without prejudice. *See In re Bestwall LLC*, No. 1:21-MC-141 (CFC) (D. Del. June 17, 2021) [Dkt. 33] (the "Delaware District Court Order").

<sup>7</sup> As previously noted by the Debtors, this discovery is needed to test the settlement methodology offered by the Claimant Representatives. *See* Oct. 19, 2021 Hearing Tr. 70:2-4 (Mr. Gordon: "The whole purpose of the trust discovery is to allow us to determine whether the methodology [the Claimant Representatives] want to put in front of your Honor is appropriate.").

They opposed the trust discovery despite the acknowledgment by the FCR’s counsel that the discovery *was needed by the FCR’s estimation expert*: “until I get the discovery and my experts... and my cohorts make a determination about the reliability of that settlement history, ... [the liability] could be lower because maybe it was infected with what the debtors are saying was a lack of disclosure.” Aug. 31, 2021 Hearing Tr. 172:23–173:7 (comments of Ms. Zieg).<sup>8</sup>

2. The 1,500-claim sample described in the New Subpoenas Motion was drawn from a larger 2,700-claim random and representative sample to which Bestwall and the Claimant Representatives had agreed (and have been using) for purposes of estimation discovery (the “Agreed Discovery Sample”). The Agreed Discovery Sample includes claims resolved through verdict, settlement, and dismissal selected by experts for the Debtor and the Claimant Representatives. This sample is comprised of 2,200 claims from a random, stratified sample drawn by the Debtor’s expert, Bates White, as supplemented by an additional 500 claims selected by the Claimant Representatives’ experts. The Debtor has produced all non-privileged documents contained in the case files for the Bestwall Mesothelioma Claims included in the Agreed Discovery Sample.

3. On August 6, 2021, the Claimant Representatives moved to compel the production of *all* privileged information within *all* 2,700 of the case files in the Agreed Discovery Sample. *See The Official Committee of Asbestos Claimants’ and the Future Claimants’ Representative’s Motion to Compel the Debtor to Produce Claim Files and Comply with Case Management Order* [Dkt. 1967] (the “Motion to Compel”).<sup>9</sup> The Claimant Representatives asserted that production

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<sup>8</sup> A true copy of relevant pages from the August 31, 2021 Hearing Transcript are annexed hereto as Exhibit E.

<sup>9</sup> Prior to filing the Motion to Compel, on June 23, 2021, the Claimant Representatives sent to the Debtor a draft Rule 502(d) order and a two-page “protocol” with respect to the order (the “Sample Protocol”) that proposed using a 1,600-claim sample plus an additional claim-sample in an unspecified amount (copies attached collectively as Exhibit G). The Sample Protocol proposed that the Debtor produce complete

of privileged communications and attorney work product was necessary for the same reason Bestwall is seeking discovery from the Trusts, *i.e.*, to evaluate the extent to which the Debtor's settlement and verdict payments to resolved Bestwall Mesothelioma Claimants were affected by non-disclosure of trust exposure evidence. *See, e.g.*, Motion to Compel at 2 (“[I]f the Debtor and Old GP knew about other exposures (or did not care to know), or if the Debtor and Old GP settled cases for reasons entirely unrelated to plaintiffs’ exposure profiles, then the plaintiffs’ disclosures would have no impact on settlements.”). The Debtor opposed the Motion to Compel on August 20, 2021. *See* Dkt. 2018.

4. The Court heard argument on both motions at a hearing on August 31, and September 1, 2021. The Court denied the Debtor's request for entry of an order authorizing issuance of the New Trust Subpoenas (*see Order Denying Debtor's Motion to Authorize Issuance and Service of New Subpoenas* [Dkt. 2073]), but did not immediately rule on the Motion to Compel. Instead, as requested by the Debtor, the Court afforded the parties time to meet and confer on a sample that could be used both to obtain trust data and address the Claimant Representatives' request for privileged information pursuant to a Rule 502(d) order. *See* Sept. 1, 2021 Hearing Tr. 266:6–274:10 (discussion of the parties and the Court)<sup>10</sup>; *see also* Aug. 31, 2021 Hearing Tr. 56:15–18 (*e.g.*, Ms. Zieg: discussing the possible agreement to a new sample and indicating that “it would make sense that all discovery be related to this sample”).

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unredacted case files for all claims in the unspecified additional sample; it did not identify the types of documents the Claimant Representatives wanted from the 1,600-claim sample. Although the Sample Protocol purported to attach a spreadsheet of claimant names, no spreadsheet was attached. The Claimant Representatives did not respond to the Debtor's questions about the Sample Protocol and did not provide the spreadsheet. It appears that the Claimant Representatives ultimately abandoned this proposal.

<sup>10</sup> A true copy of relevant pages from the September 1, 2021 Hearing Transcript are annexed hereto as Exhibit H.

5. At the August 31 and September 1, 2021 hearings, counsel for the Claimant Representatives committed on the record to work with the Debtor to develop a narrower sample and an agreement on a Rule 502(d) Order. *See, e.g.*, Sept. 1, 2021 Hearing Tr. 272:17–24 (Ms. Ramsey: subject to certain caveats, stating on behalf of the ACC, “we are prepared to work with the debtor and see if the parties can agree on a 502(d) order and in connection with that, also agree on a trust sample that would, we think, accomplish the goals of both the parties and some of the matters, would resolve some of the matters before the Court. So we will endeavor to meet with the debtor over the next couple of weeks and report back to the Court at the next omnibus”); Aug. 31, 2021 Hearing Tr. 43:1–4 (Ms. Zieg: “We’re willing to work with you to create a smaller sample size that would get you to the, the 1500 or 1600 files you need for the 10 percent for the district court.”).<sup>11</sup> The parties agreed to report to the Court on their progress at the omnibus hearing a month later on September 29, 2021.

6. On September 3, 2021, the Debtor’s counsel emailed counsel to the Claimant Representatives to initiate this discussion. Among other things, the Debtor requested any comments on the Debtor’s sample used in the New Subpoenas Motion, invited the Claimant Representatives to provide their own sample, and offered to schedule a meet-and-confer among the parties, including their experts. After a follow up email on September 9, 2021, the ACC’s counsel indicated they would “revert as soon as possible after next Wednesday [September 15].” The Debtor delayed sending any additional materials at the request of the ACC’s counsel, but on September 24, 2021, after receiving no response from the Claimant Representatives, sent a detailed email that (a) provided a draft of an agreed Rule 502(d) order; (b) provided the Resolved Claim

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<sup>11</sup> *See also* Aug. 31, 2021 Hearing Tr. 48:15–20 (Ms. Zieg: “But we could come up with maybe a stipulated agreed order what a sample for the estimation proceeding would look like and then you could make some sort of findings about this is the agreed random sample that the parties have agreed to. I would be willing to commit to, to work with Mr. Gordon over the next month.”).

Sample—a random and representative sample of resolved Bestwall Mesothelioma Claims drawn from the Agreed Discovery Sample to which the proposed Rule 502(d) order would apply; (c) explained in an attached memorandum from its expert how the Resolved Claim Sample was drawn; (d) offered to arrange a meeting of the experts on these matters; and (e) offered to meet and confer “at any time.” The Claimant Representatives did not provide an alternative sample or otherwise engage in a discussion of the issues. *See* Sept. 3 – Oct. 18, 2021 email thread attached hereto as Exhibit I.

7. At the September 29, 2021 hearing, the parties reported that, as of that hearing, they had not reached an agreement on these matters. The Court then announced its decision on the Motion to Compel, ruling that the Debtor had not put at issue the requested privileged information and, therefore, finding no at-issue privilege waiver and denying the Motion to Compel, without prejudice. *See* Sept. 29, 2021 Hearing Tr. 31:21–33:11.

8. The Court, however, cautioned that a waiver could yet occur at some future point in the estimation process. *Id.* The Court further advised that addressing, before the close of estimation discovery, how to permit appropriate disclosure of privileged communications and work product for at least some set of claims, without effecting a privilege waiver, would be preferable to addressing that issue later in the estimation process. *Id.* The Court “urged” the parties to further consider use of Rule 502(d) as a means to address disclosure without waiver and invited a motion under this rule should an agreement not be achieved. *Id.* at 33:6–10. The Court also expressed concern about the form of the agreed Rule 502(d) order offered by the Debtor. *Id.* at 74:13–16.

9. Following the September 29 hearing, on October 13, 2021, the Debtor provided a revised draft of a proposed Rule 502(d) stipulation and order (the “Proposed Agreed Order”) to

the Claimant Representatives. This Proposed Agreed Order, among other things, removed the waiver language and instead made clear that the Claimant Representatives would retain their right to seek additional privileged materials, subject to the Debtor's right to oppose any such request. To assist the Claimant Representatives in evaluating the Proposed Agreed Order, the Debtor offered to share with them, by way of preview and on a Professional Eyes Only basis, exemplars of the privileged documents that the Debtor would produce under the Proposed Agreed Order, subject to a short form Rule 502(d) order—*i.e.*, a “sneak peek” order—that was shared with the Claimant Representatives on October 18, 2021. *See Exhibit I* at 1–2 (without attachments).

10. To date, neither the ACC nor the FCR has responded to the sample or offered an alternative, and neither has responded to the revised Rule 502(d) stipulation and order. Just prior to the October 19, 2021 hearing and despite the prior commitments to the Debtor and in Court described above, the Claimant Representatives indicated that they did not intend to propose a new sample or agree at this time to any proposed sample other than the Agreed Discovery Sample used for discovery purposes, nor would they agree to the use of any sample for purpose of trust discovery. *See, e.g.*, Oct. 19, 2021 Hearing Tr. 57:2–3 (Ms. Ramsey: “we are not prepared to identify the sample for trust discovery.”); *id.* at 67:3–5 (stating ACC position that any estimation sample “could be not used for trust discovery”).<sup>12</sup> Despite its statements in support of a “sneak peek” order (*see id.* at 56:10–15), the ACC has yet to respond to the draft sent to them on October 18.<sup>13</sup> Given the lack of engagement on or resolution of these issues, the Debtor has no alternative but to file this Motion.<sup>14</sup>

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<sup>12</sup> *See also* email dated Oct. 19, 2021 from Davis Lee Wright to Gregory M. Gordon and others, attached as Exhibit J (“Greg, Confirming your conversations with Natalie [Ramsey] over the weekend and yesterday that the Committee is unwilling to agree to any sample to be used in connection with trust discovery.”).

<sup>13</sup> The FCR proposed a single change to the “sneak peek” order, which the Debtor has agreed to make.

<sup>14</sup> At the October 19, 2021 hearing, counsel made clear on the record the Debtor's intention to file a motion to be heard at the November omnibus hearing in the absence of any agreement with the Claimant



11. To facilitate the Debtor’s efforts to obtain the trust discovery that has already been authorized by this Court, eliminate or narrow disputes regarding the Debtor’s non-disclosure of privileged or work product-protected information, and avoid further delay, the Debtor now moves this Court to approve the Resolved Claim Sample for use in the estimation proceeding, including in particular with respect to the Debtor’s efforts to obtain trust discovery and the Debtor’s disclosure of privileged information, and to enter the Rule 502(d) order attached to this Motion as Exhibit K (the “Proposed Rule 502(d) Order”). The Resolved Claims Sample is random, representative, and appropriate for both trust discovery and a Rule 502(d) order. And, although the Proposed Rule 502(d) Order may not resolve all disputes that may arise with respect to the Debtor’s withholding of privileged and work product-protected information, it will narrow the scope of any future dispute that may arise and will, in the interim, provide the Claimant Representatives with information they can use to consider and prepare their estimation case.

### **Jurisdiction**

12. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 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.

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Representatives. *See* Oct. 19 Hearing Tr. 54:20–25 (Mr. Gordon: “unless something changes between now and October 28th, which is our deadline to get a motion on file for the November hearing, we will be filing the motion that the Court talked about at the prior hearing, a motion both to...approve... a proposed 502(d) order as well as to approve a claim sample.”). The Debtor previously had informed the Claimant Representatives of this fact in an email from Mr. Gordon on October 13, 2021. *See* Exhibit I at 2 (“In the absence of an agreement, we plan to file a motion to approve a 502(d) order and a sample in time to be heard at the November 18 hearing. My understanding is that motion must be filed by October 28 in order to be timely.”).



## The Resolved Claim Sample and Proposed Rule 502(d) Order

### A. *The Resolved Claim Sample*

13. The Resolved Claim Sample is a sub-sample of the 2,700-claim sample the parties have been using for estimation discovery. It has been designed for use with both the Debtor's trust discovery and the disclosure of certain privileged information pursuant to a Rule 502(d) order. Since the trust discovery and the Claimant Representatives' request for privileged information relate to the same topic—the potential impact of claimants' failure to disclose alternative exposures on Bestwall's past settlements—it is appropriate, efficient, and practical to use the same sample for both purposes. In fact, using different samples would make no sense: in the absence of trust discovery revealing whether plaintiffs failed to disclose trust exposures in specific cases, privileged communications relating to such cases could shed no light on whether suppression of trust exposure evidence impact resolutions of those cases.

14. As explained in the Gallardo-Garcia Declaration, sampling is designed to gather information that is representative of a whole population when conducting a complete census is not feasible.<sup>15</sup> See Gallardo-Garcia Declaration ¶ 15. To draw a representative random sample that can be used to make robust inferences about the population, the sampling methodology chosen in a specific situation must ensure the ultimate sample is random, representative, and drawn using well-established and generally accepted methods of stratified sampling. *Id.* ¶ 13–14. As Dr. Gallardo-Garcia details, the scientific techniques utilized here to arrive at the Resolved Claim Sample were specifically designed to satisfy econometric standards for reliability and accuracy. *Id.* ¶¶ 12–24.

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<sup>15</sup> Trust discovery was approved by this Court for the entire population of 15,000 resolved Bestwall Mesothelioma Claims. The Debtor believes that this was appropriate and feasible. Sampling is now needed, however, to comply with the Delaware District Court Order requiring a 10% sample of the total group of 15,000 claims.

15. The Resolved Claim Sample has the added advantage that it consists of claims that already are the subject of discovery in the estimation proceeding—*i.e.*, Bestwall Mesothelioma Claims drawn from the 2,700 claims in the Agreed Discovery Sample for which the Debtor already has produced all non-privileged documents. The Resolved Claim Sample includes a random selection from the additional 500 claims the Claimant Representatives requested that the Debtor add to its original list of 2,200 claims identified for claim file review (the “ACC/FCR Additional Claims”) and replaces a prior random, representative sample drawn by Bates White for the New Subpoenas Motion that did not include any of these additional claims.<sup>16</sup> The Revised Claim Sample incorporates 72% of the ACC/FCR Additional Claims, meets the 10% sampling requirement of the Delaware District Court Order, and includes only claims for which documents have already been collected by the Debtor and produced to the Claimant Representatives. As Dr. Gallardo-Garcia opines, the Revised Claim Sample “can be used as a representative sample of Bestwall’s historical mesothelioma verdicts and settlements population.” Gallardo-Garcia Declaration ¶ 20.

16. Although the parties have not agreed on what sample to use, the experts agree that a stratified random sample is necessary to analyze and reach accurate conclusions regarding Bestwall’s claims resolution history given the nature of the claims to be analyzed.<sup>17</sup> The parties also agree that using some sample of claims is the practicable way to proceed for purposes of a Rule 502(d) order. *See* Sept. 29, 2021 Hearing Tr. 64:2–25 (Ms. Ramsey: “[W]e are prepared to

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<sup>16</sup> The prior representative sample drawn by Bates White is described at paragraphs 18–23 of the New Subpoenas Motion. *See also* New Subpoenas Motion Exhibit G. June 29, 2021 *Declaration of Jorge Raul Gallardo-Garcia, PhD*.

<sup>17</sup> *See* Sample Protocol; Email from Sharon M. Zieg, July 8, 2021 (copy attached as Exhibit 2 to Gallardo-Garcia Declaration) (describing stratification used in choosing the additional 500 claims added by the Claimant Representatives to the Agreed Discovery Sample); *see also* Deposition of Dr. Mark Peterson (ACC expert), *In re DBMP LLC* (July 27, 2021) (copy of excerpts attached as Exhibit L) at 41:3–23, 145:13–17 (discussing and adopting sample stratification).

engage on a sample for purposes of estimation.”), 66:1–3; *see also* Aug. 31, 2021 Hearing Tr. 56:15-18 (Ms. Zieg: “[I]f we have a sample that we agree to that’s different from the sample that we’re currently working with, it would make sense that all discovery be related to this sample.”), 43:1–10, 48:15–25, 54:20–21.<sup>18</sup>

17. The Resolved Claim Sample is a random, representative, and efficient sample that can provide a reliable characterization of the resolution history of Bestwall Mesothelioma Claims. It is appropriate for the Court, which is presiding over the estimation proceeding, to approve the use of this sample as part of its oversight of the estimation proceeding.

18. As noted above, the Debtor does *not* request from this Court any ruling regarding whether the Resolved Claim Sample complies with the decisions of the Delaware District Court in connection with the Debtor’s service of subpoenas on the Trusts, including the Delaware District Court Order. *See also In re Bestwall LLC*, 1:21-MC-141 (CFC) (D. Del. June 1, 2021) [Order, Dkt. 30, Memorandum, Dkt. 29]. The Debtor asks only that this Court determine that the Resolved Claim Sample is appropriate for use in the estimation proceeding it is overseeing both for trust discovery and disclosure of privileged information by the Debtor. If a subpoena utilizing the Resolved Claim Sample later becomes the subject of another motion to quash in the Delaware District Court, all questions of compliance with any orders of that court will be left for that court to determine. This limitation is expressly included in the Proposed Rule 502(d) Order described below. *See* Proposed Rule 502(d) Order ¶ 11.

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<sup>18</sup> As noted, although the Claimant Representatives have agreed that a sample (or samples) are needed for use in estimation discovery, they more recently have indicated that they are not prepared to agree to any sample for purposes of trust discovery or a Rule 502(d) order. *See supra* ¶ 10.

**B. *The Proposed Rule 502(d) Order***

19. Pursuant to the terms of the Proposed Rule 502(d) Order, the Debtor proposes to provide certain privileged documents to the Claimant Representatives' counsel to assist in their evaluation of the Debtor's (and its predecessor's) basis for settling the claims in the Resolved Claim Sample. The order conditions such disclosure of privileged information upon the Debtor's receipt of Trust data for claims in the Resolved Claim Sample in a form that allows the Debtor to match Trust information on a claim-by-claim basis. It is only after receipt of that Trust data that the Debtor will be able to ascertain more fully whether and to what extent its settlement determinations may have been made without full knowledge of claimants' alternative exposures. Until the Debtor receives and determines to present an estimation case premised, in part, on suppressed alternative exposure evidence, there is no cause to invade the Debtor's privilege to provide the Claimant Representatives with information they believe may bear on the significance or impact of suppressed exposure evidence on the Debtor's settlement decisions.

20. Upon the Debtor's receipt of Trust data for the Resolved Claim Sample in a form that is usable, the Proposed Rule 502(d) Order permits the Debtor to provide to the Claimant Representatives' counsel identified privileged communications and work product that contemporaneously documented the Debtor's or its predecessor's requests for authority to settle the claims within the Resolved Claim Sample.<sup>19</sup> The order permits this disclosure for purposes of this estimation proceeding only and subject to stated confidentiality protections while, at the same time, providing that the disclosure will not cause a waiver of privilege either in this proceeding or in any other federal or state proceeding. The proposed order expressly states that it does not require

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<sup>19</sup> Those documents include written requests for authority to settle, either in the form of formal Requests for Authority or in the form of correspondence, memoranda, or emails to the extent these documents exist either in the Debtor's files or the files maintained by its defense counsel.

the Claimant Representatives to waive the right to seek other privileged communications or work product should either choose to do so, subject to the Debtor's right to oppose any such request.<sup>20</sup>

21. The Resolved Claim Sample should be approved for going-forward use in the estimation proceeding, and the referenced disclosures regarding that sample should be permitted subject to the protections against waiver provided under the Proposed Rule 502(d) Order.

### **Argument**

#### **A. *Approval of the Resolved Claim Sample Will Simplify Issues and Avoid Unnecessary and Cumulative Proof***

22. Rule 16 of the Federal Rules of Civil Procedure (the "Civil Rules") vests the Court with the power to take appropriate action to simplify issues and avoid unnecessary proof and cumulative evidence. Fed. R. Civ. P. 16(c)(2)(A), (D).<sup>21</sup> Rule 16 provides in pertinent part, "[a]t any pretrial conference, the court may consider and take appropriate action on the following matters: (A) formulating and simplifying the issues, and eliminating frivolous claims or defenses; . . . (D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702." *Id.*

23. As the Manual for Complex Litigation recognizes, "[a]cceptable sampling techniques, in lieu of discovery and presentation of voluminous data from the entire population, can save substantial time and expense, and in some cases provide the only practicable means to collect and present relevant data." Ann. Manual Complex Lit. § 11.493 (4th ed.), *cited approvingly*

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<sup>20</sup> In the event the Debtor receives Trust information for a different group of claims than those in the Resolved Claims Sample, the Proposed Rule 502(d) Order provides that the Debtor will seek to negotiate appropriate revisions to the order with the Claimant Representatives or, in the absence of agreement, seek additional relief from this Court. *See* Proposed Rule 502(d) Order ¶ 12.

<sup>21</sup> Civil Rule 16 is applicable in chapter 11 pursuant to Bankruptcy Rule 7016. Although this rule does not automatically apply in contested matters such as the estimation proceeding, Bankruptcy Rule 9014(c) authorizes the Court to direct that any of Part VII's rules apply in a contested matter, including the pretrial management tools set forth in Bankruptcy Rule 7016 and Civil Rule 16. The Debtor respectfully requests that the Court do so here.

by *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454–55 (2016) (permitting use of a representative sample to establish hours worked in a class action lawsuit); *see also Benson v. St. Joseph Reg'l Health Ctr.*, No. CIV.A. H-04-04323, 2006 WL 1407744, at \*1–2 (S.D. Tex. May 17, 2006) (modifying earlier ruling compelling discovery to limit production of medical charts to a representative sample, which would be sufficient for a reasonable analysis in light of the burden and expense associated with complete production).

24. Consistent with Civil Rule 16, the use of an appropriate sample will provide an efficient mechanism by which the parties and this Court can address issues presented by the estimation proceeding. The Resolved Claim Sample is a random, representative sample that will provide reliable information on the resolution history of Bestwall Mesothelioma Claims (as validated by the Gallardo-Garcia Declaration). The sample also will enable the Debtor, upon receipt of Trust data in a form that is usable by the parties, to produce identified privileged information regarding each claim in the Resolved Claim Sample for which the information is available. Approving the Resolved Claim Sample with respect to both the disclosure of privileged information and pursuit of trust discovery, and authorizing the proposed disclosures pursuant to the Proposed Rule 502(d) Order, is appropriate, offers a practicable and fair way to proceed, will save time and expense, and should be approved.

**B. *Rule 502(d) Relief is Routinely Granted by Courts,  
Either on Motion by the Producing Party or the Court's Own Initiative***

25. Rule 502(d) provides that the Court “may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.” Fed. R. Evid. 502(d).

26. Federal courts, including those within the Fourth Circuit, routinely grant such orders on the request of the parties. *See, e.g., Simpson Performance Prod., Inc. v. Zamp Inc.*,

No. 5:16-CV-157-MOC-DCK, 2019 WL 1865561, at \*7 (W.D.N.C. Apr. 25, 2019) (“The production of privileged or work-product protected Documents or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This provision [within an agreed protective order] shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).”); *Advance Nursing Corp. v. S.C. Hosp. Ass’n*, No. 6:16-CV-00160-MGL, 2016 WL 7212778, at \*1–2 (D.S.C. Dec. 13, 2016) (“so ordering” parties’ agreed Rule 502(d) non-waiver provisions); *Hale v. Lab. Finders*, No. 2:16-CV-00582-DAK-PMW, 2017 WL 213853, at \*1 (D. Utah Jan. 13, 2017) (granting stipulated Rule 502(d) motion); *Sankar v. Napleton’s Palm Beach Imports, LLC*, No. 16-CV-80129, 2016 WL 528466, at \*1 (S.D. Fla. Feb. 10, 2016) (granting “Unopposed Motion for the Entry of a Fed. R. Evid. 502(d) Non-Waiver Order”).

27. A court also may enter a Rule 502(d) order on its own initiative or on motion and without the parties’ agreement. *Good v. Am. Water Works Co.*, No. CIV.A. 2:14-01374, 2014 WL 5486827, at \*2–3 (S.D.W. Va. Oct. 29, 2014) (entering defendant’s proposed Rule 502(d) order with respect to its own privileged material over plaintiff’s opposition); see *Radian Asset Assur., Inc. v. Coll. of the Christian Bros. of New Mexico*, No. CIV 09-0885 JB DJS, 2010 WL 4928866, at \*8–9 (D.N.M. Oct. 22, 2010) (holding defendant’s production of any privileged documents will not result in waiver pursuant to Rule 502(d) order, notwithstanding plaintiff’s opposition).

28. The Advisory Committee Explanatory Note to Rule 502 itself explains that a Rule 502(d) order “is enforceable whether or not it memorializes an agreement among the parties to the litigation. Party agreement should not be a condition of enforceability of a federal court’s order.” Fed. R. Evid. 502(d) advisory committee explanatory note (rev. 11/28/2007).

29. Here, although the Debtor has been unable at this juncture to reach agreement with the Claimant Representatives on the Proposed Rule 502(d) Order, the Court should enter the order to potentially limit or narrow future disputes over the privilege and provide the Claimant Representatives with additional information they can use to consider, and move forward with the preparation of, their respective estimation cases. The Proposed Rule 502(d) Order is consistent with the resolutions of similar disputes in the *Garlock* and *Bondex* bankruptcy cases. In both *Garlock* and *Bondex*, the debtors disclosed documents that are the equivalent of the requests for information the Debtor proposes to disclose here. And, in *Garlock* and *Bondex*, the documents were provided for considerably smaller claim samples. Lastly, because the Proposed Rule 502(d) Order fully preserves the Claimant Representatives' rights, it only benefits them.

#### **Notice**

30. Consistent with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Dkt. 65] (the "Case Management Order"), notice of this Motion has been provided to (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) counsel to the ACC; (c) counsel to the FCR; (d) counsel to Georgia-Pacific LLC; and (e) the other parties on the Service List established by the Case Management Order. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

#### **No Prior Request**

31. No prior request for the relief sought herein has been made to this Court or any other court.

#### **Conclusion**

For the foregoing reasons, the Debtor requests that this Court (i) grant the relief requested in this Motion and (ii) grant such other and further relief to the Debtor that is just and appropriate.



Dated: October 28, 2021  
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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IN POSSESSION

# EXHIBIT A

Bates White claimant id	PACE reference id	PACE reference id 2
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1001321203	GP.3070CD6	
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1001321523	GP.3071B2E	
1001322010	GP.30727E0	
1001322450	GP.30730E7	
1001322637	GP.307343A	
1001322692	GP.30734FE	
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1001314324	GP.2ED3171	

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1001314723	GP.2EE92DF	
1001315770	GP.2EEE5ED	
1001320691	GP.3070577	
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1001286285	GP.11D8C46	
10026086	GP.11C318F	
220008094	GP.11C0DA5	
1001290082	GP.11DD21D	
120127650	GP.11E716C	
20165628	GP.11DD125	
10024064	GP.11DD580	
20161802	GP.11DE861	
20107200	GP.11E86AA	
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10025328	GP.25DAD22	
20144327	GP.11E370B	
20230275	GP.11DDC63	
30092486	GP.11DD5D4	
10022334	GP.132FDEA	
10020149	GP.2D31C93	
1001308518	GP.2E8BF0E	
1001309341	GP.2E8D10E	
1001309803	GP.2E8D7DA	
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1001311092	GP.2E8F084	
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1001319730	GP.305BF52	
30025967	GP.11B5151	
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20240674	GP.2E965F5	
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20126011	GP.118C261	
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20191873	GP.15A4EF1	
10007937	GP.16768E0	

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10001590	GP.2E72136	
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20051383	GP.11CEEE5	
20109035	GP.11D9978	
1001225495	GP.118C1BB	
20267640	GP.11A6239	
40021855	GP.11AE35F	
1001255256	GP.11AD4F5	
20036828	GP.1191690	
20185823	GP.11B1019	
10011696	GP.11B0AAC	
20232687	GP.1198A9E	
1001300193	GP.16DF73B	

# EXHIBIT B

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

In re  
BESTWALL LLC,<sup>1</sup>  
Debtor.

Chapter 11  
Case No. 17-31795 (LTB)

**DECLARATION OF JORGE GALLARDO-GARCIA, PHD**

I, Jorge Gallardo-García, PhD declare:

- (1) I am a Partner with Bates White, LLC (“Bates White”), an economic consulting firm with its primary office located in Washington, DC. The U.S. Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) authorized Bestwall LLC (“Bestwall”) to retain Bates White in its chapter 11 case by an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.<sup>2</sup> I am duly authorized to make this Declaration as a consultant for Bestwall in this action.

**Qualifications**

- (2) I specialize in the application of statistics and computer modeling to economic and financial issues, and I have extensive experience working on the construction and design of complex databases for econometric and statistical analyses. I have more than 20 years of experience in the management, design, and analysis of large complex databases using statistical and econometric tools. Further, I have 15 years of experience in the management, design, and analysis of large complex asbestos personal injury and wrongful death claims’ databases using statistical and econometric tools for valuation and forecasting. In particular, I have designed representative and efficient random samples of claims for multiple asbestos-related matters, and those samples have been used in central valuation analyses in those matters. I have submitted expert reports and

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 5815. The Debtor’s address is 133 Peachtree Street, N.E., Atlanta, GA 30303.

<sup>2</sup> *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC, as Asbestos Consultants as of the Petition Date*, No. 17-31795 (Bankr. W.D.N.C. Nov. 2, 2017) (Dkt. 40).



testified in U.S. Bankruptcy Court regarding the construction and reliability of asbestos claims databases.

- (3) I received a PhD and an MA in Economics from the University of Pennsylvania, and a BS in Economics, a BS in Business Administration, and an MA in Economics from the Instituto Autónomo de México in Mexico City.
- (4) A complete and accurate copy of my curriculum vitae is attached as Exhibit 1 to this Declaration.
- (5) I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, would testify competently to such facts under oath.

### **Background**

- (6) Bestwall retained Bates White in its chapter 11 case to perform, among other things, a reliable estimation of Bestwall's legal liability for mesothelioma claims; that is, estimating Bestwall's share of final judgments that would be obtained by current and future Bestwall mesothelioma claimants.
- (7) Since the commencement of Bestwall's chapter 11 case, I have been leading Bates White's work to construct an analytical database containing information about the asbestos personal injury and wrongful death claims filed against Bestwall and its predecessors (the "Bestwall Analytical Database"). This Bestwall Analytical Database will be the foundation for most of the analyses Bates White will perform in Bestwall's case, including Bates White's estimate of Bestwall's legal liability.
- (8) I led Bates White's design, construction, and implementation of a random sample of historical Bestwall mesothelioma claims for further review and analysis (the "Bestwall Random Sample"), as one of the components for the Bestwall Analytical Database. The Bestwall Random Sample is comprised of 2,407 claims, of which 35 are verdicts, 1,466 are settled claims, and 906 are dismissed claims. I described the statistical foundation, the methodology, and the design for the Bestwall Random Sample in my June 29, 2021 Declaration (the "June Declaration").<sup>3</sup> In the June Declaration, I also explained that the Bestwall Random Sample was designed to be a representative and efficient sample that can provide a reliable characterization of Bestwall's

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<sup>3</sup> Declaration of Jorge Gallardo-García, PhD, June 29, 2021 (Dkt. 1924-G).

mesothelioma resolution history. The opinions I offered in the June Declaration concerning the reliability and efficiency of the Bestwall Random Sample remain unchanged.

- (9) It is my understanding that Bestwall’s counsel provided the list of 2,407 Bestwall claims comprising the Bestwall Random Sample to the Official Committee of Asbestos Personal Injury Claimants (the “ACC”) and the Future Claimants’ Representative (the “FCR” and, together with the ACC, the “Claimant Representatives”). It is my further understanding that Bestwall’s counsel also provided to the Claimant Representatives information about how Bates White designed the Bestwall Random Sample and that such information was then provided to the FCR’s consultant, Ankura Consulting Group, LLC (“Ankura”). According to an email from the FCR’s counsel,<sup>4</sup> Ankura, on behalf the Claimant Representatives, randomly selected 500 settled mesothelioma claims (the “ACC/FCR Additional Claims”) that were not already part of the Bestwall Random Sample.<sup>5</sup> The email from the FCR’s counsel further represented that the ACC/FCR Additional Claims were drawn from the settled claims not sampled in the Bestwall Random Sample using a stratified random sampling technique in which Ankura first assigned the non-sampled settled claims to groups based on claim amount and then drew claims randomly from certain groups using simple random sampling.<sup>6</sup> Upon review of the ACC/FCR Additional Claims, Bates White has determined that all those claims appear in the Bestwall claims database with settlements for less than \$400,000 each.
- (10) Taken together, the Bestwall Random Sample and the ACC/FCR Additional Claims include a total of 1,966 settled mesothelioma claims. Thus, accounting for the 35 verdicts that were randomly selected in the Bestwall Random Sample, there are a total of 2,001 Bestwall verdict and settled mesothelioma claims within the combined samples (the “Combined Random Sample”).<sup>7</sup> The Combined Random Sample, when weighted appropriately, is also a

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<sup>4</sup> Sharon M. Zieg, Young Conaway Stargatt & Taylor LLP, email message to Davis L. Wright and Natalie D. Ramsey, Robinson & Cole LLP; James M. Jones, Jennifer L. Del Medico, Gregory M. Gordon, Jeffrey B. Ellman, and Jeff A. Kaplan, Jones Day; Garland Cassada and Stuart Pratt, Robinson Bradshaw; Erin Edwards, Edwin Harron, Elisabeth Bradley, and Paul Loughman, Young Conaway Stargatt & Taylor LLP; Richard Schneider, King & Spalding; with copy to Anne M. Steadman, Young Conaway Stargatt & Taylor LLP (July 8, 2021), attached as Exhibit 2 to this Declaration.

<sup>5</sup> Thus, the set of ACC/FCR Additional Claims do not overlap with the Bestwall Random Sample.

<sup>6</sup> I understand that Ankura separated the settled claims that were not part of the Bestwall Random Sample into groups defined by cutoffs of \$50,000. Then, the ACC/FCR Additional Claims were randomly selected from the groups with cutoff values up to \$400,000. At this time, certain questions remain about details of the stratified random sample methodology the ACC and FCR consultants used in selecting the ACC/FCR Additional Claims. For purposes of this Declaration and for designing the subsample described herein, I accept the FCR’s counsel’s representations as accurate.

<sup>7</sup> 2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the ACC/FCR Additional Claims.

representative sample of Bestwall’s mesothelioma verdicts and settlement history because the Bestwall Random Sample is a representative sample of that resolution history and the ACC/FCR Additional Claims were drawn randomly, as described by the FCR’s counsel. The Combined Random Sample, however, is less efficient as it includes more claims than necessary given that representativeness was already provided by the Bestwall Random Sample.

- (11) While both the Bestwall Random Sample and Combined Random Sample are reliable random samples for performing analyses related to Bestwall’s liability estimation, Bestwall’s counsel requested that I prepare a third sample that accounts for the ACC/FCR Additional Claims. In particular, Bestwall’s counsel requested that, using the Combined Random Sample, Bates White prepare a random sample of approximately 1,500 verdict and settled claims (the “Joint 10% Random Sample”). As explained below, the claims in the Joint 10% Random Sample were randomly selected from the 2,001 Bestwall verdict and settled mesothelioma claims in the Combined Random Sample, which include the ACC/FCR Additional Claims.

### Overview

- (12) I make this Declaration at the request of Bestwall’s counsel in connection with Bestwall’s *Motion to (A) Approve the Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence* filed in the above-referenced chapter 11 case. This Declaration describes the Joint 10% Random Sample for use in Bestwall’s estimation proceeding.
- (13) The Joint 10% Random Sample was constructed by random sampling from the 2,001 verdict and settled cases in the Combined Random Sample. Like for the Bestwall Random Sample, Bates White followed well-established and generally accepted methods of statistical sampling when designing the Joint 10% Random Sample. This included accounting for Bates White’s use of stratified random sampling for the Bestwall Random Sample and Ankura’s reported use of stratification and supplemental random sampling methods for the ACC/FCR Additional Claims.
- (14) A stratified random sample of Bestwall mesothelioma claims can be designed to be representative of claims settled with different amounts by ensuring that the resulting sample includes sufficient examples from the whole distribution of amounts. I explained this in detail in my June Declaration. The Joint 10% Random Sample preserves the stratification structure that was in place for the Bestwall Random Sample and accounts for the ACC/FCR Additional Claims. Further, with detailed information about the methodology followed by Ankura in

selecting the ACC/FCR Additional Claims,<sup>8</sup> the Joint 10% Random Sample can be used as representative of Bestwall’s mesothelioma verdicts and settlements history and can be used for robust statistical analyses in this matter.

### Random Sampling Techniques

- (15) As explained in my June Declaration, sampling is a useful strategy if gathering and reviewing information for the whole population by conducting a census is not an option, for example, due to the financial cost or time delay associated with such an exercise. Because a sample includes only a fraction of the whole population, it invariably increases the analytical burden and can reduce the precision of results when compared to performing the same analysis on data for the whole population. Thus, any sample of a population should be designed in a manner that reduces the analytical burden and the uncertainty in the results. Such a sample should include elements from all segments of the target population, with sufficient numbers to allow for robust inferences. In order to draw a representative random sample that can be used to make robust inferences about the population, the sampling technique chosen in a specific situation must take into account the characteristics of the population and the level of precision desired.
- (16) Stratified random sampling is a technique that involves dividing the target population based on known characteristics into smaller non-overlapping groups such that every element of the population belongs to one and only one group. Then, within each group, simple random sampling is applied, where each element within the group has an equal probability of being sampled.<sup>9</sup>

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<sup>8</sup> At this time, Bates White has not received the sampling weights Ankura calculated for each of the settled claims not in the Bestwall Random Sample. Additionally, Bates White has not received information on the exact stratification followed by Ankura. However, based on representations from the FCR’s counsel, the Joint 10% Random Sample is a representative sample of Bestwall’s mesothelioma verdicts and settlements history. Should those representations prove incorrect, I reserve the right to update my opinions in this Declaration.

<sup>9</sup> Stratified random sampling is used in a wide range of fields and applications by economists, statisticians, researchers, and statistical agencies. For example:

The Current Population Survey (CPS), published by the Bureau of Labor Statistics, is one of the most recognized surveys in the United States (<https://www.bls.gov/cps/>). The CPS technical documentation describes the stratified sampling design for this survey (*see* [https://www.bls.gov/cps/sample\\_redesign\\_2014.pdf](https://www.bls.gov/cps/sample_redesign_2014.pdf)).

The American Community Survey (ACS) is conducted by the Census Bureau (<https://www.census.gov/programs-surveys/acs>). Its “Design and Methodology” publication describes how it uses a stratification strategy based on a measure of the size of the *Census Block* (*see* [https://www2.census.gov/programs-surveys/acs/methodology/design\\_and\\_methodology/acs\\_design\\_methodology\\_previous.pdf](https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_previous.pdf)).

For textbook examples of the theoretical foundation and applications of stratified random sampling methods *see*:

**The Joint 10% Random Sample**

- (17) As described in detail in my June Declaration, Bates White designed and identified the Bestwall Random Sample as a stratified random sample representative of Bestwall’s historical mesothelioma claims that were resolved through verdict, settlement, or that were dismissed by the claimants.
- (18) Bestwall’s asbestos tort experience shows an uneven distribution of the number of claims it resolved, including the divergence of settlement values, and the rarity of cases resolved through verdict and by settlements over \$1 million. My June Declaration provides a detailed description of Bestwall’s distribution of its mesothelioma settlement amounts and rarity of verdicts. For example, of the approximately 15,000 settled mesothelioma claims in Bestwall’s tort history, more than 60% settled for \$50,000 or less while less than 1% were settled for amounts of more than \$1 million. Further, the 35 mesothelioma verdicts (7 plaintiff verdicts and 28 defense verdicts) Bestwall experienced in its tort history represent only about 0.23% of the mesothelioma claims that Bestwall resolved through verdict or settlement.
- (19) Therefore, to ensure that the Joint 10% Random Sample includes sufficient observations of claims with different claimant and claim characteristics, especially those that are rare—e.g., verdicts and claims with high settlement values—I maintained the same stratification used to draw the Bestwall Random Sample.
- (20) The Joint 10% Random Sample is a subsample drawn from the Combined Random Sample which incorporates the Bestwall Random Sample and the ACC/FCR Additional Claims, and that can be used as a representative sample of Bestwall’s historical mesothelioma verdicts and settlements population.
- (21) Specifically, the Joint 10% Random Sample was designed as follows. First, Bates White pooled the 2,001 Bestwall verdict and settled claims from the Bestwall Random Sample and the ACC/FCR Additional Claims into a single set of Bestwall claims (the Combined Random Sample). Second, Bates White classified each of the 2,001 claims in this combined set using the same stratification for verdict and settled claims used for the Bestwall Random Sample.<sup>10</sup> That is,

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Paul S. Levy and Stanley Lemeshow, *Sampling of Populations: Methods and Applications*, 4th ed. (Hoboken, N.J.; Wiley, 2013).

William G. Cochran, *Sampling techniques*, 3rd ed. (New York; Wiley, 1977).

<sup>10</sup> As explained in my June Declaration, for purposes of asbestos trust discovery, dismissed claims were not included in the 1,501 random sample described in such declaration and are also not included in the Joint 10% Random Sample described herein.

the pooled set of 2,001<sup>11</sup> mesothelioma verdict and settled claims from the Combined Random Sample were parsed into 157<sup>12</sup> non-overlapping groups as follows:

- Verdicts (including plaintiff and defense verdicts)
  - For simplification, these claims were assigned to only one group.
- Settlements
  - Bates White separated settled claims into 156<sup>13</sup> non-overlapping groups based on the period of claim resolution,<sup>14</sup> injured party/claimant gender,<sup>15</sup> settlement amount category,<sup>16</sup> and an indicator for law firms with the majority of claims resolved through group settlements.<sup>17</sup>

(22) Third, within each group defined above, Bates White randomly sampled claims with equal probability.<sup>18</sup>

- For simplicity and computational convenience, all 181 claims in the groups including verdicts and settlements of more than \$1 million were included in the Joint 10% Random Sample. This is because, if these 181 claims were assigned to groups using the same factors used for the rest of the settlements, the number of claims in those resulting groups would be small. This would result in having to include all claims within those groups in a representative sample to account for differences across those claims, as those claims present large variation across claimant characteristics of interest for analysis. Further, as

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<sup>11</sup> 2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the ACC/FCR Additional Claims.

<sup>12</sup> This is comprised of one group for verdicts and 156 groups for settlements.

<sup>13</sup> Bates White divided settled claims into 3 categories by claim resolution period, 2 categories by injured party/claimant gender, 13 categories by settlement amount, and 2 categories by the indicator for law firms with the majority of claims resolved through group settlements. Therefore, there were a total of 156 groups for settled claims ( $156 = 3 \times 2 \times 13 \times 2$ ). The definitions of these categories are described in the next footnotes.

<sup>14</sup> The resolution years in the Bestwall database were divided into three periods: through 2000, from 2001 through 2010, and from 2011 through Bestwall's bankruptcy petition date (November 2, 2017).

<sup>15</sup> Claimants were identified as male or female based on the gender field included in the database.

<sup>16</sup> Settlement amounts were divided into 13 categories, based on cut-off levels observed in the data at \$10,000, \$25,000, \$50,000, \$75,000, \$100,000, \$200,000, \$300,000, \$400,000, \$500,000, \$1 million, \$2 million, \$5 million, and greater than \$5 million.

<sup>17</sup> Bates White classified claim records based on whether a claim was represented by a plaintiff law firm with which Bestwall entered into settlement agreements to resolve multiple claims at once, as part of inventory deals, docket clearing deals, or matrix agreements. That classification had two categories: (1) claims represented by law firms whose group settlements accounted for 50% or less of their Bestwall settled claims, and (2) claims represented by law firms whose group settlements accounted for more than 50% of their Bestwall settled claims.

<sup>18</sup> The random sampling algorithm was designed to select a minimum of two claims from each group.



explained in my June Declaration, because these cases were important in terms of liability concerns for Bestwall, importance sampling techniques also result in their inclusion in the sample.

- Bates White then drew the rest of the random sample from each defined group that contained one or more of the remaining 1,820 (= 2,001 – 181) claims.
  - Because 181 claims (verdicts and settlements for more than \$1 million) out of the approximate 1,500 target sample size<sup>19</sup> were already selected, 1,319 claims remained to be drawn. To approximate the distribution from the 2,001 target population, which includes the ACC/FCR Additional Claims, Bates White drew 72.5% of the claims in each group, with the resulting sample size rounded to the nearest integer.<sup>20</sup> The rounding in the number of claims resulted in an additional 1,320 claims drawn in this stage, only one more claim than the initial target.

(23) The resultant Joint 10% Random Sample includes 1,501 claims: 35 verdicts and 1,466 settled claims. Of the 1,466 randomly selected settled claims, 358 were part of the ACC/FCR Additional Claims. Thus, 72% of the ACC/FCR Additional Claims were randomly selected for inclusion in the Joint 10% Random Sample.<sup>21</sup> Further, the percentage of claims in amount groups to which Ankura added claims (those with settlements of up to \$400,000) increased from about 71% in the Bestwall Random Sample to 76%<sup>22</sup> in the Joint 10% Random Sample. Because the 1,501 claims in the Joint 10% Random Sample were randomly selected from the verdict and settled claims from the representative Combined Random Sample using stratified random sampling, the resulting sample is also a representative random sample that can be reliably used for analysis.

(24) To summarize, the Joint 10% Random Sample is a representative random subsample from the representative Combined Random Sample, which is composed of the Bestwall Random Sample and the ACC/FCR Additional Claims.

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<sup>19</sup> The 1,500 target represents about 10% of the approximately 15,000 resolved mesothelioma claims.

<sup>20</sup> The 72.5% is the result of calculating the percentage that the 1,319 claims still to be drawn (1,319 = 1,500 – 181) represent out of the remaining target population of 1,820 (1,820 = 2,001 – 181); i.e., 72.5% = (1,500 – 181) ÷ (2,001 – 181).

<sup>21</sup> 72% = 358 ÷ 500.

<sup>22</sup> These percentages assume that Ankura included the amount \$400,000 in the boundary for the top group to which they added claims. If Ankura defined that top group as “less than \$400,000” (excluding the amount \$400,000 in the boundary), the percentage represented by the supplemented groups increased from 69% in the Bestwall Random Sample to 74% of the Joint 10% Random Sample.

- (25) My understanding that the claim documents for both the Bestwall Random Sample and the ACC/FCR Additional Claims (and, therefore, for the Joint 10% Random Sample) have already been collected.
- (26) Bates White's work on this matter is ongoing. I reserve the right to update or supplement my Declaration at the request of counsel, or in the event that I receive any new information that has a material impact on my opinions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 28, 2021



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Jorge Gallardo-García, Ph.D.  
Partner  
Bates White, LLC



**Exhibit 1**

## JORGE RAÚL GALLARDO-GARCÍA, PHD

### Partner

#### AREAS OF EXPERTISE

- Product liability forecasting
- Statistical analysis
- Insurance allocation
- Applied econometrics
- Financial reporting
- Labor and health economics



#### SUMMARY OF EXPERIENCE

Jorge Gallardo-García has authored and submitted expert reports and declarations and provided deposition testimony in several litigation matters. He has extensive experience in statistical modeling and data analysis and performs economic analysis, valuation, forecasting, sample design, and research, as well as discovery support. He has worked on numerous engagements involving product liability issues, in the context of bankruptcy procedures, insurance coverage disputes and settlement support, financial reporting, and strategic consulting. In addition, he has presented results of his work at national conferences on asbestos litigation topics and actuarial methods.

Prior to joining Bates White, Dr. Gallardo-García conducted empirical research on social program evaluation, labor and health economics, and demography. As part of his research, he simulated policy experiments for evaluating effects of different government health policies may have on health outcomes.

#### EDUCATION

- PhD, Economics, University of Pennsylvania
- MA, Economics, University of Pennsylvania
- MA, Economics, ITAM, México City, México (*summa cum laude*)
- BS, Business Administration, ITAM, México City, México (*summa cum laude*)
- BS, Economics, ITAM, México City, México (*magna cum laude*)

#### SELECTED BATES WHITE EXPERIENCE

- Retained as a complex database construction and statistics expert on behalf of the debtor in the matter *In re DBMP LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.
- Retained and authored declarations as a complex database construction and statistics expert on behalf of the debtor in the matter *In re Bestwall LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.

- Retained and authored declarations as a complex database construction and statistics expert on behalf of Truck Insurance Exchange in the matter *In re Kaiser Gypsum Company, Inc., et al.* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.
- Retained and authored declarations as a complex database construction and statistics expert on behalf of certain insurance carriers in the matter *Rapid American Corporation, et al., v Travelers Casualty and Surety Company, et al.* in the US Bankruptcy Court for the Southern District of New York.
- Engaged as expert by John Crane Inc. and authored declarations in relation to Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuits it filed against certain law firms in connection with the firms' conduct in previous personal injury and wrongful death cases alleging exposure to John Crane's asbestos-containing products.
- Authored expert reports and declarations and provided deposition and trial testimony on behalf of the Debtors in the matter *In re Garlock Sealing Technologies, LLC*, No. 10-BK-31607 (US Bankruptcy Court for the Western District of North Carolina). Analyzed large, complex data sets and developed robust random samples that were used to assess the value of pending and future asbestos-related personal-injury claims. The resulting database constructed in this matter was described by the presiding Judge as "...the most extensive database about asbestos claims and claimants that has been produced to date. It is the most current data available and is the only data that accurately reflects the pool of claims against Garlock."
- Submitted a declaration on behalf of insurance companies in relation to the matter *In re Pittsburgh Corning Corporation*, No. 00-22876-TPA (US Bankruptcy Court for the Western District of Pennsylvania). Discussed the overlap between the claimants who cast a ballot in the PCC bankruptcy and the claimants who appear in the publicly available Garlock Analytical Database.
- Produce annual and quarterly estimates of companies' potential asbestos and other tort-related expenditures, and author opinion letters to help clients ensure compliance with Sarbanes-Oxley, SEC, and other comprehensive reporting requirements.
- Led team supporting the asbestos claims valuation and forecasting expert in arbitration on behalf of Cooper Industries in *Pepsi-Cola Metropolitan Bottling Co. et al. v. Cooper Industries et al.*
- Led team in support of expert in asbestos claims valuation for financial reporting purposes on behalf of certain Halliburton stockholders (US District Court, Northern District of Texas) regarding Halliburton's financial disclosures of its asbestos liabilities after its acquisition of Dresser.
- Led team supporting the expert in asbestos claims valuation, estimation methodology, and asbestos reinsurance billing on behalf of American Re-Insurance Company and ACE Property and Casualty Company (New York Court of Appeals) regarding the proper reinsurance bill associated with USF&G's reinsurance of its asbestos-related payments to Western MacArthur.
- Estimated and simulated future asbestos-related expenses in litigation contexts.
- Implemented insurance allocation of asbestos-related losses in financial reporting, invoicing, and litigation contexts.
- Designed and implemented statistically representative samples for claim file audits regarding asbestos claims. Samples were used in the estimation of future asbestos-related expenses and insurance allocations in litigation and consulting contexts.

- Directed protocol design and database construction based on data collected through claim file reviews regarding asbestos claims. The products were used to estimate future asbestos-related expenses and insurance allocations in litigation and consulting contexts.

## ACADEMIC EXPERIENCE

- At the University of Pennsylvania, conducted empirical research on infant health, labor market participation, and healthcare insurance availability
- Participated as part of the external evaluation team at the University of Pennsylvania in the largest experiment-designed social program, the Progres/Oportunidades from México
- Collaborated as a teaching assistant for the Microeconomic Theory course of the PhD in Economics program at the University of Pennsylvania
- Held recitation sessions on Introductory Macroeconomics at the University of Pennsylvania
- Conducted economic research as visiting researcher at Centre for Economic Research (CIE), ITAM, México City, México
- Taught Applied Econometrics as an invited lecturer at ITAM, México City, México
- Conducted research on inflation as a visiting researcher at the Economic Research Department in Banco de México, México
- Participated as Economic Advisor on topics involving electricity demand estimation at Miguel Estrada Iturbide Foundation, Congress of México, México City, México
- Participated as Economic Analyst at the Centre for Economic Analysis and Research (CAIE), ITAM, México City, México

## DISTINCTIONS AND HONORS

- First place in the research category of the 2006 Banamex Economics Award, one of the most prestigious prizes to economic research in México that has been awarded by the Banco Nacional de México since 1951. This international competition is focused on conducting research on development economics and public policy applicable to México. The panel of judges includes the Secretary of Finance, the Governor of the Central Bank, deans of the economics departments from the most prestigious universities in México, and members of the Economics Research Department of Banamex.
- Dissertation Fellowship, Department of Economics, University of Pennsylvania.
- Mellon Award for Latin American Demographic Studies, University of Pennsylvania.
- Inaugural recipient, President Emerita Judith Rodin Graduate Fellowship Award.
- University Fellowships, Department of Economics, University of Pennsylvania.
- Academic Excellence Scholarship, CONACYT, México City, México.

## PUBLICATIONS

- “Are Conditional Cash Transfers Effective in Urban Areas? Evidence from Mexico,” joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd, and Viviana Vélez-Grajales, in *Education Economics*, Taylor and Francis Journals, vol. 20, no. 3 (2012): 233–59.

- “*Oportunidades* Impact on Children and Youths Education in Urban Areas after One-year of Program Participation,” (in Spanish) with Petra E. Todd, Jere R. Behrman and Susan W. Parker, in *External Evaluation of the Impact of Oportunidades Program 2004: Education*, eds. B. Hernández-Prado, and M. Hernández-Avila, Chapter 3, Vol. 1, 167–227 Cuernavaca, México: National Institute of Public Health, 2005.

## SELECTED SPEAKING ENGAGEMENTS

- “The Future of Mesothelioma in the US and the Increasing Portion of Diagnoses Not Related to Asbestos Exposure: Estimation and Forecasting.” 1st Annual Asbestos Litigation Strategies ExecuSummit, Dec. 2–3, 2014.
- “Emerging Trends in Asbestos Reserving.” Casualty Actuarial Society 2014 Casualty Loss Reserve Seminar, Sept. 15, 2014.
- “An Asbestos Defendant’s Legal Liability—the Experience in Garlock’s Bankruptcy Asbestos Estimation Trial.” Bates White webinar, July 29, 2014.
- “By the Numbers: The Future of Mesothelioma in America.” Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference, Mar. 18, 2014.

## RESEARCH PAPERS

- “Health Insurance and Pregnancy Outcomes: An Analysis of Fertility, Prenatal Care and Employment in México,” PhD Dissertation, University of Pennsylvania, 2006
- “How School Subsidies Impact Schooling and Working Behaviors of Children and Youth in Urban México,” joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd and Viviana Vélez-Grajales (working paper, University of Pennsylvania, 2005)
- “Forecasting Inflation with Factor Analysis: A Two Countries Application,” Banco de México and University of Pennsylvania, 2003
- “Interest Rate Parity and Risk Premium in Mexico,” ITAM, 2001, México City, México
- “Evidence of Long Memory in the Mexican Currency Market,” ITAM, 2001, México City, México

## LANGUAGES

- Spanish (native)

Document Page 4 of 108

Case 1:17-cv-00022 Doc 57-3 Filed 10/18/17 Entered 10/18/17 13:14:51 Desc Main

**Exhibit 2**

**From:**  
**Sent:**  
**To:**

**Cc:**  
**Subject:**

In follow-up to our call yesterday regarding the negotiation of the 502(d) order, the following is a description of how the additional 500 claims were selected:

- Ankura divided the population of settled claims into non-overlapping groups, using cutoffs that were multiples of \$50k
- Ankura randomly selected additional claims so that the overall sample size (Bates + Ankura/LAS) for each of the 5 groups between \$150K and \$400K, is 110
- Next, Ankura randomly sampled from the three most underrepresented groups (other than the "less than \$50K" group) until the overall sampling rate (Bates + Ankura/LAS) in each of the three groups was 17%
- Finally, Ankura randomly sampled 39 claims from the "less than \$50K" group

Regards,  
Sharon



**Sharon M. Zieg, Partner**

Young Conaway Stargatt & Taylor, LLP  
Rodney Square, 1000 North King Street  
Wilmington, DE 19801

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**From:** Wright, Davis L. <DWright@rc.com>

**Sent:** Tuesday, July 6, 2021 9:13 PM

**To:** Jones, James M. <jmjones@JonesDay.com>; Ramsey, Natalie D. <NRamsey@rc.com>; Del Medico, Jennifer L. <jdelmedico@JonesDay.com>; Edwards, Erin <eedwards@ycst.com>; Gregory M. Gordon <gmgordon@jonesday.com>; Jeffrey B. Ellman <jbellman@jonesday.com>; Garland Cassada (GCassada@rbh.com) <GCassada@rbh.com>; Harron, Edwin <eharron@ycst.com>; Bradley, Elisabeth <EBradley@ycst.com>; Kaplan, Jeff A. <jkaplan@jonesday.com>; Schneider Richard (King & Spalding - Atlanta, GA) <dschneider@kslaw.com>; Pratt, Stuart <SPratt@robinsonbradshaw.com>; Loughman, Paul <PLoughman@ycst.com>; Zieg, Sharon <SZIEG@ycst.com>

**Cc:** Steadman, Anne M. <ASteadman@ycst.com>

**Subject:** Re: Bestwall - Sampling Meet & Confer

Jim,

Following last week's meet and confer and further discussions with LAS and the FCR, we would propose the following options for addressing the scope of the 502(d) proposal:

1. The Committee and the FCR would be willing to consider a smaller sample size of approximately 1,500 to 1,600 claims files (out of the total 2,907 Sample Resolved Mesothelioma Files) as the scope of the 502(d) production.

The Committee/FCR would provide a spreadsheet of the claimants that would form the sample. The Debtor, the Committee, and the FCR would all have to agree that this would be the sample for estimation.

2. The 502(d) order would apply to the claims files of all claimants identified in the Bates Reliance Materials and the Debtor would produce all documents, including privileged documents, related to those claim files. The Committee would be amenable to granting an extension on the production of the Additional 500 claims files, however these additional files would not be subject to the 502(d) Order; or
3. The Debtor would provide all documents for all 2,907 claim files (less the 200 or so for which there is allegedly no documentation) pursuant to the 502(d) order.

With respect to each of the above options, the Committee and the FCR reserve all rights with respect to seeking additional 502(d) documents or claims files depending on the outcome of the trust-related litigation pending in Delaware and/or any decision by the Debtor or its agents to modify the scope of the sample size, utilize a different sample or sample size, or modify the individuals assigned to the sample. We can discuss further on tomorrow's call but thought it would make sense to provide the Debtor with insight on our current thinking.

Best,  
Davis  
**Davis Lee Wright**

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---

**From:** "Jones, James M." <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>

**Date:** Tuesday, July 6, 2021 at 2:25 PM

**To:** "Wright, Davis L." <[DWright@rc.com](mailto:DWright@rc.com)>, "Ramsey, Natalie D." <[NRamsey@rc.com](mailto:NRamsey@rc.com)>, "Del Medico, Jennifer L." <[idelmedico@JonesDay.com](mailto:idelmedico@JonesDay.com)>, "Edwards, Erin" <[eedwards@ycst.com](mailto:eedwards@ycst.com)>, Gregory Gordon <[gmgordon@jonesday.com](mailto:gmgordon@jonesday.com)>, Jeffrey Ellman <[jbellman@jonesday.com](mailto:jbellman@jonesday.com)>, "Garland Cassada ([GCassada@rbh.com](mailto:GCassada@rbh.com))" <[GCassada@rbh.com](mailto:GCassada@rbh.com)>, "[eharron@ycst.com](mailto:eharron@ycst.com)" <[eharron@ycst.com](mailto:eharron@ycst.com)>, "Bradley, Elisabeth" <[EBradley@ycst.com](mailto:EBradley@ycst.com)>, "Kaplan, Jeff A." <[jkaplan@jonesday.com](mailto:jkaplan@jonesday.com)>, "Schneider Richard (King & Spalding - Atlanta, GA)" <[dschneider@kslaw.com](mailto:dschneider@kslaw.com)>, "Pratt, Stuart" <[SPratt@robinsonbradshaw.com](mailto:SPratt@robinsonbradshaw.com)>, "Loughman, Paul" <[PLoughman@ycst.com](mailto:PLoughman@ycst.com)>, Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>

**Cc:** "Steadman, Anne M." <[ASteadman@ycst.com](mailto:ASteadman@ycst.com)>

**Subject:** RE: Bestwall - Sampling Meet & Confer

I can make that work.

James M. Jones ([bio](#))  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
250 Vesey Street  
New York, NY 10281-1047  
Office +1.212.326.7838



**From:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>  
**Sent:** Tuesday, July 6, 2021 2:22 PM  
**To:** Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>; Del Medico, Jennifer L. <[jdelmedico@JonesDay.com](mailto:jdelmedico@JonesDay.com)>; Edwards, Erin <[eedwards@ycst.com](mailto:eedwards@ycst.com)>; Gordon, Gregory M. <[gmgordon@JonesDay.com](mailto:gmgordon@JonesDay.com)>; Ellman, Jeffrey B. <[jbellman@JonesDay.com](mailto:jbellman@JonesDay.com)>; Garland Cassada (<[GCassada@rbh.com](mailto:GCassada@rbh.com)>) <[GCassada@rbh.com](mailto:GCassada@rbh.com)>; Edwin J. Harron <[eharron@ycst.com](mailto:eharron@ycst.com)>; Bradley, Elisabeth <[EBradley@ycst.com](mailto:EBradley@ycst.com)>; Kaplan, Jeff A. <[jkaplan@jonesday.com](mailto:jkaplan@jonesday.com)>; Schneider Richard (King & Spalding - Atlanta, GA) <[dschneider@kslaw.com](mailto:dschneider@kslaw.com)>; Pratt, Stuart <[SPratt@robinsonbradshaw.com](mailto:SPratt@robinsonbradshaw.com)>; Loughman, Paul <[PLoughman@ycst.com](mailto:PLoughman@ycst.com)>; Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>; Jones, James M. <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>  
**Cc:** Steadman, Anne M. <[ASteadman@ycst.com](mailto:ASteadman@ycst.com)>  
**Subject:** RE: Bestwall - Sampling Meet & Confer

\*\* External mail \*\*

All,  
We think we need some additional time to address some issues on our side. Could we reschedule this for 1:30 pm tomorrow?  
Thanks,  
Davis  
**Davis Lee Wright**

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----Original Appointment----

**From:** Wright, Davis L.  
**Sent:** Friday, July 2, 2021 10:44 AM  
**To:** Wright, Davis L.; Ramsey, Natalie D.; Del Medico, Jennifer L.; Edwards, Erin; Gregory M. Gordon; Jeffrey B. Ellman; Garland Cassada (<[GCassada@rbh.com](mailto:GCassada@rbh.com)>); Edwin J. Harron; Bradley, Elisabeth; Kaplan, Jeff A.; Schneider Richard (King & Spalding - Atlanta, GA); Pratt, Stuart; Loughman, Paul; Zieg, Sharon; Jones, James M.  
**Cc:** Steadman, Anne M.  
**Subject:** Bestwall - Sampling Meet & Confer  
**When:** Tuesday, July 6, 2021 3:00 PM - 4:00 PM (UTC-04:00) Eastern Time (US & Canada).  
**Where:** <https://robinsoncole.zoom.us/j/99440279877?pwd=UXlMZWk3OGVVRWNzOE51cWVTT01nUT09>



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# EXHIBIT C





1 THE COURT: Okay.

2 MS. RAMSEY: -- is done. But --

3 THE COURT: Okay.

4 MS. RAMSEY: -- you're, you're exactly focused on the  
5 correct issue.

6 THE COURT: All right.

7 MS. RAMSEY: Thank you.

8 THE COURT: I'm sorry, Mr. Gordon. Go ahead.

9 MR. GORDON: And just to go back, just so I make sure  
10 I'm clear what I'm saying, this was a sample that we had said  
11 could be used for both the 502(d) order --

12 THE COURT: Right.

13 MR. GORDON: -- as well as the trust discovery. In  
14 our view, it would make sense to use the same sample and  
15 Ms. Zieg even at one of the hearings acknowledged it would make  
16 sense to use the same sample for the discovery. But there's  
17 now a refusal altogether to provide it and, you know, we've  
18 also asked for meet and confers. There's not been any interest  
19 in those, either. So nothing's, nothing's occurred at all.

20 And so where we are is that unless something changes  
21 between now and October 28th, which is our deadline to get a  
22 motion on file for the November hearing, we will be filing the  
23 motion that the Court talked about at the prior hearing, a  
24 motion both to -- to -- to approve -- excuse me -- a proposed  
25 502(d) order as well as to approve a claim sample.

1 Mr. Gordon yesterday to tell him that we were in the process of  
2 putting together a response on the proposed 502(d) order, but  
3 among other things, the proposal for the requests for  
4 authority, our view was that we would need a sample of some,  
5 some size of claims to take a look at what the totality of the  
6 documents that might be available were in order to really  
7 assess that and that we would be getting back to him with  
8 respect to some other comments that we had regarding the 502(d)  
9 order, but we have not gotten that communication to him as yet.

10           With respect to a sneak peek, you know, that would be  
11 very desirable from our perspective if we could agree on, on  
12 what the universe of documents are that we would have the  
13 opportunity to take a look at. I think it would facilitate a  
14 much more informed and constructive dialogue with respect to a  
15 502(d) order.

16           With respect to the, the sample files, your Honor, the  
17 Court is aware that we have consistently said that, first of  
18 all, we do not believe -- and, and I said this at the end of  
19 the argument on the, the various 502(d) and, motion for at-  
20 issue privilege waiver -- we don't view the privilege waiver  
21 and the 50 -- I'm sorry -- the privilege waiver and the, the  
22 issue of trust discovery as linked. Those are issues the  
23 debtor is trying to link. I understand why the debtor wants to  
24 link it and, and it would be desirable from the debtor's  
25 perspective, but we don't view those as, as linked and the

1 debtor has consistently sort of tried to put us in a box where  
2 we are essentially being presented as unreasonable because we  
3 are not prepared to identify the sample for trust discovery.  
4 And we did get to Mr. Gordon last week. We asked the debtor to  
5 confirm that if there was a discussion, that the debtor would  
6 not use or otherwise report that to the courts in Delaware; in  
7 other words, would not try to use through the backdoor what we  
8 had said no to from the front door and the debtor's response  
9 was, as you might expect, that we could condition it the way  
10 Mr. Gordon said. We could say, "Oh, this is only for  
11 estimation," but the debtor would still use it to go to the  
12 district court and say, "Well, they've agreed on estimation  
13 sampling and so we should use that for trust discovery."

14 To us, that's the same thing. That's, that's not  
15 consistent with the goals and objectives of the Committee here.  
16 We are -- we are -- the debtor has made no secret that it is  
17 attempting to overcome the district court order and the, at  
18 least Judge Connolly's decision that the discovery ought to be  
19 random and it ought to be anonymous and, and do an end run  
20 around that with the, with the complacency and agreement of  
21 the, of the Committee and pointing to, again, files that we  
22 know -- the debtor has made no secret -- it is going to try to  
23 find some evidence of something that it can report to the Court  
24 as misconduct. The Committee's just not prepared to do that.

25 And I think that I would be remiss if I didn't say



1 that all of this now arises in the context of what we are  
2 seeing are copycat cases in the playbook that has, that has now  
3 become the fashion and with the filing with JJCI/LTL we're  
4 seeing again that what is happening in these cases is they are  
5 affecting each other and we have trust discovery coming up  
6 before Judge Whitley on Thursday of this week. These issues  
7 are going to come up. And so we're very much cognizant that  
8 the decisions that are made and the course of conduct of the  
9 parties becomes something that the other courts cite to, that  
10 the other committees look to, and, and the Committee feels that  
11 it has no alternative with respect to sample, but to say that  
12 if there is any intention, if there is any ability to use that,  
13 to use it before the Delaware District Court, we, we can't do  
14 that.

15           What we did propose when I spoke with Mr. Gordon, I  
16 think it was on Saturday, is one of the options would be to  
17 wait and see what comes out of that litigation and then to  
18 engage on a sample. If we could do something that would get  
19 the ball rolling faster, that would be great, but we're only  
20 prepared to do it consistent with that *caveat*.

21           So that is the disconnect between the parties, you  
22 know. We've been trying to find other alternative ways around  
23 it, but I think both of the parties have sort of drawn a line,  
24 the Committee with no, no assistance with trust discovery and  
25 the debtor with, "We're only prepared to agree if we can use it

1 for all purposes." So we're not in a position to do that. We  
2 understand that the debtor is going to go forward with respect  
3 to proposing its sample and we will respond in the appropriate  
4 time to that.

5 But that is where, where it is, but I didn't want to  
6 leave the Court with the impression that we were not getting  
7 back to the debtor, that there hadn't been dialogue about this,  
8 or that we were not trying to be constructive and finding ways  
9 to, to achieve some agreement between the parties. We just  
10 haven't been able to come up with one.

11 THE COURT: As far as being constructive and finding  
12 ways to expedite the process in Delaware, as I understand it  
13 and recall from our prior hearings, that matter is on appeal,  
14 right? But otherwise, there is nothing pending in front of the  
15 District Court in Delaware right now. So it's just sort of  
16 *status quo*. And I guess the question would be --

17 And I know that you expressed this, Mr. Gordon, at a  
18 prior hearing.

19 -- but what, you know, what's the best way to  
20 refashion the issue to, perhaps, try to get it back in front of  
21 the, the District Court in Delaware. And, and I wish I had a  
22 clever solution to that problem. If one can be determined or  
23 come up with, you all are the ones to come up with it, that is  
24 for sure.

25 MR. GORDON: Well, all I would say, your Honor, is the

1 acceptable. We don't think that that's even an appropriate  
2 ask.

3           So our position has been, yes, we, we could agree on  
4 an estimation sample. It could be a small sample. It could be  
5 not used for trust discovery. We could get started on that.  
6 Trust discovery could go independently separately,  
7 theoretically. At the end of the day if there's trust  
8 discovery and it's useful for this process, then we could  
9 incorporate those files, too, but they should be distinct  
10 silos. And part of the, the problem is we believe differently  
11 than the debtor does. We, we understand Judge Connolly's order  
12 differently and until that is clear whether the debtor is going  
13 to get information, what kind of information, how it's going to  
14 be randomized, how it's going to be anonymized, we're, we  
15 believe that this is really, again, an effort to sort of  
16 undermine some of what the, the court may have wanted there  
17 with respect to the protections of this highly sensitive  
18 information.

19           So, so to say that we're not being constructive  
20 because we won't do what the debtor wants us to do, I, I just  
21 don't think that's a fair characterization.

22           So with that, your Honor, we -- we -- we continue to  
23 try to be willing to find a path here. We haven't found it,  
24 but we, if we can find a path that does not cause us to be in  
25 the position that we've said we won't be in, we're, we're

1 was evidence suppression which resulted in us paying more than  
2 we should have paid. The whole purpose of the trust discovery  
3 is to allow us to determine whether the methodology they want  
4 to put in front of your Honor is appropriate. That's what  
5 they're blocking us from doing and at some point I, I guess  
6 we're going to have to consider whether we would file a motion  
7 *in limine* that would say they shouldn't even be allowed to put  
8 it on on that type of approach if we're not allowed to see the  
9 discovery. Because if they're not going to use a settlement  
10 approach, we don't need the trust discovery. That's the  
11 purpose for it.

12 So it's easy for the party who wants to put forward a  
13 methodology to say, "We don't need the information." Because  
14 they're going to use the settlements irrespective of what that  
15 information shows and all we're asking for -- and your Honor  
16 knows this -- is the right to say, "Okay. We think our  
17 settlements are inflated. We think this discovery will help us  
18 determine whether that's true and we want to get it." And, you  
19 know, we had the, we had the litigation in Delaware, fine, but  
20 the judge said, "You can continue if you comply with my order,"  
21 which is a 10 percent sample, and he said some things about  
22 anonymization, which we think we've addressed.

23 But it's just, to me, the, the litigants should be  
24 able to reach an agreement on the sample. And I submit again,  
25 the reason we're not reaching agreement is because the other

# EXHIBIT D



1 APPEARANCES (continued):

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10 For Official Committee of  
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15 For Future Claimants'  
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16 Esserman:

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1 APPEARANCES (continued):

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16 ALSO PRESENT (via telephone): SANDER L. ESSERMAN  
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20  
21  
22  
23  
24  
25



1 wants to know and understand why the parties were unable to  
2 reach agreement and wants to compare what the debtor offered by  
3 502(d) with what the claimant representatives offered by 502(d)  
4 and why we have a disconnect on sampling, we're prepared to go  
5 through that with the Court. But our, our position is  
6 fundamentally that a lot of that is how the sausage gets  
7 made --

8 THE COURT: Right.

9 MS. RAMSEY: -- and the Court may or may not want to  
10 get into that granularity. If the Court does, we are, of  
11 course, prepared to, to address those two topics with the  
12 Court.

13 THE COURT: Well, I, I have -- in response to all of  
14 that, Mr. Gordon, I would suggest that the Court go ahead and  
15 rule on the motion to compel production of claim files.  
16 Frankly, I, I know, I know what my ruling is. I did come  
17 prepared to issue that ruling and I, and then we can talk about  
18 that ruling. But I, I think maybe in light of the Court's  
19 ruling, it might advance the ball some. And so that's what I'm  
20 going to go ahead and do.

21 So with respect to the motion to compel production of  
22 claim files in compliance with case management order that was  
23 filed by the ACC and the FCR, as you all know, I previously  
24 ruled on that similar motion on December 17th and ruled that  
25 the motion was premature. There had been no at issue waiver at

1 that point. And, and frankly, folks, having reviewed the  
2 motions and heard the argument at the hearings last month, I  
3 conclude, in some ways reluctantly, that that's still where we  
4 are. And so I deny the motion without prejudice.

5 I think the trick is timing and as I indicated at that  
6 last hearing I believe there will be, there will come a time  
7 where there is, has been a waiver and what I'm not going to do  
8 is wait until we get to the eve of the estimation hearing to  
9 conclude that we have reached that point to the substantial  
10 prejudice, frankly, of the claimants and the FCR. I think  
11 we'll be closer to that point once the parties have concluded  
12 discovery.

13 So we're not there yet. And I did go back and, and  
14 look at Garlock and the timing of, of where that happened and  
15 when that happened and, and it was very close to the estimation  
16 hearing and I do think that it likely was in some ways  
17 prejudicial to the claimants that it was that far into the  
18 process and I don't want that to happen here; hence why I  
19 raised the issues and the concerns about the 502(d) order at  
20 that last hearing.

21 I, I did do a little research with the help of some  
22 law clerks on 502(d) orders and the conclusion that the Court  
23 has reached, without not doing a, as you say, Ms. Ramsey, deep  
24 dive into it, it does not, it doesn't have to be by consent of  
25 the parties as far as the Court is concerned. I think there is

1 authority out there suggesting that it can be by court order  
2 and on the Court's own motion and perhaps we get to that point,  
3 but, but we're not there yet.

4 So in light of that ruling, Mr. Gordon, would ask you  
5 to draw a short order denying the motion to compel.

6 But again, would urge you all to consider talking  
7 about a 502(d) order because I think that that's what needs to  
8 happen so that you can get the information now and you're still  
9 preserving the issues of attorney-client privilege and work  
10 product doctrine. Those issues haven't been waived yet. We're  
11 holding on to that issue.

12 So that's, that's where we are. I don't know if that  
13 will help you engage in further discussion post ruling, but I  
14 think that's where we are, okay?

15 MR. GORDON: Your Honor, can, can I make a comment or  
16 two --

17 THE COURT: Yes, sir.

18 MR. GORDON: -- if you don't mind?

19 First of all, I, I just want to say with respect to  
20 the, the status conference and the opposition to it, I'm very  
21 surprised because I, I've gone back and looked at the  
22 transcript. All the parties committed to working together from  
23 last hearing to this hearing and then reporting to your Honor  
24 on the results. Ms., I mean, Ms. Ramsey said, "So we will  
25 endeavor to meet with the debtor over the next couple of weeks

1 proof of that," and we're going to be in a position of saying,  
2 "No, it's not."

3           But we don't want to be the, the group that selects  
4 who those individuals are. The district court in Delaware has  
5 ruled and re-ruled that the debtor may only receive trust files  
6 which are completely random and anonymized and dissatisfied  
7 with that ruling the debtor has repeatedly attempted to get the  
8 trusts to ignore that directive. It's come before this Court  
9 and asked this Court for a blessing on a sample before that it  
10 wants this Court to say is random and anonymous and complies  
11 with the district court order. And now, they're coming to us  
12 and they're putting us, they're trying to put the claimant  
13 representatives in a position of becoming complicit, we think,  
14 in identifying files to -- that -- that are the subject of  
15 this. And the debtor is attempting to link that complicity  
16 with our right to receive what we think are clearly material  
17 discovery that it has put at issue.

18           So as a result, you know, we, we also believe that,  
19 that here we have the fact that the trusts and the claim  
20 facilities are in every bit as good a position as the  
21 parties -- and maybe better -- but at certainly the same  
22 position to select a truly random sample. So there's no need  
23 to assist the debtor with selection of a truly random sample.  
24 The truly random sample will be selected. We recognize that  
25 both this Court and the district court have ruled that they're

1 a sample for purposes of estimation and we continue to be  
2 willing to engage on a sample for purposes of estimation and  
3 the decisions that, that need to be made with respect to trust  
4 discovery, we think, need to continue to be made in the  
5 District Court of Delaware where those are, issues are being  
6 litigated. As the Court knows, we're not a party to them.  
7 We're not participating in them, but we are aware that one day,  
8 if there is a trust that is created in this bankruptcy cases,  
9 our claimants will be making, the people that we represent will  
10 be making claims to that trust and they will have in that  
11 capacity an interest in maintaining the confidentiality of the  
12 information that they are turning over to those as well.

13 So we believe for all of those reasons, your Honor,  
14 we, we do not agree with the debtor's characterization and the  
15 limitations that it seeks to impose on this and we certainly  
16 could not agree to a 502(d) order that is so limited and  
17 specifically requires us to waive rights that the debtor's not  
18 going to waive. On appeal, it's still seeking 15,000 trust  
19 files. There's nothing in there that says, "Oh, no, we can't  
20 just identify other things, but you waive your right to that."  
21 We -- we just -- the -- it's, it's such a, we, we think,  
22 unreasonable request. We are prepared to engage on a 502(d)  
23 order along the lines we have proposed, which is a much more  
24 neutral 502(d) order, and we are prepared to engage on a sample  
25 for purposes of estimation.

1 you said that that wasn't appropriate to do there. But we said  
2 we will work with the debtor to come up with a sample for  
3 estimation purposes.

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

6 MS. ZIEG: And Mr. Gordon and I have already gone back  
7 and forth. They want to link it to estimation and trust  
8 discovery purposes and keep saying I said we'd do it for trust  
9 discovery purposes, but I actually went back and read the  
10 transcript just to be sure. Because I thought I was very  
11 careful about that, that we don't have anything to do with the  
12 trust discovery issues. That's for the District Court of  
13 Delaware, the trusts, and the Manville, and DCPF. What we were  
14 focused on is the fact that that sample that we would agree to  
15 would be for estimation purposes and I mentioned to you that I  
16 was very concerned about Footnote 11 in that new subpoena  
17 motion, which essentially said, "Ms. Zieg keeps saying we've  
18 agreed on this sample of 2900 for estimation purposes, but  
19 that's not really true. We're going to use all 15,000 if we  
20 want to."

21 And so that was another issue we had. So I'm like,  
22 well, if we agree to a sample, it's got to be a sample for  
23 estimation purposes and I don't, we can't also have you going  
24 after the other 15,000 that -- then it's like a moving -- it  
25 just always puts us at a disadvantage. Because we don't know

1 picking cases and say, "I'm going to go after this claimant or  
2 that claimant," or, "I'm going to take three from this law firm  
3 or two from that." It doesn't work that way. It's all, it's  
4 just scientific sampling.

5 But in any event, notwithstanding you heard a lot of  
6 negative, I think, well, I don't know what you took from it.  
7 It sounded like we're really far apart. I'm not convinced we  
8 are. Ours wasn't take it or leave it. We're prepared to sit  
9 down and see what we can do.

10 THE COURT: Thank you.

11 And I would encourage you all to do that and consider  
12 strongly what your next step should be.

13 I will make a very broad statement about the debtor's  
14 proposed 502(d) order and based on what I've read about 502(d)  
15 orders and the spirit and the purpose behind them it strikes me  
16 that this is not within the spirit of what I have read about.  
17 And, and that is all I will say about that, that it -- it could  
18 -- it could use some amendment, okay?

19 So with that, I think we will move on to the debtor's  
20 motion.

21 And it is 11:25 and I don't know if it's worth getting  
22 started. I'm not sure who's going to argue the motion. And it  
23 is the FCR's motion for extension of deadlines, actually.

24 MS. ZIEG: Oh, we'll do that one first.

25 THE COURT: Yeah.

# EXHIBIT E







5.2(a) below, (ii) claims filed against AWI in the tort system or actually submitted to AWI pursuant to an administrative settlement agreement prior to the Petition Date of December 6, 2000, and (iii) all claims filed against another defendant in the tort system prior to the date the Plan was filed with the Bankruptcy Court (November 1, 2002 (the “*Plan Filing Date*”)); provided, however, that (1) the holder of a claim described in subsection (i), (ii), or (iii) above or his or her authorized agent, actually voted to accept or reject the Plan pursuant to the voting procedures established by the Bankruptcy Court, unless such holder certifies to the satisfaction of the Trustees that he or she was prevented from voting in this proceeding as a result of circumstances resulting in a state of emergency affecting, as the case may be, the holder’s residence, principal place of business or legal representative’s place of business at which the holder or his or her legal representative receives notice and/or maintains material records relating to his or her PI Trust Voting Claim, and provided further that (2) the claim was subsequently filed with the PI Trust pursuant to Section 6.1 below by the Initial Claims Filing Date defined in Section 5.1(a) below. The Initial Payment Percentage has been calculated on the assumption that the Average Values set forth in Section 5.3(b)(3) below shall be achieved with respect to existing present domestic claims and projected future domestic claims involving Disease Levels II – VIII.

The Payment Percentage may thereafter be adjusted upwards or downwards from time to time by the PI Trust, with the consent of the TAC and the Future Claimants’ Representative, to reflect then-current estimates of the PI Trust’s assets and its liabilities, as well as the then-estimated value of then-pending and future claims. However, any adjustment to the Initial Payment Percentage shall be made only pursuant to Section 4.2 below. If the Payment Percentage is increased over time, claimants whose claims were liquidated and paid in prior periods under the TDP shall receive additional payments only as provided in Section 4.2 below. Because there is uncertainty in the prediction of both the number and severity of future claims, and the amount of the PI Trust’s assets, no guarantee can be made of any Payment Percentage of a PI Trust Claim’s liquidated value.

**2.4 PI Trust’s Determination of the Maximum Annual Payment and Maximum Available Payment.** After calculating the Payment Percentage, the PI Trust shall model the cash flow, principal, and income year by year to be paid over its entire life to ensure that all present and future claimants are compensated at the Payment Percentage. In each year, based upon that model of the cash flow, the PI Trust shall be empowered to pay out the portion of its funds payable for that year according to the model (the “*Maximum Annual Payment*”). The PI Trust’s distributions to all claimants for that year shall not exceed the Maximum Annual Payment. The Payment Percentage and the Maximum Annual Payment figures are based on projections over the lifetime of the PI Trust. As noted in Section 2.3 above, if such long-term projections are revised, the Payment Percentage may be adjusted accordingly, which would result in a new model of the PI Trust’s anticipated cash flow and a new calculation of the Maximum Annual Payment figures.

However, year-to-year variations in the PI Trust’s flow of claims or the value of its assets, including earnings thereon, will not mean necessarily that the long-term projections are inaccurate; they may simply reflect normal variations, both up and down, from the smooth curve created by the PI Trust’s long-term projections. If, in a given year, however, asset values, including earnings thereon, are below projections, the PI Trust may need to distribute less in that year than would otherwise be permitted based on the original Maximum Annual Payment derived from long-term projections. Accordingly, the original Maximum Annual Payment for a given year may be temporarily decreased if the present value of the assets of the PI Trust as measured on a specified date during the year is less than the present value of the assets of the PI Trust projected for that date by the cash flow model described in the foregoing paragraph. The PI Trust shall make such a comparison whenever the Trustees become aware of any information that suggests that such a comparison should be made and, in any event, no less frequently than once every six (6) months. If the PI Trust determines that as of the date in question, the present value of the PI Trust’s assets is less than the projected present value of its assets for such date, then it will remodel the cash flow year by year to be paid over the life of the PI Trust based upon the reduced value of the total assets as so calculated and identify the reduced portion of its funds to be paid for that year, which will become the “*Temporary Maximum Annual Payment*” (additional reductions in the Maximum Annual Payment can occur during the course of that year based upon subsequent calculations). If in any year the Maximum Annual Payment was temporarily reduced as a result of an earlier calculation and, based upon a later calculation, the difference between the projected present value of the PI Trust’s assets and the actual present value of its assets has decreased, the Temporary Maximum Annual Payment shall be increased to reflect the decrease in the differential. In no event, however, shall the Temporary Maximum Annual Payment exceed the original Maximum Annual Payment. As a further safeguard, the PI Trust’s distribution to all claimants for the first nine (9) months of a year shall not exceed 85% of the Maximum Annual Payment determined for that year. If on December 31 of a given year, the original Maximum Annual Payment for















applicable federal, state, or foreign statutes of limitations and repose that were in effect at the time of the filing of the claim in the tort system, or (ii) for claims that were not filed against AWI in the tort system prior to the Petition Date, the applicable federal, state, or foreign statute of limitations that was in effect at the time of the filing with the PI Trust. However, the running of the relevant statute of limitations shall be tolled as of the earliest of (A) the actual filing of the claim against AWI prior to the Petition Date, whether in the tort system or by submission of the claim to AWI pursuant to an administrative settlement agreement; (B) the tolling of the claim against AWI prior to the Petition Date by an agreement or otherwise; or (C) the Petition Date.

If a PI Trust Claim meets any of the tolling provisions described in the preceding sentence and the claim was not barred by the applicable federal, state or foreign statute of limitations at the time of the tolling event, it shall be treated as timely filed if it is actually filed with the PI Trust within three (3) years after the Initial Claims Filing Date. In addition, any claims that were first diagnosed after the Petition Date, irrespective of the application of any relevant federal, state or foreign statute of limitations or repose, must be filed with the PI Trust within three (3) years after the date of diagnosis or within three (3) years after the Initial Claims Filing Date, whichever occurs later, unless the applicable statute of limitations of the Claimant's Jurisdiction, as defined in Section 5.3(b)(2) below, is longer than three (3) years, in which case the claim must be filed within the time period prescribed by the statute of limitations of the Claimant's Jurisdiction in effect at the time of the filing with the PI Trust. However, the processing of any PI Trust Claim by the PI Trust may be deferred at the election of the claimant pursuant to Section 6.3 below.

**5.1(b) Processing of Claims.** As a general practice, the PI Trust shall review its claims files on a regular basis and notify all claimants whose claims are likely to come up in the FIFO Processing Queue in the near future.

**5.1(c) Payment of Claims.** PI Trust Claims that have been liquidated by the Expedited Review Process as provided in Section 5.3(a) below, by the Individual Review Process as provided in Section 5.3(b) below, by arbitration as provided in Section 5.10 below, or by litigation in the tort system as provided in Section 5.11 below, shall be paid in FIFO order based on the date their liquidation became final (the "**FIFO Payment Queue**"), all such payments being subject to the applicable Payment Percentage, the Maximum Available Payment, the Claims Payment Ratio, and the sequencing adjustment provided for in Section 7.5 below, except as otherwise provided herein. Pre-Petition Liquidated Claims, as defined in Section 5.2 below, shall be subject to the Maximum Annual Payment and Payment Percentage limitations, but not to the Maximum Available Payment and Claims Payment Ratio provisions set forth above.

Where the claimant is deceased or incompetent, and the settlement and payment of his or her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the claimant's representative, an offer made by the PI Trust on the claim shall remain open so long as proceedings before that court or in that probate process remain pending, provided that the PI Trust has been furnished with evidence that the settlement offer has been submitted to such court or probate process for approval. If the offer is ultimately approved by the court or through the probate process and accepted by the claimant's representative, the PI Trust shall pay the claim in the amount so offered, multiplied by the Payment Percentage in effect at the time the offer was first made.

If any claims are liquidated on the same date, the claimant's position in the FIFO Payment Queue shall be determined by the date of the diagnosis of the claimant's asbestos-related disease. If any claims are liquidated on the same date and the respective claimants' asbestos-related diseases were diagnosed on the same date, the position of those claimants in the FIFO Payment Queue shall be determined by the PI Trust based on the dates of the claimants' birth, with older claimants given priority over younger claimants.

## **5.2 Resolution of Pre-Petition Liquidated PI Trust Claims.**

**5.2(a) Processing and Payment.** As soon as practicable after the Effective Date, the PI Trust shall pay, upon submission by the claimant of the appropriate documentation, all PI Trust Claims that were liquidated by (i) a binding settlement agreement for the particular claim entered into prior to the Petition Date that is judicially enforceable by the claimant, (ii) a jury verdict or non-final judgment in the tort system obtained prior to the Petition Date, or (iii) by a judgment that became final and non-appealable prior to the Petition Date (collectively "**Pre-Petition Liquidated Claims**"). In order to receive payment from the PI Trust, the holder of a Pre-Petition Liquidated Claim must submit all documentation necessary to demonstrate to the PI Trust that the claim was liquidated in the manner described in the preceding sentence, which documentation shall include, without limitation, (A) a copy of the executed, binding settlement agreement, if applicable, (B) a court-authenticated copy of the jury

verdict (if applicable), non-final judgment (if applicable), or final judgment (if applicable), and (C) the name, social security number, and date of birth of the claimant and the name and address of the claimant's lawyer.

The liquidated value of a Pre-Petition Liquidated Claim shall be AWI's share of the unpaid portion of the amount agreed to in the binding settlement agreement, the unpaid portion of the amount awarded by the jury verdict or non-final judgment, or the unpaid portion of the amount of the final judgment, as the case may be, plus interest, if any, that has accrued on that amount in accordance with the terms of the agreement, if any, or under applicable state law for settlements or judgments as of the Petition Date; however, except as otherwise provided in Section 7.4 below, the liquidated value of a Pre-Petition Liquidated Claim shall not include any punitive or exemplary damages. In the absence of a final order of the Bankruptcy Court determining whether a settlement agreement is binding and judicially enforceable, a dispute between the claimant and the PI Trust over this issue shall be resolved pursuant to the same procedures in this TDP that are provided for resolving the validity and/or liquidated value of a PI Trust Claim (i.e., arbitration and litigation in the tort system as set forth in Sections 5.10 and 5.11 below).

Pre-Petition Liquidated Claims shall be processed and paid in accordance with their order in a separate FIFO queue to be established by the PI Trust based on the date the PI Trust received all required documentation for the particular claim; provided, however, the amounts payable with respect to such claims shall not be subject to or taken into account in consideration of the Claims Payment Ratio or the Maximum Available Payment, but shall be subject to the Maximum Annual Payment and Payment Percentage provisions set forth above. If any Pre-Petition Liquidated Claims were filed on the same date, the claimants' position in the FIFO queue for such claims shall be determined by the date on which the claim was liquidated. If any Pre-Petition Liquidated Claims were both filed and liquidated on the same dates, the position of those claimants in the FIFO queue shall be determined by the dates of the claimants' birth, with older claimants given priority over younger claimants.

**5.2(b) Marshalling of Security.** Holders of Pre-Petition Liquidated Claims that are secured by letters of credit, appeal bonds, or other security or sureties shall first exhaust their rights against any applicable security or surety before making a claim against the PI Trust. Only in the event that such security or surety is insufficient to pay the Pre-Petition Liquidated Claim in full shall the deficiency be processed and paid as a Pre-Petition Liquidated Claim.

**5.3 Resolution of Unliquidated PI Trust Claims.** Within six (6) months after the establishment of the PI Trust, the Trustees with the consent of the TAC and the Future Claimants' Representative shall adopt procedures for reviewing and liquidating all unliquidated PI Trust Claims, which shall include deadlines for processing such claims. Such procedures shall also require claimants seeking resolution of unliquidated PI Trust Claims to first file a proof of claim form, together with the required supporting documentation, in accordance with the provisions of Sections 6.1 and 6.2 below. It is anticipated that the PI Trust shall provide an initial response to the claimant within six (6) months of receiving the proof of claim form.

The proof of claim form shall require the claimant to assert his or her claim for the highest Disease Level for which the claim qualifies at the time of filing. Irrespective of the Disease Level alleged on the proof of claim form, all claims shall be deemed to be a claim for the highest Disease Level for which the claim qualifies at the time of filing, and all lower Disease Levels for which the claim may also qualify at the time of filing or in the future shall be treated as subsumed into the higher Disease Level for both processing and payment purposes.

Upon filing of a valid proof of claim form with the required supporting documentation, the claimant shall be placed in the FIFO Processing Queue in accordance with the ordering criteria described in Section 5.1(a) above. The PI Trust shall provide the claimant with six-months notice of the date by which it expects to reach the claim in the FIFO Processing Queue, following which the claimant shall promptly (i) advise the PI Trust whether the claim should be liquidated under the PI Trust's Expedited Review Process described in Section 5.3(a) below or, in certain circumstances, under the PI Trust's Individual Review Process described in Section 5.3(b) below; (ii) provide the PI Trust with any additional medical and/or exposure evidence that was not provided with the original claim submission; and (iii) advise the PI Trust of any change in the claimant's Disease Level. If a claimant fails to respond to the PI Trust's notice prior to the reaching of the claim in the FIFO Processing Queue, the PI Trust shall process and liquidate the claim under the Expedited Review Process based upon the medical/exposure evidence previously submitted by the claimant, although the claimant shall retain the right to request Individual Review as described in Section 5.3(b) below.

**5.3(a) Expedited Review Process.**

**5.3(a)(1) In General.** The PI Trust’s Expedited Review Process is designed primarily to provide an expeditious, efficient, and inexpensive method for liquidating all PI Trust Claims (except those involving Lung Cancer 2 (Disease Level VI) and all Foreign Claims, which shall only be liquidated pursuant to the PI Trust’s Individual Review Process) where the claim can easily be verified by the PI Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level. Expedited Review thus provides claimants with a substantially less burdensome process for pursuing PI Trust Claims than does the Individual Review Process described in Section 5.3(b) below. Expedited Review is also intended to provide qualifying claimants a fixed and certain claims payment.

Thus, claims that undergo Expedited Review and meet the presumptive Medical/Exposure Criteria for the relevant Disease Level shall be paid the Scheduled Value for such Disease Level set forth in Section 5.3(a)(3) below. However, except for claims involving Other Asbestos Disease (Disease Level I), all claims liquidated by Expedited Review shall be subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio limitations set forth above. Claimants holding claims that cannot be liquidated by Expedited Review because they do not meet the presumptive Medical/Exposure Criteria for the relevant Disease Level may elect the PI Trust’s Individual Review Process set forth in Section 5.3(b) below.

Subject to the provisions of Section 5.8, the claimant’s eligibility to receive the Scheduled Value for his or her PI Trust Claim pursuant to the Expedited Review Process shall be determined solely by reference to the Medical/Exposure Criteria set forth below for each of the Disease Levels eligible for Expedited Review.

**5.3(a)(2) Claims Processing Under Expedited Review.** All claimants seeking liquidation of their claims pursuant to Expedited Review shall file the PI Trust’s proof of claim form. As a proof of claim form is reached in the FIFO Processing Queue, the PI Trust shall determine whether the claim described therein meets the Medical/Exposure Criteria for one (1) of the seven (7) Disease Levels eligible for Expedited Review, and shall advise the claimant of its determination. If a Disease Level is determined, the PI Trust shall tender to the claimant an offer of payment of the Scheduled Value for the relevant Disease Level multiplied by the applicable Payment Percentage, together with a form of release approved by the PI Trust. If the claimant accepts the Scheduled Value and returns the release properly executed, the claim shall be placed in the FIFO Payment Queue, following which the PI Trust shall disburse payment subject to the limitations of the Maximum Available Payment and Claims Payment Ratio, if any.

**5.3(a)(3) Disease Levels, Scheduled Values and Medical/Exposure Criteria.** The eight (8) Disease Levels covered by this TDP, together with the Medical/Exposure Criteria for each and the Scheduled Values for the seven (7) Disease Levels eligible for Expedited Review, are set forth below. These Disease Levels, Scheduled Values, and Medical/Exposure Criteria shall apply to all PI Trust Voting Claims filed with the PI Trust (except Pre-Petition Liquidated Claims) on or before the Initial Claims Filing Date provided in Section 5.1 above for which the claimant elects the Expedited Review Process. Thereafter, for purposes of administering the Expedited Review Process and with the consent of the TAC and the Future Claimants’ Representative, the Trustees may add to, change or eliminate Disease Levels, Scheduled Values, or Medical/Exposure Criteria; develop subcategories of Disease Levels, Scheduled Values or Medical/Exposure Criteria; or determine that a novel or exceptional asbestos personal injury claim is compensable even though it does not meet the Medical/Exposure Criteria for any of the then current Disease Levels.

<u>Disease Level</u>	<u>Scheduled Value</u>	<u>Medical/Exposure Criteria</u>
Mesothelioma (Level VIII)	\$ 110,000	(1) Diagnosis <sup>5</sup> of mesothelioma; and (2) credible evidence of AWI Exposure (as defined in Section 5.7(b)(3) below).
Lung Cancer 1 (Level VII)	\$ 42,500	(1) Diagnosis of a primary lung cancer plus evidence of an underlying Bilateral Asbestos-Related

<sup>5</sup> The requirements for a diagnosis of an asbestos-related disease that may be compensated under the provisions of this TDP are set forth in Section 5.7 below.

Nonmalignant Disease<sup>6</sup>, (2) six months AWI Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos (as defined in Section 5.7(b)(2) below), and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

Lung Cancer 2 (Level VI)                      None

(1) Diagnosis of a primary lung cancer; (2) AWI Exposure prior to December 31, 1982, and (3) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

Lung Cancer 2 (Level VI) claims are claims that do not meet the more stringent medical and/or exposure requirements of Lung Cancer 1 (Level VII) claims. All claims in this Disease Level will be individually evaluated. The estimated likely average of the individual evaluation awards for this category is \$15,000, with such awards capped at \$50,000, unless the claim qualifies for Extraordinary Claim treatment (as described in Section 5.4(a) below).

Level VI claims that show no evidence of either an underlying Bilateral Asbestos-Related Non-malignant Disease or Significant Occupational Exposure may be individually evaluated, although it is not expected that such claims will be treated as having any significant value, especially if the claimant is also a Smoker.<sup>7</sup> In any event, no presumption of validity will be available for any claims in this category.

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<sup>6</sup> Evidence of “*Bilateral Asbestos-Related Nonmalignant Disease*” for purposes of meeting the criteria for establishing Disease Levels I, II, III, V, and VII, means either (i) a chest X-ray read by a qualified B reader of 1/0 or higher on the ILO scale or, (ii) (x) a chest X-ray read by a qualified B reader or other Qualified Physician, (y) a CT scan read by a Qualified Physician, or (z) pathology, in each case showing either bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification. Evidence submitted to demonstrate (i) or (ii) above must be in the form of a written report stating the results (e.g., an ILO report, written radiology report, or a pathology report). Solely for asbestos claims filed against AWI or another defendant in the tort system prior to the Petition Date, if an ILO reading is not available, either (i) a chest X-ray or a CT scan read by a Qualified Physician or, (ii) pathology, in each case showing bilateral interstitial fibrosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification consistent with, or compatible with, a diagnosis of asbestos-related disease, shall be evidence of Bilateral Asbestos-Related Nonmalignant Disease for purposes of meeting the presumptive medical requirements of Disease Level I, II, III, V, and VII. Pathological proof of asbestosis may be based on the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, “Asbestos-associated Diseases,” Vol. 106, No. 11, App. 3 (October 8, 1982). For all purposes of this TDP, a “*Qualified Physician*” is a physician who is board-certified (or in the case of Canadian Claims or Foreign Claims, a physician who is certified or qualified under comparable medical standards or criteria of the jurisdiction in question) in one or more relevant specialized fields of medicine such as pulmonology, radiology, internal medicine or occupational medicine; provided, however, subject to the provisions of Section 5.7, that the requirement for board certification in this provision shall not apply to otherwise qualified physicians whose X-ray and/or CT scan readings are submitted for deceased holders of PI Trust Claims.

<sup>7</sup> There is no distinction between Non-Smokers and Smokers for either Lung Cancer 1 (Level VII) or Lung Cancer 2 (Level VI), although a claimant who meets the more stringent requirements of Lung Cancer 1 (Level VII) (evidence



Other Cancer (Level V)	\$ 21,500	(1) Diagnosis of a primary colo-rectal, laryngeal, esophageal, pharyngeal, or stomach cancer, plus evidence of an underlying Bilateral Asbestos-Related Nonmalignant Disease, (2) six months AWI Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
Severe Asbestosis (Level IV)	\$ 42,500	(1) Diagnosis of asbestosis with ILO of 2/1 or greater, or asbestosis determined by pathological evidence of asbestos, plus (a) TLC less than 65%, or (b) FVC less than 65% and FEV1/FVC ratio greater than 65%, (2) six months AWI Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level III)	\$ 9,700	(1) Diagnosis of Bilateral Asbestos-Related Nonmalignant Disease, plus (a) TLC less than 80%, or (b) FVC less than 80% and FEV1/FVC ratio greater than or equal to 65%, and (2) six months AWI Exposure prior to December 31, 1982, (3) Significant Occupational Exposure to asbestos, and (4) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary disease in question.
Asbestosis/ Pleural Disease (Level II)	\$ 3,700	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease, and (2) six months AWI Exposure prior to December 31, 1982, and (3) five years cumulative occupational exposure to asbestos.
Other Asbestos Disease (Level I – Cash Discount Payment)	\$ 400	(1) Diagnosis of a Bilateral Asbestos-Related Nonmalignant Disease or an asbestos-related malignancy other than mesothelioma, and (2) AWI Exposure prior to December 31, 1982.

**5.3(b) Individual Review Process.**

**5.3(b)(1) In General.** Subject to the provisions set forth below, an AWI claimant may elect to have his or her PI Trust Claim reviewed under the Individual Review Process for purposes of determining

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of an underlying Bilateral Asbestos-Related Nonmalignant Disease plus Significant Occupational Exposure), and who is also a Non-Smoker, may wish to have his or her claim individually evaluated by the PI Trust. In such a case, absent circumstances that would otherwise reduce the value of the claim, it is anticipated that the liquidated value of the claim might well exceed the \$42,500 Scheduled Value for Lung Cancer 1 (Level VII) shown above. “**Non-Smoker**” means a claimant who either (a) never smoked or (b) has not smoked during any portion of the twelve (12) years immediately prior to the diagnosis of the lung cancer.



such Extraordinary Claims. Because the detailed examination and valuation process pursuant to Individual Review requires substantial time and effort, claimants electing to undergo the Individual Review Process may be paid the liquidated value of their PI Trust Claims later than would have been the case had the claimant elected the Expedited Review Process. Subject to the provisions of Section 5.8, the PI Trust shall devote reasonable resources to the review of all claims to ensure that there is a reasonable balance maintained in reviewing all classes of claims.

**5.3(b)(2) Valuation Factors to be Considered in Individual Review.** The PI Trust shall liquidate the value of each PI Trust Claim that undergoes Individual Review based on the historic liquidated values of other similarly situated claims in the applicable tort system for the same Disease Level. The PI Trust shall thus take into consideration all of the factors that affect the severity of damages and values within the applicable tort system including, but not limited to, credible evidence of (i) the degree to which the characteristics of a claim differ from the presumptive Medical/Exposure Criteria for the Disease Level in question; (ii) factors such as the claimant’s age, disability, employment status, disruption of household, family or recreational activities, dependencies, special damages, and pain and suffering; (iii) whether the claimant’s damages were (or were not) caused by asbestos exposure, including exposure to AWI Products/Operations (as defined in Section 5.7(b)(3) below) prior to December 31, 1982 (for example, alternative causes, and the strength of documentation of injuries); (iv) the industry of exposure; (v) settlement and verdict histories and other law firms’ experience in the Claimant’s Jurisdiction for similarly situated claims; and (vi) settlement and verdict histories for the claimant’s law firm for similarly situated claims. Where the claimant’s law firm submits clear and convincing evidence to the PI Trust, and the Trustees determine, in their sole discretion, that the claimant’s law firm, prior to the Petition Date, played a substantial role in the prosecution, trial, and resolution of asbestos personal injury claims against the AWI in the Claimant’s Jurisdiction, such as actively participating in court appearances, discovery, and trial of the subject cases (evidence will be required of all three phases: prosecution, trial, and resolution for each law firm involved; necessary evidence will include evidence of active participation in the cases; and the mere referral of a case, without further involvement, will not be viewed as having played a substantial role in the prosecution and resolution of a case), irrespective of whether a second law firm also was involved, the PI Trust shall include such cases in the settlement and verdict histories for the claimant’s law firm in the Claimant’s Jurisdiction. If this occurs, the claimant’s law firm shall certify, as required by the PI Trust, that it has provided all settlement and verdict history information for asbestos cases against the AWI in which claimant’s law firm, prior to the Petition Date, played a substantial role in the prosecution, trial and resolution of the asbestos personal injury claims against the AWI in the Claimant’s Jurisdiction, as described above.

For these purposes, the “*Claimant’s Jurisdiction*” is the jurisdiction in which the claim was filed (if at all) against AWI in the tort system prior to the Petition Date. If the claim was not filed against AWI in the tort system prior to the Petition Date, the claimant may elect as the Claimant’s Jurisdiction either (i) the jurisdiction in which the claimant resides at the time of diagnosis or when the claim is filed with the PI Trust; or (ii) a jurisdiction in which the claimant experienced exposure to an asbestos-containing product for which AWI has legal responsibility. With respect to the “*Claimant’s Jurisdiction*” in the event a personal representative or authorized agent makes a claim under the TDP for wrongful death with respect to which the governing law of the Claimant’s Jurisdiction could only be the Alabama Wrongful Death Statute, the Claimant’s Jurisdiction for such claim shall be the Commonwealth of Pennsylvania, and such claimant’s damages shall be determined pursuant to the statutory and common laws of the Commonwealth of Pennsylvania without regard to its choice of law principles. The choice of law provision in Section 7.4 below applicable to any claim with respect to which, but for this choice of law provision, the applicable law of the Claimant’s Jurisdiction pursuant to Section 5.3(b)(2) is determined to be the Alabama Wrongful Death Statute, shall only govern the rights between the PI Trust and the claimant, and, to the extent the PI Trust seeks recovery from any entity that provided insurance coverage to AWI, the Alabama Wrongful Death Statute shall govern.

**5.3(b)(3) Scheduled, Average and Maximum Values.** The Scheduled, Average and Maximum Values for domestic claims involving the Disease Levels compensable under this TDP are the following:

<u>Scheduled Disease</u>	<u>Scheduled Value</u>	<u>Average Value</u>	<u>Maximum Value</u>
Mesothelioma (Level VIII)	\$ 110,000	\$ 130,500	\$ 400,000
Lung Cancer1 (Level VII)	\$ 42,500	\$ 43,800	\$ 150,000
Lung Cancer 2 (Level VI)	None	\$ 15,000	\$ 50,000

Other Cancer (Level V)	\$ 21,500	\$ 21,800	\$ 75,000
Severe Asbestosis (Level IV)	\$ 42,500	\$ 44,300	\$ 140,000
Asbestosis/Pleural Disease (Level III)	\$ 9,700	\$ 10,100	\$ 20,000
Asbestosis/Pleural Disease (Level II)	\$ 3,700	\$ 4,200	\$ 10,000
Other Asbestos Disease Cash Discount Payment (Level I)	\$ 400	None	None

These Scheduled Values, Average Values and Maximum Values shall apply to all domestic PI Trust Voting Claims other than Pre-Petition Liquidated Claims filed with the PI Trust on or before the Initial Claims Filing Date as provided in Section 5.1 above. Thereafter, the PI Trust, with the consent of the TAC and the Future Claimants' Representative pursuant to Sections 5.7(b) and 6.6(b) of the PI Trust Agreement, may change these valuation amounts for good cause and consistent with other restrictions on the amendment power.

Commencing in 2017, and annually thereafter, the PI Trust shall adjust the Scheduled Values, Average Values, and Maximum Values by the amount of any upward change over the prior year in the Consumer Price Index for All Urban Consumers ("CPI-U") published by the United States Department of Labor, Bureau of Labor Statistics. Each time such Scheduled Values, Average Values, and Maximum Values are increased in accordance herewith, such values shall be deemed to be the Scheduled Values, Average Values and Maximum Values for all purposes of the TDP. The annual CPI-U adjustment may not exceed 3%. The first adjustment in 2017 shall not be cumulative. The increased values and adjusted liquidated payment amounts shall be applied by the PI Trust at the time of payment and shall not require a revision to the TDP language and matrix values as set forth in the TDP.

**5.4 Categorizing Claims as Extraordinary and/or Exigent Hardship.**

**5.4(a) Extraordinary Claims.** "*Extraordinary Claim*" means a PI Trust Claim that otherwise satisfies the Medical Criteria for Disease Levels II – VIII, and that is held by a claimant whose exposure to asbestos (i) occurred predominately as the result of working in a manufacturing facility of AWI during a period in which AWI was manufacturing asbestos-containing products at that facility, or (ii) was at least seventy-five percent (75%) the result of exposure to asbestos-containing product for which AWI has legal responsibility, and in either case there is little likelihood of a substantial recovery elsewhere. All such Extraordinary Claims shall be presented for Individual Review and, if valid, shall be entitled to an award of up to a maximum value of five (5) times the Scheduled Value for claims qualifying for Disease Levels II – V, VII, and VIII, and five (5) times the Average Value for claims in Disease Level VI, multiplied by the applicable Payment Percentage.

Any dispute as to Extraordinary Claim status shall be submitted to a special Extraordinary Claims Panel established by the PI Trust with the consent of the TAC and the Future Claimants' Representative. All decisions of the Extraordinary Claims Panel shall be final and not subject to any further administrative or judicial review. An Extraordinary Claim, following its liquidation, shall be placed in the PI Trust's FIFO Payment Queue ahead of all other PI Trust Claims except Pre-Petition Liquidated Claims, Disease Level I Claims and Exigent Hardship Claims, which shall be paid first in that order in said Queue, based on its date of liquidation and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above.

**5.4(b) Exigent Hardship Claims.** At any time the PI Trust may liquidate and pay PI Trust Claims that qualify as Exigent Hardship Claims as defined below. Such claims may be considered separately no matter what the order of processing otherwise would have been under this TDP. An Exigent Hardship Claim, following its liquidation, shall be placed first in the FIFO Payment Queue ahead of all other liquidated PI Trust Claims except Pre-Petition Liquidated Claims and Disease Level I Claims, and shall be subject to the Maximum Available Payment and Claims Payment Ratio described above. A PI Trust Claim qualifies for payment as an Exigent Hardship Claim if the claim meets the Medical/Exposure Criteria for Severe Asbestosis (Disease Level IV) or an asbestos-related malignancy (Disease Levels V – VIII), and the PI Trust, in its sole discretion, determines (i) that the claimant needs financial assistance on an immediate basis based on the claimant's expenses and all



sources of available income, and (ii) that there is a causal connection between the claimant's dire financial condition and the claimant's asbestos-related disease.

**5.5 Secondary Exposure Claims.** If a claimant alleges an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member, the claimant must seek Individual Review of his or her claim pursuant to Section 5.3(b) above. In such a case, the claimant must establish that the occupationally exposed person would have met the exposure requirements under this TDP that would have been applicable had that person filed a direct claim against the PI Trust. In addition, the claimant with secondary exposure must establish that he or she is suffering from one (1) of the eight (8) Disease Levels described in Section 5.3(a)(3) above or an asbestos-related disease otherwise compensable under the TDP, that his or her own exposure to the occupationally exposed person occurred within the same time frame as the occupationally exposed person was exposed to asbestos products produced by AWI, and that such secondary exposure was a cause of the claimed disease. The proof of claim form included in Attachment B hereto contains an additional section for Secondary Exposure Claims. All other liquidation and payment rights and limitations under this TDP shall be applicable to such claims.

**5.6 Indirect PI Trust Claims.** Indirect PI Trust Claims asserted against the PI Trust shall be treated as presumptively valid and paid by the PI Trust subject to the applicable Payment Percentage if (a) such claim satisfied the requirements of the Bar Date for such claims established by the Bankruptcy Court, if applicable, and is not otherwise disallowed by Section 502(e) of the Code or subordinated under Section 509(c) of the Code, and (b) the holder of such claim (the "*Indirect Claimant*") establishes to the satisfaction of the Trustees that (i) the Indirect Claimant has paid in full the liability and obligation of the PI Trust to the individual claimant to whom the PI Trust would otherwise have had a liability or obligation under these Procedures (the "*Direct Claimant*"), (ii) the Direct Claimant and the Indirect Claimant have forever and fully released the PI Trust from all liability to the Direct Claimant, and (iii) the claim is not otherwise barred by a statute of limitations or repose or by other applicable law. In no event shall any Indirect Claimant have any rights against the PI Trust superior to the rights of the related Direct Claimant against the PI Trust, including any rights with respect to the timing, amount or manner of payment. In addition, no Indirect PI Trust Claim may be liquidated and paid in an amount that exceeds what the Indirect Claimant has actually paid the related Direct Claimant.

To establish a presumptively valid Indirect PI Trust Claim, the Indirect Claimant's aggregate liability for the Direct Claimant's claim must also have been fixed, liquidated and paid fully by the Indirect Claimant by settlement (with an appropriate full release in favor of the PI Trust) or a Final Order (as defined in the Plan) provided that such claim is valid under the applicable state, federal, or foreign law. In any case where the Indirect Claimant has satisfied the claim of a Direct Claimant against the PI Trust under applicable law by way of a settlement, the Indirect Claimant shall obtain for the benefit of the PI Trust a release in form and substance satisfactory to the Trustees.

If an Indirect Claimant cannot meet the presumptive requirements set forth above, including the requirement that the Indirect Claimant provide the PI Trust with a full release of the Direct Claimant's claim, the Indirect Claimant may request that the PI Trust review the Indirect PI Trust Claim individually to determine whether the Indirect Claimant can establish under applicable state, federal, or foreign law that the Indirect Claimant has paid all or a portion of a liability or obligation that the PI Trust had to the Direct Claimant as of the Effective Date of the TDP. If the Indirect Claimant can show that it has paid all or a portion of such a liability or obligation, the PI Trust shall reimburse the Indirect Claimant the amount of the liability or obligation so paid, times the then-applicable Payment Percentage. However, in no event shall such reimbursement to the Indirect Claimant be greater than the amount to which the Direct Claimant would have otherwise been entitled. Further, the liquidated value of any Indirect PI Trust Claim paid by the PI Trust to an Indirect Claimant shall be treated as an offset to or reduction of the full liquidated value of any PI Trust Claim that might be subsequently asserted by the Direct Claimant against the PI Trust.

Any dispute between the PI Trust and an Indirect Claimant over whether the Indirect Claimant has a right to reimbursement for any amount paid to a Direct Claimant shall be subject to the ADR Procedures provided in Section 5.10 below and set forth in Attachment A hereto. If such dispute is not resolved by said ADR Procedures, the Indirect Claimant may litigate the dispute in the tort system pursuant to Sections 5.11 and 7.6 below.

The Trustees may develop and approve a separate proof of claim form for such Indirect PI Trust Claims. Indirect PI Trust Claims that have not been disallowed, discharged, or otherwise resolved by prior order of the Bankruptcy Court shall be processed in accordance with procedures to be developed and implemented by the Trustees, consistent with the provisions of this Section 5.6, which procedures (a) shall determine the validity, allowability and enforceability of such claims; and (b) shall otherwise provide the same liquidation and payment procedures and





reasonably reliable), by invoices, employment, construction or similar records, or by other credible evidence. The specific exposure information required by the PI Trust to process a claim under either Expedited or Individual Review shall be set forth on the proof of claim form to be used by the PI Trust. The PI Trust can also require submission of other or additional evidence of exposure when it deems such to be necessary.

Evidence submitted to establish proof of exposure to AWI Products/Operations is for the sole benefit of the PI Trust, not third parties or defendants in the tort system. The PI Trust has no need for, and therefore claimants are not required to furnish the PI Trust with, evidence of exposure to specific asbestos products other than those for which AWI is responsible, except to the extent such evidence is required elsewhere in the TDP. Similarly, failure to identify AWI Products/Operations in the claimant's underlying tort action, or to other bankruptcy trusts, does not preclude the claimant from recovering from the PI Trust, provided the claimant otherwise satisfies the medical and exposure requirements of the TDP.

**5.8 Claims Audit Program.** The PI Trust, with the consent of the TAC and the Future Claimants' Representative, may develop methods for auditing the reliability of medical evidence, including additional reading of X-rays, CT scans and verification of pulmonary function tests, as well as the reliability of evidence of exposure to asbestos, including exposure to AWI Products/Operations prior to December 31, 1982. In the event that the PI Trust reasonably determines that any individual or entity has engaged in a pattern or practice of providing unreliable medical evidence to the PI Trust, it may decline to accept additional evidence from such provider in the future.

Further, in the event that an audit reveals that fraudulent information has been provided to the PI Trust, the PI Trust may penalize any claimant or claimant's attorney by disallowing the PI Trust Claim or by other means including, but not limited to, requiring the source of the fraudulent information to pay the costs associated with the audit and any future audit or audits, reordering the priority of payment of all affected claimants' PI Trust Claims, raising the level of scrutiny of additional information submitted from the same source or sources, refusing to accept additional evidence from the same source or sources, seeking the prosecution of the claimant or claimant's attorney for presenting a fraudulent claim in violation of 18 U.S.C. § 152, and seeking sanctions from the Bankruptcy Court.

**5.9 Second Disease (Malignancy) Claims.** The holder of a PI Trust Claim involving a non-malignant asbestos-related disease (Disease Levels I – IV) may assert a new PI Trust Claim against the PI Trust for a malignant disease (Disease Levels V – VIII) that is subsequently diagnosed. Any additional payments to which such claimant may be entitled with respect to such malignant asbestos-related disease shall not be reduced by the amount paid for the non-malignant asbestos-related disease, provided that the malignant disease had not been diagnosed by the time the claimant was paid with respect to his or her original claim involving the non-malignant disease.

#### **5.10 Arbitration.**

**5.10(a) Establishment of ADR Procedures.** The PI Trust, with the consent of the TAC and the Future Claimants' Representative, shall institute binding and non-binding arbitration procedures in accordance with the Alternative Dispute Resolution (“*ADR*”) Procedures included in Attachment A hereto for resolving disputes concerning whether a Pre-Petition settlement agreement with AWI is binding and judicially enforceable in the absence of a final order of the Bankruptcy Court determining the issue, whether the PI Trust's outright rejection or denial of a claim was proper, or whether the claimant's medical condition or exposure history meets the requirements of this TDP for purposes of categorizing a claim involving Disease Levels I – VIII.<sup>10</sup> Binding and non-binding arbitration shall also be available for resolving disputes over the liquidated value of a claim involving Disease Levels II – VIII as well as disputes over AWI's share of the unpaid portion of a Pre-Petition Liquidated Claim described in Section 5.2 above and disputes over the validity of an Indirect PI Trust Claim.

In all arbitrations, the arbitrator shall consider the same medical and exposure evidentiary requirements that are set forth in Section 5.7 above. In the case of an arbitration involving the liquidated value of a claim involving Disease Levels II – VIII, the arbitrator shall consider the same valuation factors that are set forth in Section 5.3(b)(2) above. In order to facilitate the Individual Review Process with respect to such claims, the PI Trust may from time to time develop valuation methodologies and/or matrices taking account of the valuation factors that are set forth in Section 5.3(b)(2) above that enable the PI Trust to efficiently make initial liquidated value offers on these claims in the Individual Review setting. With respect to all claims except Foreign Claims, these valuation methodologies and/or

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<sup>10</sup> To the extent there is any ambiguity or conflict between any provision of this TDP and the ADR Procedures, the provisions of this TDP shall control.





Claimants' Representative for approval; it may be changed by the PI Trust with the consent of the TAC and the Future Claimants' Representative.

**6.2 Content of Claims Materials.** The Claims Materials shall include a copy of this TDP, such instructions as the Trustees shall approve, and a detailed proof of claim form. If feasible, the forms used by the PI Trust to obtain claims information shall be the same or substantially similar to those used by other asbestos claims resolution organizations. If requested by the claimant, the PI Trust shall accept information provided electronically. The claimant may, but shall not be required to, provide the PI Trust with evidence of recovery from other defendants and claims resolution organizations, except that the PI Trust may require a claimant holding a Foreign Claim to provide it with such evidence of recovery or other information that such claimant would be required to provide pursuant to the substantive law, rules of procedure or practices in the tort system in the Claimant's Jurisdiction, including pre- and post-verdict rules, so as to enable the PI Trust to (1) determine whether the claim would be valid and cognizable in the tort system in the Claimant's Jurisdiction, (2) comply with the provisions of Section 5.3(b)(1) hereof, and (3) determine AWI's several share of liability for the claimant's unpaid damages.

**6.3 Withdrawal or Deferral of Claims.** A claimant can withdraw a PI Trust Claim at any time upon written notice to the PI Trust and file another claim subsequently without affecting the status of the claim for statute of limitations purposes, but any such claim filed after withdrawal shall be given a place in the FIFO Processing Queue based on the date of such subsequent filing. A claimant can also request that the processing of his or her PI Trust Claim by the PI Trust be deferred for a period not to exceed three (3) years without affecting the status of the claim for statute of limitations purposes, in which case the claimant shall also retain his or her original place in the FIFO Processing Queue. During the period of such deferral, a sequencing adjustment on such claimant's PI Trust Claim as provided in Section 7.5 hereunder shall not accrue and payment thereof shall be deemed waived by the claimant. Except for PI Trust Claims held by representatives of deceased or incompetent claimants for which court or probate approval of the PI Trust's offer is required, or a PI Trust Claim for which deferral status has been granted, a claim shall be deemed to have been withdrawn if the claimant neither accepts, rejects, nor initiates arbitration within six (6) months of the PI Trust's written offer of payment or rejection of the claim. Upon written request and good cause, the PI Trust may extend either the deferral or withdrawal period for an additional six (6) months.

**6.4 Filing Requirements and Fees.** The Trustees shall have the discretion to determine, with the consent of the TAC and the Future Claimants' Representative, (a) whether a claimant must have previously filed an asbestos-related personal injury claim in the tort system to be eligible to file the claim with the PI Trust, and (b) whether a filing fee should be required for any PI Trust Claims.

**6.5 Confidentiality of Claimants' Submissions.** All submissions to the PI Trust by a holder of a PI Trust Claim or a proof of claim form and materials related thereto shall be treated as made in the course of settlement discussions between the claimant and the PI Trust, and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including but not limited to those directly applicable to settlement discussions. The PI Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the claimant, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) and/or section 105 of the Bankruptcy Code or other applicable law, to such other persons as authorized by the claimant, or in response to a valid subpoena of such materials issued by the Bankruptcy Court. Furthermore, the PI Trust shall provide counsel for the claimant a copy of any such subpoena immediately upon being served. The PI Trust shall on its own initiative or upon request of the claimant in question take all necessary and appropriate steps to preserve said privileges before the Bankruptcy Court and before those courts having appellate jurisdiction related thereto. Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the Future Claimants' Representative, the PI Trust may, in specific limited instances, disclose information, documents, or other materials reasonably necessary in the PI Trust's judgment to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos PI Insurance Asset; provided, however, that the PI Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the PI Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the PI Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party.

## SECTION VII



paid on all PI Trust Claims with respect to which the claimant has had to wait a year or more for payment, provided, however, that no claimant shall receive a sequencing adjustment for a period in excess of seven (7) years. The sequencing adjustment factor for periods prior to May 1, 2013, shall be six percent (6%) per annum. Thereafter, the sequencing adjustment factor shall be the one-year Treasury bill interest rate in effect on January 1 of the year in which the accrual commences, with the factor being adjusted each January 1 to correspond to the one-year Treasury bill interest rate then in effect; provided, however, that if the sequencing adjustment accrual began prior to May 1, 2013, the sequencing adjustment factor shall be six percent (6%) per annum for the period prior to May 1, 2013. The PI Trust shall have the discretion to change the sequencing adjustment factor with the consent of the TAC and the Future Claimants' Representative.

**7.5(b) Unliquidated PI Trust Claims.** A sequencing adjustment shall be payable on the Scheduled Value of any unliquidated PI Trust Claim that meets the requirements of Disease Levels II – V, VII, and VIII, whether the claim is liquidated under Expedited Review, Individual Review, or by arbitration. No sequencing adjustment shall be paid on any claim liquidated in the tort system pursuant to Sections 5.11 above and 7.6 below. The sequencing adjustment on an unliquidated PI Trust Claim that meets the requirements of Disease Level VI shall be based on the Average Value of such a claim. Sequencing adjustments on all such unliquidated claims shall be measured from the date of payment back to the earliest of the date that is one (1) year after the date on which (a) the claim was filed against AWI prior to the Petition Date, (b) the claim was filed against another defendant in the tort system on or after the Petition Date, but before the Effective Date, or (c) the claim was filed with the PI Trust after the Effective Date.

**7.5(c) Liquidated Pre-Petition Claims.** A sequencing adjustment shall also be payable on the liquidated value of all Pre-Petition Liquidated Claims described in Section 5.2(a) above. In the case of Pre-Petition Liquidated Claims liquidated by verdict or judgment, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the date that the verdict or judgment was entered. In the case of Pre-Petition Liquidated Claims liquidated by a binding, judicially enforceable settlement, the sequencing adjustment shall be measured from the date of payment back to the date that is one (1) year after the Petition Date.

**7.6 Suits in the Tort System.** If the holder of a disputed claim disagrees with the PI Trust's determination regarding the Disease Level of the claim, the claimant's exposure or medical history, the validity of the claim under the provisions of this TDP, or the liquidated value of the claim, and if the claimant has first submitted the claim to non-binding arbitration as provided in Section 5.10 above, the claimant may file a lawsuit in the Claimant's Jurisdiction as defined in Section 5.3(b)(2) above. Any such lawsuit must be filed by the claimant in her or her own right and name, and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit. All defenses (including, with respect to the PI Trust, all defenses that could have been asserted by AWI) shall be available to both sides at trial; however, the PI Trust may waive any defense and/or concede any issue of fact or law. If the claimant was alive at the time the initial pre-petition complaint was filed or on the date the proof of claim form was filed with the PI Trust, the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.

**7.7 Payment of Judgments for Money Damages.** If and when a claimant obtains a judgment in the tort system, the claim shall be placed in the FIFO Payment Queue based on the date on which the judgment became final. Thereafter, the claimant shall receive from the PI Trust an initial payment (subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above) of an amount equal to one-hundred percent (100%) of the greater of (i) the PI Trust's last offer to the claimant or (ii) the award that the claimant declined in non-binding arbitration. The claimant shall receive the balance of the judgment, if any, in five (5) equal installments in years six (6) through ten (10) following the year of the initial payment (also subject to the applicable Payment Percentage, the Maximum Available Payment, and the Claims Payment Ratio provisions set forth above in effect on the date of the payment of the subject installment).

In the case of non-Extraordinary Claims involving Disease Levels II – VIII, the total amounts paid with respect to such claims shall not exceed the Maximum Values for such Disease Levels set forth in Section 5.3(b)(3). In the case of Extraordinary Claims, the total amounts paid with respect to such claims shall not exceed the maximum extraordinary value for such claims set forth in Section 5.4(a) above. Under no circumstances shall either a sequencing adjustment be paid pursuant to Section 7.5 or interest be paid under any statute on any judgments obtained in the tort system.



**7.8 Releases.** The Trustees shall have the discretion to determine the form and substance of the releases to be provided to the PI Trust in order to maximize recovery for claimants against other tortfeasors without increasing the risk or amount of claims for indemnification or contribution from the PI Trust. As a condition to making any payment to a claimant, the PI Trust shall obtain a general, partial, or limited release as appropriate in accordance with the applicable state, federal, foreign, or other law. If allowed by applicable law, the endorsing of a check or draft for payment by or on behalf of a claimant shall constitute such a release.

**7.9 Third-Party Services.** Nothing in this TDP shall preclude the PI Trust from contracting with another asbestos claims resolution organization to provide services to the PI Trust so long as decisions about the categorization and liquidated value of PI Trust Claims are based on the relevant provisions of this TDP, including the Disease Levels, Scheduled Values, Average Values, Maximum Values, and Medical/Exposure Criteria set forth above.

**7.10 PI Trust Disclosure of Information.** Periodically, but not less often than once a year, the PI Trust shall make available to claimants and other interested parties, the number of claims by disease levels that have been resolved both by the Individual Review Process and by arbitration, as well as by litigation in the tort system, indicating the amounts of the awards and the averages of the awards by jurisdiction.

## SECTION VIII

### Miscellaneous

**8.1 Amendments.** Except as otherwise provided herein, the Trustees may amend, modify, delete, or add to any provisions of this TDP (including, without limitation, amendments to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided they first obtain the consent of the TAC and the Future Claimants' Representative pursuant to the Consent Process set forth in Sections 5.7(b) and 6.6(b) of the PI Trust Agreement, except that the right to amend the Claims Payment Ratio is governed by the restrictions in Section 2.5 above, and the right to adjust the Payment Percentage is governed by Section 4.2 above. Nothing herein is intended to preclude the TAC or the Future Claimants' Representative from proposing to the Trustees, in writing, amendments to this TDP. Any amendment proposed by the TAC or the Future Claimants' Representative shall remain subject to Section 7.3 of the PI Trust Agreement.

**8.2 Severability.** Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP. Should any provision contained in this TDP be determined to be inconsistent with or contrary to AWI obligations to any insurance company providing insurance coverage to AWI in respect of claims for personal injury based on exposure to asbestos-containing products manufactured or produced by AWI, the PI Trust, with the consent of the TAC and the Future Claimants' Representative, may amend this TDP and/or the PI Trust Agreement to make the provisions of either or both documents consistent with the duties and obligations of AWI to said insurance company.

**8.3 Governing Law.** Except for purposes of determining the liquidated value of any PI Trust Claim, administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the liquidation of PI Trust Claims in the case of Individual Review, arbitration, or litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 5.3(b)(2) above.

# EXHIBIT F



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18  
19  
20  
21  
22  
23  
24  
25

1 proposal to them where we said, "We're willing to work with you  
2 to create a smaller sample size that would get you to the, the  
3 1500 or 1600 files you need for the 10 percent for the district  
4 court." And, and that's, that's the end. We had all three  
5 options of things we are willing to do, but the debtors don't  
6 want to work with us and our professionals, LAS, Ankura, and  
7 Bates White, to come together and do, everyone agree about  
8 what's the random representative sample for purposes of your,  
9 their trust discovery and for estimation. The debtors didn't  
10 want to continue that discussion.

11           So it's -- we're willing to work with them, but they  
12 want to use their sample of 1501, which we were going to argue  
13 later today, which we don't think is a random representative  
14 sample and we don't think Mr. Gallardo-Garcia's declaration  
15 supports that it's a random representative sample.

16           And, and what I hear Mr. Gordon saying is exactly the  
17 concerns that I have. You're not seeking just to get a finding  
18 that you can issue the subpoena. You're getting a, you're  
19 looking for a finding --

20           THE COURT: Right.

21           MS. ZIEG: -- that this sample is what we're going to  
22 use for all purposes and they're going to be using it against  
23 the FCR and the ACC, which such a finding would prejudice us  
24 and we would need a full record before your Court about that  
25 issue and I think it relates to estimation, not to some random

1 that, you know, we can, we can advance the ball.

2 But I think it is also going to push off consideration  
3 of some other issues until we get this issue finally decided.

4 MS. ZIEG: Well, my, my suggestion, your Honor, would  
5 be to deny the motion because it's still procedurally improper  
6 the way it's presented, been presented to the Court, although I  
7 would commit that maybe for the next hearing we could, before  
8 the next hearing we could try to work together to see if we  
9 could come up between our experts -- 'cause this is really not  
10 an issue --

11 THE COURT: Right.

12 MS. ZIEG: -- for me. This is an issue for LAS,  
13 Ankura, and Bates White, to be quite frank.

14 THE COURT: Right.

15 MS. ZIEG: But we could come up with maybe a  
16 stipulated agreed order what a sample for the estimation  
17 proceeding would look like and then you could make some sort of  
18 findings about this is the agreed random sample that the  
19 parties have agreed to. I would be willing to commit to, to  
20 work with Mr. Gordon over the next month. It may take a little  
21 bit longer than that. I don't know. I mean, I think we  
22 probably could do it within the next month. I think the next  
23 hearing is the 29th of September. Because that's what we  
24 agreed to do before and we would definitely be willing to do it  
25 again. What we -- again, though, what we are not willing to

1 and order, if we can.

2 THE COURT: Sure. And I -- and I -- you know, we tend  
3 to do this just to keep things on the calendar so, and denying  
4 the motion, but continuing it for a status hearing. I mean, in  
5 a sense it's just so I've got a tool. I know it's on the  
6 docket, you know. We know --

7 MS. ZIEG: That would be acceptable to us. I just  
8 don't want to have the motion continued and then --

9 THE COURT: No.

10 MS. ZIEG: -- make it look like we're still dealing --  
11 'cause then we're, then we're in the strange procedural posture  
12 of, well, are we still arguing the merits of the motion or not.

13 THE COURT: Well, the Court would --

14 MS. ZIEG: That's --

15 THE COURT: I mean, I suppose you all could do it in  
16 the form of announcing what your positions are in September.

17 MS. ZIEG: As long as we're clear that we're not  
18 rearguing this particular motion --

19 THE COURT: Right.

20 MS. ZIEG: -- and this particular sample of 1501, I, I  
21 think we could work it out.

22 THE COURT: So I would suggest, then -- and you think  
23 September is ample time for you all to put your heads together  
24 on this issue?

25 MS. ZIEG: If it's a status conference, it will either



1 noticed for hearing that day. But our, our time will be  
2 limited. And I think we may have a Judges' meeting that day at  
3 12:15, so. Okay?

4 MS. ZIEG: And with respect to the other motion that  
5 was just filed, I mean, hopefully, it will start a dialogue  
6 between the debtors and, and the --

7 THE COURT: The Court --

8 MS. ZIEG: -- claimants' representatives.

9 THE COURT: -- welcomes your dialogue, always.

10 MS. ZIEG: I think we should be able to work it out,  
11 but we'll see.

12 THE COURT: Okay.

13 MS. ZIEG: Although this may change things as well  
14 because if we have a sample that we agree to, which is why we  
15 tried to initiate this conversation back in July, if we have a  
16 sample that we agree to that's different from the sample that  
17 we're currently working with, it would make sense that all  
18 discovery be related to this sample.

19 THE COURT: Okay.

20 With that, Mr. Ewing and Mr. Rubinstein, I think that  
21 you can be excused.

22 MR. EWING: Thank you, your Honor.

23 MR. RUBINSTEIN: Thank you, your Honor.

24 THE COURT: You're welcome. Thank you.

25 MS. ZIEG: Thank you.

1 forecast and then some discount rate expert to present value  
2 his forecast.

3           It sounds to me like the ACC's disclosures are more in  
4 the nature of, of rebuttal disclosures, but I won't prejudge  
5 it. We'll see what their disclosures look like and, and  
6 determine whether they inform us about their case in chief.  
7 And we'll, we'll be happy to talk with them with any questions  
8 we have.

9           THE COURT: All right.

10           Ms. Zieg, I gathered you might have something else to  
11 say.

12           MS. ZIEG: Well, first, I think that Mr. Cassada just  
13 made my point of if I say something, then it's like, "This is  
14 what you're going to do," and I just want to point out, your  
15 Honor, our settlement methodology assumes that the debtor's --  
16 typically, our settlement methodology assumes that the debtor's  
17 historical settlements accurately reflect their liability, but  
18 the debtors have inserted into this process the concept that it  
19 doesn't --

20           THE COURT: Right.

21           MS. ZIEG: -- that for, either it was for  
22 nondisclosure or now we have the talc issue.

23           So to us, until I get the discovery and my experts and  
24 my, and my cohorts make a determination about the reliability  
25 of that settlement history and, one, and then, two, whether the

1 discovery indicates that that liability could be higher because  
2 talc is an issue here and the, the debtors may have been, as  
3 Ms. Ramsey said earlier, settling because of talc and they  
4 didn't want it to come out. I don't know. I'm not saying  
5 that's the case. Or it could be lower because maybe it was  
6 infected with what the debtors are saying was a lack of  
7 disclosure. I, I don't want to be tied, I can't be tied to a  
8 position when, with blinders on, which is why I'm seeking the  
9 discovery that I'm seeking.

10 THE COURT: Okay.

11 All right. Let the Court take a recess and I'll come  
12 back.

13 (Recess from 4:07 p.m., until 4:29 p.m.)

14 AFTER RECESS

15 (Call to Order of the Court)

16 THE COURT: All right. We are back in the Bestwall  
17 case.

18 In the context of the two motions that we just heard,  
19 we heard a lot of talk about discovery and discovery that we  
20 don't have and that we need and I think the other motions that  
21 are on the calendar are motions to compel production of claim  
22 files in compliance with case management order and then the  
23 other motion to compel.

24 It's 4:30 in the afternoon. So I don't know that we  
25 have time to start in on those today. One, one of the things

# EXHIBIT G

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

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In re	:	Chapter 11
	:	
BESTWALL LLC, <sup>1</sup>	:	Case No. 17-31795 (LTB)
	:	
Debtor.	:	

---

**STIPULATION AND AGREED ORDER REGARDING PRODUCTION OF DOCUMENTS PURSUANT TO FEDERAL RULE OF EVIDENCE 502(d) AND 502(e)**

On June \_\_, 2021, the Official Committee of Asbestos Claimants (the “Committee”), Sander L. Esserman, in his capacity as the Future Claimants’ Representative (the “FCR”), the debtor Bestwall LLC (“Bestwall”), and Georgia-Pacific LLC (“New GP”), and their respective counsel for the Committee, the FCR, Bestwall, and New GP (all of the foregoing, collectively, the “Parties”) entered into this Stipulation and Agreed Order.

**WHEREAS**, Rule 502(e) of the Federal Rule of Evidence (“FRE”) authorizes parties in a federal proceeding to enter into an agreement that disclosure of privileged documents shall not be a waiver of privilege, and FRE 502(d) provides that where such agreements are so ordered by a Court, “the disclosure is also not a waiver in any other federal or state proceeding.”

**WHEREAS**, the Parties jointly request that this Court issue an Order pursuant to Federal Rule of Evidence 502(d) to facilitate production and use of documents in this proceeding and to protect the Parties against waiver of any privileges or protections attaching to those documents;

---

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 5815. The Debtor’s address is 133 Peachtree Street, N.W., Atlanta, Georgia 30303.

**WHEREAS**, the Parties and nonparties may produce documents, answer interrogatories, and provide testimony and other information that may contain information covered by the attorney-client privilege or work product protection;

**WHEREAS**, absent a Court order, under certain circumstances, the production of privileged or protected information can operate as a waiver of any applicable privilege, protection, and/or immunity with respect to disclosure in this case and other Federal or State proceedings;

**WHEREAS**, the Parties wish to expedite and facilitate the production of a large volume of electronic and hard copy data, information, and documents (“ESI”), and to protect against waiver as a result of the disclosure of attorney-client privileged communications or work product materials;

**WHEREAS**, this Court finds good cause to issue an order pursuant to Fed. R. Evid. 502(d). **NOW THEREFORE**, the Parties stipulate and agree, and it hereby is **ORDERED** that:

1. Pursuant to Fed. R. Evid. 502(d), a Party’s disclosure or production of any documents or information in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by that Party of any privilege or protection applicable to those documents, including the attorney-client privilege, work product protection, and any other privilege or protection recognized by law.

2. The provisions of Fed. R. Evid. 502(b) are inapplicable to the production of documents or information under this Order. Specifically, there has been no waiver if a party discloses privileged or protected information (the “Protected Information”), regardless of whether the party took reasonable steps to prevent the disclosure or to rectify the error.

3. The Protected Documents may be considered Confidential Information under the *Agreed Protective Order Governing Confidential Information* [Dkt. No. 337] entered in this case on March 26, 2018 (the “Protective Order”).

4. Any Party receiving Protected Information shall follow the procedure outlined in Paragraph M of the Protective Order. Nothing in this Order shall prevent a receiving party from challenging the privilege or protection asserted by the producing party by following the procedure outlined in paragraph M of the Protective Order. Pursuant to Fed. R. Civ. P. 26, the producing party bears the burden of establishing the privilege or protection of all such challenged documents.

5. Because the Court is entering this Stipulation and Agreed Order pursuant to FRE 502(d) and 502(e), rather than FRE 502(b), no analysis is required of reasonable steps by Bestwall to prevent disclosure of the Protected Information.

6. This Stipulation and Agreed Order expressly governs the disclosure of Withheld Documents, as detailed in the Claim File Protocol, attached hereto as Exhibit A and specifically incorporated herein.

7. Except as provided in Paragraph 6 herein, this Stipulation and Agree Order does not require the Debtor, New GP or any other Party or non-Party to produce any particular documents to the Committee or the FCR.

8. Disclosure of Protected Information by the receiving party before the producing party designates the information as protected shall not be deemed a violation of this Order.

9. This Stipulation and Agreed Order has binding force and effect and applies to nonparties in later, parallel, and/or other federal and state proceedings of any kind in any federal or state forum.

10. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation, enforcement, or interpretation of this Stipulation and Agreed Order.

SO STIPULATED AND  
AGREED AND CONSENTED TO BY:

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*Counsel to the Future Claimants' Representative*

*Counsel to Georgia Pacific LLC*

***This Order has been signed electronically.  
The judge's signature and court's seal appear  
at the top of the Order.***

***United States Bankruptcy Court***

***In re Bestwall LLC***  
**Case No 17-31795**  
**Committee/FCR 502(d) Settled Case Sampling Protocol**

The Debtor is investigating but has alleged that it believes that its settlement history was infected by incomplete information regarding plaintiffs’ other exposures/sources of recovery. The Committee and FCR are unable to evaluate that contention based on review of selected documents from the 2,407 claims files the Debtor provided to Charles Bates, Ph.D. (the “Bates Reliance Materials”), because the produced plaintiff claim files are incomplete due to the Debtor’s withholding of, or redaction of, numerous documents based on various alleged privileges (the “Withheld Documents”). The Withheld Documents are documents and communications created contemporaneously with the resolution of the underlying asbestos claim and are likely to most accurately reflect the information available to Old GP/the Debtor related to potential other asbestos exposures/sources of recovery, Old GP’s/the Debtor’s reasons for settling the case, and Old GP’s/the Debtor’s reasons agreeing to/proposing the settlement values assigned to the respective cases. As the Debtor has represented the Withheld Documents are voluminous, the Committee and the FCR will agree to incorporate this proposal in a Federal Rule of Evidence 502(d) order.

The Committee and FCR propose that the Debtor produce for examination a sample of the Debtor’s historically settled case files, including all Withheld Documents (the “Case Files”), based on the following two components:

1. A random sample of 1,600 Case Files from eight (8) sample categories (total sample identified in the below chart is 1,600) (the “Randomly Selected Case Files”).

<b>Table 1 - Sample Weighted by Values</b>			
<b>Category</b>	<b>Value Range</b>	<b>Sampling %</b>	<b>Sampled N</b>
1	> \$1mm	100%	78
2	\$500k - \$1mm	100%	191
3	\$200k - \$500k	50%	380
4	\$125k-\$200k	50%	334
5	\$25k-\$125k	16.5%	345
6	\$7.5k-\$25k	5%	98
7	< \$7.5k > \$0	5%	96
8	<0	5%	98

2. Complete, unredacted Case Files for a sample of [# claimants to be agreed upon by the parties] (the “Additional Agreed Case Files”) that, along with the Randomly Selected Case Files, will serve as the Case Files that will be the subject of any estimation (the “Estimation Case Files”).

The Randomly Selected Case Files must reflect settlement history, accordingly the sample should be dispersed among and properly sample (1) group or individual settlements, (2) cases handled by six (6) defense firms which handled a substantial number of the historic cases (Perkins, Hepler, Lynch, Manion, Marks and Miles), and “other” defense firms, (3) the six law firms that represented about seventy-five percent (75%) of the settled claims, (4) the four jurisdictions in which the majority of claims were settled, (5) the four (4) time periods identified; and (6) the number of days a case was pending to the date of settlement, which the Committee believes is five (5) days. Although the random sampling can be conducted in a variety of ways, in an effort to expedite the process, we have attached a spreadsheet with the claimant we would propose be included in the random sample.

# EXHIBIT H



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Debevoise & Plimpton  
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NATASHA LABOVITZ, ESQ.  
919 Third Avenue  
New York, NY 10022

23

24

25

1 in the case.

2 If you, yeah, if you have questions, I'll be happy to  
3 answer them. Otherwise, I'll sit down.

4 THE COURT: I don't. Thank you.

5 Mr. Gordon.

6 MR. GORDON: Your Honor, I actually have a proposal to  
7 make to try to help us with this issue and it just came to mind  
8 when I heard your Honor's question, which I think is the right  
9 question to ask, or even the right statement to make, isn't  
10 this going to come to a head at some point? And if it's going  
11 to come to a head at some point, when should we be addressing  
12 this issue?

13 And I think as we tried to point out, we feel like  
14 there is a bit of a cart before the horse here. Because we  
15 can't develop any kind of case on suppression of evidence  
16 without the evidence. And, you know, we talked yesterday about  
17 spending the next 30 days or so seeing if we can come to an  
18 agreement with the other side on a sample for purposes of trust  
19 discovery. And it just strikes me that we should be doing the  
20 same thing here. In other words, we should be taking the next  
21 30 days or so to see if we can negotiate a 502(d) agreement  
22 acceptable to the party, parties that likewise involves the  
23 sample. I'm not saying it would be the same sample. Maybe it  
24 would be, maybe it wouldn't. I don't really have a view on  
25 that.

1           But it strikes me that they're interrelated in the  
2 sense that if we can't get the trust data, then there's no  
3 point in the Committee and the FCR spending a lot of time in  
4 our files trying to figure out whether if we had the  
5 information it would have made a difference. It's, that's just  
6 a hypothetical. And we feel strongly that if we can agree with  
7 the other side on the sample for trust discovery purposes, as  
8 we talked yesterday, that we'll likely get that information.  
9 'Cause we don't believe the trusts have a dog in the hunt.

10           And I'm trying to think how best to say this. The  
11 other side controls the trust discovery, or controls the trust  
12 information. They kind of make it look like they don't.

13           MR. HARRON: There's no basis in the record for  
14 that --

15           MR. GORDON: Well --

16           MR. HARRON: -- and I categorically deny it.

17           THE COURT: Okay.

18           MS. RAMSEY: Agreed.

19           THE COURT: Well, I can address that with some  
20 evidence, but --

21           MR. HARRON: Please do.

22           MR. GORDON: -- that's a -- that's -- that, that's our  
23 view. Let me put it another way.

24           I feel confident that if we reached an agreement with  
25 the Committee, most of the members of which are members of the



1 trust advisory committees of the trusts, and they're  
2 comfortable with that sample for trust discovery purposes,  
3 we're not going to have an issue with the trusts.

4           So I'll, I'll put it that way and I won't say anything  
5 more about it.

6           MS. RAMSEY: I have no basis to respond to that at  
7 all, your Honor. There are clearly firms on the Committee that  
8 are on trust advisory committees, but the trusts have trustees  
9 that have fiduciary duties that do what they do to protect the  
10 trust data in accordance with the way that they understand that  
11 data needs to be protected.

12           So I also object strenuously to the suggestion that  
13 the plaintiffs are in charge of the trusts. There is  
14 absolutely no factual basis for that.

15           THE COURT: Well, you know, I wouldn't begin to weigh  
16 in on any of that. It would be entirely inappropriate.

17           And aside from all of that, I think Mr. Gordon has  
18 just raised an interesting point. I mean, we need to reach  
19 some consensus on the trust discovery and if, if doing that,  
20 which we've already talked about in the context of yesterday's  
21 motion and are pushing, you know, that off for a status  
22 hearing, denying the motion, but pushing it off for a status  
23 hearing to see if we can't reach some agreement on that while  
24 also talking about a 502(d) order, which was suggested by you  
25 folks, I mean, it seems to me that that might advance the ball

1 in this case.

2 MR. GORDON: Well, just that -- I guess I distracted  
3 everybody with comments. Maybe I shouldn't have made them. I  
4 don't know, but the point is they are interconnected in the  
5 sense that if we can't get the trust discovery and from my way  
6 of thinking there's no reason to spend a lot of time  
7 determining whether privilege has been waived because it's, the  
8 purpose for which they want the discovery doesn't exist  
9 anymore.

10 And so I started to think about the two being linked.  
11 If we can get to an agreement on the trust discovery on a  
12 sample, I don't see why we can't agree to a sample on the  
13 502(d) order and then the further link should be that in the  
14 event we get the trust discovery, we get the sample, then they  
15 get the privileged documents that relate to that and then that  
16 sort of all ties, ties this together.

17 So it seems to me all -- we -- we -- all of us here  
18 have a common interest in coming to an agreement on both of  
19 these issues. Ms. Zieg said yesterday that the FCR would like  
20 to know whether there's been suppression of evidence in  
21 evaluating whether settlements actually do represent liability.  
22 That's obviously been our position. That's what we want.  
23 Earlier, that was opposed, of course, by both the Committee and  
24 the FCR, our efforts to get the trust discovery, but we're past  
25 that now.

1           So we're past that. We have the issue with the trust  
2 discovery. We've agreed to talk to that. So I, speak to that,  
3 try to settle that. So that would be my suggestion, that we  
4 carry this motion until the 29th of September. We will commit,  
5 the debtor's committed to sit down to see if we can negotiate  
6 an acceptable 502(d) order and, in my mind, I have something --  
7 'cause it's my experience -- like Bondex which was an, it was a  
8 sample and I think it was limited to certain types of  
9 documents, but I'll refresh on that.

10           But those would be two things we could talk about in  
11 negotiations with the other side and if we can get to an  
12 agreement, we can resolve both issues at the same time and  
13 then, hopefully, the resolution of the trust discovery enables  
14 us to actually get the trust discovery, which then makes  
15 relevant their request for privileged information.

16           THE COURT: Ms. Ramsey -- and I know, I told y'all  
17 that I've got to break in a minute -- but I'm intrigued by what  
18 Mr. Gordon has proposed. You can hold off your response until  
19 after lunch until you confer with the other attorneys in the  
20 room. But, I mean, I will tell you that I'm intrigued by what  
21 he has just suggested.

22           So if you all are in agreement with that, we can  
23 recess and come back at, unfortunately, come back at 1:00, if  
24 that's okay.

25           MS. RAMSEY: Thank you, your Honor.

1 THE COURT: Thank you.

2 MS. ZIEG: Thank you, your Honor.

3 (Lunch recess from 11:45 a.m., until 1:06 p.m.)

4 AFTER RECESS

5 (Call to Order of the Court)

6 THE COURT: All right. We are back in the Bestwall  
7 case, having recessed for lunch and having heard substantial  
8 argument about the, on the ACC/FCR motion to compel claims  
9 files.

10 Ms. Ramsey, I sort of cut you off before we left, but  
11 said I would let you respond when we came back after lunch.

12 MS. RAMSEY: Thank you, your Honor. It was helpful to  
13 have the extra time and, and we appreciate it.

14 The Committee and the FCR are prepared to work with  
15 the debtor to determine whether we can reach agreement, but we  
16 do want to make a couple of statements in connection with that.

17 First of all, we do not see the issues of the trust  
18 sample and the privilege waiver as linked. And we say that  
19 because cost, the debtor's argument that cost influenced its  
20 settlement history is an independent basis upon which we  
21 believe that the debtor has an at issue waiver. The second is  
22 that, as discussed during our argument, there have been  
23 statements by the debtor in prior pleadings that it has  
24 evidence sitting here today that there has been a "widespread  
25 pattern" in which certain plaintiffs' firms failed to disclose

1 material evidence of their clients' exposure to other  
2 companies' products. And again, in the trust motion there's  
3 just the blanket statement that significant numbers of  
4 plaintiffs and their law firms have failed to identify  
5 exposures to other products saying that each of these practices  
6 substantially impacted the cases against Bestwall.

7           So there is some population of cases that apparently  
8 the debtor has that it already believes that it has evidence of  
9 those practices.

10           And the third *caveat* is that we note that the debtor's  
11 appeal from the District Court of Delaware's order on trust  
12 discovery continues to pursue trust discovery on all of the  
13 approximately 15,000 settled cases.

14           So having said all of that and just so that we're not  
15 leaving the Court with the impression that, that we agree with  
16 the proposition that, that, that the trust discovery and the  
17 privilege waiver are conjoined, we are prepared to work with  
18 the debtor and see if the parties can agree on a 502(d) order  
19 and in connection with that, also agree on a trust sample that  
20 would, we think, accomplish the goals of both the parties and  
21 some of the matters, would resolve some of the matters before  
22 the Court. So we will endeavor to meet with the debtor over  
23 the next couple of weeks and report back to the Court at the  
24 next omnibus.

25           THE COURT: Okay. So in other words, you all would

1 ask the Court to continue the hearing on the motion to compel  
2 the production of claim files until September 29th.

3 And let me ask this. I think it stands -- that's a  
4 fair question for me. Should the Court be prepared to rule on  
5 September 29th or should we treat that hearing date as sort of  
6 a status hearing depending on agreement or not reached by the  
7 parties?

8 MS. ZIEG: Yes.

9 MS. RAMSEY: From our perspective, your Honor, we  
10 would appreciate it if the Court were prepared to rule that  
11 day. If we reach an agreement in advance, we're certainly  
12 happy to reach out to Chambers and let the Court know that that  
13 would be unnecessary. But, but we do believe that the parties  
14 have been heard and we're prepared for the Court to rule.

15 THE COURT: Okay.

16 Mr. Gordon.

17 MR. GORDON: Thank you, your Honor.

18 In terms of that question, I, I don't think we're  
19 opposed to having your Honor rule. I'm, I'm very optimistic we  
20 can reach agreements. I'm, I'm hoping that's not going to be  
21 necessary. And I'm also thinking that if for some reason we're  
22 not, if we have an opportunity to report to your, to the Court  
23 about that and what the impasse is, your Honor may be able to  
24 provide some direction that leads to an agreement --

25 THE COURT: Okay.

1 MR. GORDON: -- in any event.

2 THE COURT: Okay.

3 MR. GORDON: With that said, they filed the motion.

4 They're obviously entitled to a ruling, but I, I just feel  
5 confident we can get something worked out.

6 THE COURT: Okay.

7 On that basis, then, the Court -- well, and, and I  
8 will continue the hearing until September 29th, I think at  
9 11:00 are, is the time that we have set to begin the Bestwall  
10 hearings that day.

11 Can -- I guess, Mr. Gordon, Ms. Ramsey mentioned the  
12 appeal to the Third Circuit. And my recollection was -- and  
13 either I read it in the transcript or somebody mentioned it at  
14 a hearing maybe yesterday -- whether or not that appeal's been  
15 expedited. My recollection is that you may have reported that  
16 you asked that the appeal be expedited and that motion was  
17 denied, is that right?

18 MR. GORDON: Yeah. I don't know --

19 THE COURT: Or did I make that up?

20 MR. GORDON: -- if I got that far. We, we did move to  
21 expedite. The trusts objected. No ruling came by the time, I  
22 mean, no ruling came by the, the time that we had proposed that  
23 our brief would be due under the expedited procedures. But I  
24 did hear either yesterday or the day before -- it was very  
25 recently -- it was denied.

# EXHIBIT I



**Ellman, Jeffrey B.**

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**From:** Gordon, Gregory M.  
**Sent:** Monday, October 18, 2021 7:13 PM  
**To:** Zieg, Sharon; Ramsey, Natalie D.  
**Cc:** Wright, Davis L.; Harron, Edwin; Garland S. Cassada; RWorf@robinsonbradshaw.com; kcrandall@robinsonbradshaw.com; Ellman, Jeffrey B.; Jones, James M.; Edwards, Erin; Harron, Edwin  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples  
**Attachments:** NAI\_1522242299\_3\_Bestwall Stipulation and Order Pursuant to Federal Rule of Evidence 502(d) -- 10132021.DOCX

All:

Attached is the separate, "sneak peek" 502(d) order I referenced in my email last Wednesday. Please let me know as soon as you can if this is acceptable. As soon as you sign off, we will send it to the Court for entry so that we can provide the exemplar documents asap.

Thanks.

Greg

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---

**From:** Gordon, Gregory M.  
**Sent:** Wednesday, October 13, 2021 1:29 PM  
**To:** 'Zieg, Sharon' <SZIEG@ycst.com>; 'Ramsey, Natalie D.' <NRamsey@rc.com>  
**Cc:** 'Wright, Davis L.' <DWright@rc.com>; 'Harron, Edwin' <eharron@ycst.com>; 'Garland S. Cassada' <gcassada@robinsonbradshaw.com>; 'RWorf@robinsonbradshaw.com' <RWorf@robinsonbradshaw.com>; 'kcrandall@robinsonbradshaw.com' <kcrandall@robinsonbradshaw.com>; Ellman, Jeffrey B. <jbellman@jonesday.com>; Jones, James M. <jmjones@jonesday.com>; 'Edwards, Erin' <eedwards@ycst.com>; 'Harron, Edwin' <eharron@ycst.com>  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples

All:

Attached is a substantially revised draft of a proposed 502(d) order. Hopefully, this will bring the parties closer together on this issue.

As we have discussed, our proposal is to provide to the Committee and the FCR, pursuant to the terms of this order, written requests for authority to enter into the settlements that resolved the cases in a 1500 claim sample. Since you have not seen what these types of documents look like, our plan is to send you, pursuant to a separate 502(d) order, a few representative examples of them. That should assist the Committee and the FCR in deciding whether this proposal is acceptable or not.

We are working on a draft of this separate order now and will send it to you for your review and comment as soon as it is available.

Please check your schedules and let us know if you can meet and confer later in the week to discuss the terms of the proposed 502(d) order attached to this email (other than the provision on requests for authority, which we can discuss once you have a chance to review the examples).

Our goal is to reach an agreement on an acceptable form of 502(d) order and a 1500 claim sample as soon as possible. In the absence of an agreement, we plan to file a motion to approve a 502(d) order and a sample in time to be heard at the November 18 hearing. My understanding is that motion must be filed by October 28 in order to be timely.

We look forward to receiving the Committee's and the FCR's thoughts (potentially as soon as today) on a 1500 claim sample.

Thanks.

Greg

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**From:** Gordon, Gregory M.  
**Sent:** Tuesday, September 28, 2021 7:37 AM  
**To:** 'Zieg, Sharon' <[SZIEG@ycst.com](mailto:SZIEG@ycst.com)>; Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>  
**Cc:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Harron, Edwin <[eharron@ycst.com](mailto:eharron@ycst.com)>; Garland S. Cassada <[gcassada@robinsonbradshaw.com](mailto:gcassada@robinsonbradshaw.com)>; [RWorf@robinsonbradshaw.com](mailto:RWorf@robinsonbradshaw.com); [kcrandall@robinsonbradshaw.com](mailto:kcrandall@robinsonbradshaw.com); Ellman, Jeffrey B. <[jbellman@jonesday.com](mailto:jbellman@jonesday.com)>; Jones, James M. <[jmjonas@jonesday.com](mailto:jmjonas@jonesday.com)>; Edwards, Erin <[eedwards@ycst.com](mailto:eedwards@ycst.com)>; Harron, Edwin <[eharron@ycst.com](mailto:eharron@ycst.com)>  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples

Sharon:

The ACC/FCR prior proposal sought privileged documents for a sample (1600 claims) of the larger estimation sample. This proposal appears to seek all privileged documents for the full 2700 claim sample. Have the ACC and FCR changed their prior position, which sought privileged documents for a smaller sample?

Natalie, I would appreciate it if you could call me at some point today and let me know where the Committee stands on a sample proposal following yesterday's meeting.

Thanks.

Greg

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**From:** Zieg, Sharon <[SZIEG@ycst.com](mailto:SZIEG@ycst.com)>  
**Sent:** Monday, September 27, 2021 12:40 PM  
**To:** Gordon, Gregory M. <[gmgordon@JonesDay.com](mailto:gmgordon@JonesDay.com)>; Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>  
**Cc:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Harron, Edwin <[eharron@ycst.com](mailto:eharron@ycst.com)>; Garland S. Cassada <[gcassada@robinsonbradshaw.com](mailto:gcassada@robinsonbradshaw.com)>; [RWorf@robinsonbradshaw.com](mailto:RWorf@robinsonbradshaw.com); [kcrandall@robinsonbradshaw.com](mailto:kcrandall@robinsonbradshaw.com); Ellman, Jeffrey B. <[jbellman@JonesDay.com](mailto:jbellman@JonesDay.com)>; Jones, James M. <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>; Edwards, Erin <[eedwards@ycst.com](mailto:eedwards@ycst.com)>; Harron, Edwin <[eharron@ycst.com](mailto:eharron@ycst.com)>  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples

**\*\* External mail \*\***

Greg,

As an initial matter, I am looping in my partner Erin Edwards, please include her on correspondence in this chapter 11 case. In addition, it is inaccurate to say that you have not received a response to your prior email – it is my understanding that you and Natalie have had several calls discussing where we are on the sampling issue.

With respect to the Debtor’s proposed 502(d) order, which is completely different than the version we sent to the Debtor in July, the Committee and FCR will not agree to enter into an order with the limitations set forth in your proposed order. First, the Debtor’s proposed 502(d) order is far too narrow. In addition, and among other things, the Committee and the FCR cannot agree to a 502(d) order that is conditional on the Debtor obtaining trust discovery or limiting production of privilege materials from the claim files to Requests for Authority.

Accordingly, please see the attached, which is a revised version of the draft order we sent to the Debtor back in July, that addresses our Motion to Compel the Debtor to Produce Claim Files and Comply with Case Management Order. Let us know if you would like to schedule a call to discuss.

Regards,  
Sharon



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**From:** Gordon, Gregory M. <[gmgordon@JonesDay.com](mailto:gmgordon@JonesDay.com)>  
**Sent:** Friday, September 24, 2021 4:58 PM  
**To:** Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>  
**Cc:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Zieg, Sharon <[SZIEG@ycst.com](mailto:SZIEG@ycst.com)>; Harron, Edwin <[eharron@ycst.com](mailto:eharron@ycst.com)>; Garland S. Cassada <[gassada@robinsonbradshaw.com](mailto:gassada@robinsonbradshaw.com)>; [RWorf@robinsonbradshaw.com](mailto:RWorf@robinsonbradshaw.com); [kcrandall@robinsonbradshaw.com](mailto:kcrandall@robinsonbradshaw.com); Ellman, Jeffrey B. <[jbellman@JonesDay.com](mailto:jbellman@JonesDay.com)>; Jones, James M. <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples

All:

It is now less than five days from the September 29 status conference at which we are to report to the Court on our efforts to negotiate an approximate 1500 claim sample for purposes of the trust discovery and a FRE 502(d) order. Despite the passage of 3 weeks since I first reached out to you to start the process and your agreement to respond to the initial Bates White 1,501 claim sample, we have yet to receive a response or proposed sample from either the ACC or FCR. I understand from Natalie that the Committee has had meetings to consider a sample prepared jointly by Ankura and LAS but has been unable to reach a consensus on it. I further understand the Committee is meeting again late Monday afternoon to further consider the matter. Accordingly, it appears that the earliest we will receive a proposal is Monday night or Tuesday morning.

I advised Natalie some time ago that we had asked Bates White to redraw the sample to take into account the 500 cases you had asked us to add to the sample we are using for the estimation discovery. I proposed to send that updated sample to all of you in an effort to expedite the process. Natalie asked that we refrain from doing that and instead wait for the Ankura/LAS sample.

Given the further delay that has occurred since then, we believe it makes sense to forward to you now Bates White's sample, updated to accommodate your additional claims. I have attached to this email an Excel file that contains the updated sample and certain statistical information. This is a random sample taken from (a) the 1500 verdict and settled cases in our 2200 estimation claim sample plus (b) the 500 additional settled cases you added, and it is stratified to be a representative sample as all the parties agree. This updated random sample includes 358 of the 500 cases you added to the estimation sample, reflecting a proportionate reduction in each stratum to achieve an overall sample size of 1500. Not only is this sample drawn from the sample that the parties, by agreement, are using for individual claims analysis, the case files for these claims have already been collected at considerable time and expense and are currently under review by the parties.

I am also attaching to this email a short memorandum from Bates White that describes the process Bates White used to draw the updated sample. We are hopeful that, given the inclusion in this sample of the additional cases you identified, this sample will be acceptable to the Committee and the FCR for purposes of the trust discovery and a 502(d) order.

Finally, I am attaching to this email a proposed draft of a 502(d) order that would govern the production of privileged and/or work product-protected settlement information (as described therein) for the sample. The type of information

we propose to provide is the same kind of privileged and/or work product-protected information produced in Garlock and SPHC/Bondex.

To move the case and the estimation along, it is important that we reach agreement on a random sample as soon as possible. Bates White is prepared immediately to meet with Ankura and LAS to respond to any questions or work through any issues they may have. Moreover, in response to a comment Natalie made yesterday, I would note that Judge Connolly did not require that the sample be anonymized; he only required that trust data produced in respect of the sample be anonymized. Accordingly, any issues on anonymization should be set aside for now and the parties should focus on coming to a consensus on a random, representative sample.

Please feel free to contact us if you have questions or want to discuss. We are available at any time to meet and confer on this.

Thank you.

Greg

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---

**From:** Gordon, Gregory M.  
**Sent:** Wednesday, September 22, 2021 6:50 PM  
**To:** 'Ramsey, Natalie D.' <[NRamsey@rc.com](mailto:NRamsey@rc.com)>  
**Cc:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>; Edwin J. Harron <[eharron@ycst.com](mailto:eharron@ycst.com)>; Garland S. Cassada <[gccassada@robinsonbradshaw.com](mailto:gccassada@robinsonbradshaw.com)>; [RWorf@robinsonbradshaw.com](mailto:RWorf@robinsonbradshaw.com); [kcrandall@robinsonbradshaw.com](mailto:kcrandall@robinsonbradshaw.com); Ellman, Jeffrey B. <[jbellman@jonesday.com](mailto:jbellman@jonesday.com)>; Jones, James M. <[jmjones@jonesday.com](mailto:jmjones@jonesday.com)>  
**Subject:** RE: Trust Discovery and Rule 502(d) Samples

All:

I wanted to follow up again on this.

We are now less than a week from the September 29 hearing.

Please let us know where you stand.

We will be happy to jump on the phone tomorrow if that will help move this along.

Thanks.

Greg

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---

**From:** Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>  
**Sent:** Thursday, September 9, 2021 5:33 PM  
**To:** Gordon, Gregory M. <[gmgordon@JonesDay.com](mailto:gmgordon@JonesDay.com)>  
**Cc:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>; Edwin J. Harron <[eharron@ycst.com](mailto:eharron@ycst.com)>; Garland S. Cassada <[gcassada@robinsonbradshaw.com](mailto:gcassada@robinsonbradshaw.com)>; [RWorf@robinsonbradshaw.com](mailto:RWorf@robinsonbradshaw.com); [kcrandall@robinsonbradshaw.com](mailto:kcrandall@robinsonbradshaw.com); Ellman, Jeffrey B. <[jbellman@JonesDay.com](mailto:jbellman@JonesDay.com)>; Jones, James M. <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>  
**Subject:** Re: Trust Discovery and Rule 502(d) Samples

**\*\* External mail \*\***

Greg, I am out of pocket until next Wednesday. We are conferring with our expert and will revert as soon as possible after next Wednesday.

Best regards, Natalie

Sent from my iPhone

On Sep 9, 2021, at 4:25 PM, Gordon, Gregory M. <[gmgordon@jonesday.com](mailto:gmgordon@jonesday.com)> wrote:

All:

I wanted to follow up and see where you are on this.

Are you working on a counterproposal to our 1501 claim sample? Do you or your experts have any questions about our sample?

Given that September 29 is not that far away, can we schedule a call tomorrow to discuss status and next steps?

I have windows of availability from 11 to 1:30 ET and after 2:30 ET.

Thanks.

Greg

Gregory M. Gordon ([bio](#))  
Partner  
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Mobile +1.214.663.8437  
Fax +1.214.969.5100  
[gmgordon@jonesday.com](mailto:gmgordon@jonesday.com)

---

**From:** Gordon, Gregory M.  
**Sent:** Friday, September 3, 2021 6:04 PM  
**To:** Natalie Ramsey ([NRamsey@rc.com](mailto:NRamsey@rc.com)) <[NRamsey@rc.com](mailto:NRamsey@rc.com)>; Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>; Sharon M. Zieg - Young Conaway Stargatt & Taylor, LLP ([szieg@ycst.com](mailto:szieg@ycst.com)) <[szieg@ycst.com](mailto:szieg@ycst.com)>; Edwin Harron ([eharron@ycst.com](mailto:eharron@ycst.com)) <[eharron@ycst.com](mailto:eharron@ycst.com)>  
**Cc:** Cassada, Garland <[GCassada@robinsonbradshaw.com](mailto:GCassada@robinsonbradshaw.com)>; RWorf@robinsonbradshaw.com; KCrandall@robinsonbradshaw.com; Ellman, Jeffrey B. <[jbellman@jonesday.com](mailto:jbellman@jonesday.com)>; Jones, James M. <[jmjones@jonesday.com](mailto:jmjones@jonesday.com)>  
**Subject:** Trust Discovery and Rule 502(d) Samples

All:

Good to see everyone this week and sorry for the return travel difficulties that at least some of you (probably all of you) experienced.

I wanted to get the ball rolling on a potential resolution of the trust discovery sample and a potential Rule 502(d) agreement for a sample of privileged settlement documents.

On the trust discovery sample, you have our proposed 1,501 mesothelioma claim sample so it seems to me the ball is in your court to present a counter proposal. If you or your experts have questions or otherwise need additional information about our proposal, please let us know.

On the potential 502(d) agreement, we have your proposal as embodied in Davis's email from June 23. As you may recall, that proposal contains a 1,600 case file random sample. I believe that Bates White may have some questions about the sample. If they do, we will collect and forward them as soon as we can. In view of that proposal, however, it seems to me the ball is in our court to consider and respond to your proposed form of 502(d) order. Because the respective samples seem to overlap, I am thinking that it is best if we wait to hear from you on your counter to our discovery sample rather than responding at this point to your proposed sample. One question we should address is whether the 502(d) sample should be the same as, or a smaller subset of, the trust discovery sample. We have not yet discussed that issue with our client.

Once you have an opportunity to ask questions (if any) and respond to our proposed sample, we would propose to schedule a meeting, virtual or otherwise, in which the experts can participate, ask questions and exchange views.

In the end, we hope that, by working together with all of you (and your experts), we can reach an agreement that gets us past our privilege and trust discovery disputes, and puts both sides in a position to promptly secure the information they need. I should note that, in the case of the trust discovery, that also means that we will need to ensure that the trust data is not anonymized in a way that renders it useless.

Please let me know if you have questions or different thoughts on how to proceed.

I hope everyone has a relaxing and enjoyable Labor Day weekend.

Greg

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# EXHIBIT J

**Ellman, Jeffrey B.**

---

**From:** Wright, Davis L. <DWright@rc.com>  
**Sent:** Tuesday, October 19, 2021 9:05 AM  
**To:** Edwin J. Harron; Gordon, Gregory M.  
**Cc:** Sharon Zieg; Ramsey, Natalie D.; Garland S. Cassada; RWorf@robinsonbradshaw.com; KCrandall@robinsonbradshaw.com; Ellman, Jeffrey B.; Jones, James M.; Edwards, Erin  
**Subject:** Re: Trust Discovery and Rule 502(d) Samples

**\*\* External mail \*\***

Greg,

Confirming your conversations with Natalie over the weekend and yesterday that the Committee is unwilling to agree to any sample to be used in connection with trust discovery.

We'll review the draft order. We suggest meeting after the conclusion of the DBMP hearings on Friday.

Thanks,  
Davis

**Davis Lee Wright**

Robinson & Cole LLP  
1201 North Market Street  
Suite 1406  
Wilmington, DE 19801  
Direct 302.516.1703 | Fax 302.516.1699  
[dwright@rc.com](mailto:dwright@rc.com) | [www.rc.com](http://www.rc.com)

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**From:** Harron, Edwin <eharron@ycst.com>  
**Date:** Tuesday, October 19, 2021 at 8:59 AM  
**To:** Gregory M. Gordon <gmgordon@jonesday.com>  
**Cc:** Sharon Zieg <szieg@ycst.com>, Ramsey, Natalie D. <NRamsey@rc.com>, Wright, Davis L. <DWright@rc.com>, Garland S. Cassada <gcassada@robinsonbradshaw.com>, RWorf@robinsonbradshaw.com <RWorf@robinsonbradshaw.com>, KCrandall@robinsonbradshaw.com <KCrاندall@robinsonbradshaw.com>, Jeffrey B. Ellman <jbellman@jonesday.com>, Jones, James M. <jmjones@jonesday.com>, Edwards, Erin <eedwards@ycst.com>  
**Subject:** Re: Trust Discovery and Rule 502(d) Samples

Thanks Greg.

Would you agree to delete the following clause from paragraph A: "upon the satisfaction of certain stated conditions"?

# EXHIBIT K

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

\_\_\_\_\_  
In re :  
BESTWALL LLC<sup>1</sup> : Chapter 11  
 :  
Debtor. : Case No. 17-31795 (LTB)  
 :  
\_\_\_\_\_ :  
 :

**ORDER (A) APPROVING RESOLVED  
CLAIM SAMPLE AND (B) AUTHORIZING RELATED DISCLOSURE  
PURSUANT TO RULE 502(d) OF THE FEDERAL RULES OF EVIDENCE**

This matter came before the Court pursuant to the *Motion of the Debtor to (A) Approve Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence* (the “Motion”)<sup>2</sup> filed by the above-captioned debtor and debtor-in-possession (the “Debtor”). The Motion seeks an Order (a) approving a sample of resolved Bestwall Mesothelioma Claims<sup>3</sup> (the “Resolved Claim Sample”), as random, representative, and appropriate for use in the estimation proceeding contemplated by the Estimation Order (the “Estimation Proceeding”), including with respect to (i) Trust<sup>4</sup> discovery the Debtor has been authorized to seek and (ii) the Debtor’s disclosure of certain privileged information; and (b) authorizing the Debtor,

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 5815. The Debtor’s address is 133 Peachtree Street, N.E., Atlanta, GA 30303.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

<sup>3</sup> The term “Bestwall Mesothelioma Claims” has the meaning given to it in the *Order Authorizing Estimation of Current and Future Mesothelioma Claims* [Dkt. 1577] (the “Estimation Order”).

<sup>4</sup> The term “Trust” used herein refers collectively to the Delaware Claims Processing Facility (the “DCPF”), the ten asbestos trusts whose claims are managed by DCPF, and the Manville Personal Injury Settlement Trust.

under Rule 502(d) of the Federal Rules of Evidence (“Rule 502(d)”), to produce certain privileged attorney-client communications and attorney work product and to permit related testimony for claims in the Resolved Claim Sample, without waiving the protection for privileged communications or work product in this chapter 11 case or in any other federal or state proceeding.

Based upon a review of the Motion, the *Declaration of Jorge Raul Gallardo-Garcia, PhD* attached to the Motion as Exhibit B, the further submissions of the parties, the evidence presented, and the arguments of counsel at the hearing before the Court on November 18, 2021 (the “Hearing”), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 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. Adequate notice of the Motion and the Hearing was given, consistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court and the Case Management Order, and it appears that no other notice need be given.

2. The Motion is GRANTED as set forth herein.

3. The Court finds that the Resolved Claim Sample described in Exhibit A to this Order is a random, representative, and appropriate sample of the resolved Bestwall Mesothelioma Claims for use in the Estimation Proceeding, including with respect to (a) the Trust discovery the Debtor has been authorized to seek and (b) the Debtor’s disclosure of certain identified privileged information. Consistent with Civil Rule 16, made applicable herein pursuant to Bankruptcy Rules 7106 and 9014(c), the use of the Resolved Claim Sample in this case will facilitate

appropriate estimation-related discovery, promote the manageability of that discovery, and advance the Estimation Proceeding.

4. This Order shall govern the disclosure by the Debtor to the Claimant Representatives of certain attorney-client communications and attorney work product in connection with the Estimation Proceeding. Upon the terms and conditions set forth herein, the Debtor shall produce the attorney-client communications and attorney work product described below for the claims in the Resolved Claim Sample. The conditions set forth in subparagraphs 6(a) and 6(b) below must be fully satisfied prior to the Debtor being required to produce documents, or offer testimony, as discussed herein.

5. Rule 502(d) and the protections set forth in the *Agreed Protective Order Governing Confidential Information* [Dkt. 337] (the “Protective Order”) shall apply to and govern the terms of this Order. Any documents produced, or testimony provided, pursuant to this Order shall be deemed for “Professional Eyes Only” under the terms of the Protective Order.

6. Upon Debtor’s receipt of the trust data sought in the form of subpoena attached to the *Debtor’s Motion to Authorize Issuance and Service of New Subpoenas* [Dkt. 1924] (a) for each of the claims in the Resolved Claim Sample and (b) in a form that permits the parties and the Court to match that data with the discovery and litigation record for the cases in the Resolved Claim Sample on a claim-by-claim basis, the Debtor shall produce to the Claimant Representatives, for each claim in the Resolved Claim Sample, the written request for authority to settle the claim, whether in the form of a formal Request for Authority or in some other form (*e.g.*, in correspondence, a memorandum, or an email) and whether in the Debtor’s files or the claim files of its defense counsel, to the extent such request for authority exists and reasonably can be located (the “Privileged Requests for Settlement Authority”).

7. The Claimant Representatives may examine witnesses in connection with the Estimation Proceeding, including in deposition or at the estimation hearing, regarding the Privileged Requests for Settlement Authority and, to the extent that the questions asked are confined to the purpose, content, and use of the Privileged Requests for Settlement Authority, the Debtor shall not instruct witnesses, on the ground of privilege, not to answer the questions posed.

8. Any Privileged Requests for Settlement Authority and any testimony elicited at deposition or the estimation hearing as permitted by paragraph 7 above shall be treated as “Confidential Information” and designated for “Professional Eyes Only” under and subject to the corresponding non-disclosure, use, and access restrictions and other protections set forth in the Protective Order. The production and testimony referenced in this paragraph shall be used solely in and for the Estimation Proceeding.

9. The Claimant Representatives reserve their right to seek the production of other privileged communications or work product and the elicitation of other testimony that would reveal privileged communications or work product (including with respect to resolved Bestwall Mesothelioma Claims), and the Debtor and Georgia-Pacific LLC reserve their respective rights to object to the production of any other privileged communications or work product or the elicitation of any other testimony that would reveal privileged communications or work product.

10. Pursuant to Rule 502(d), the attorney-client privilege and protection for work product are not waived by any disclosure of the Privileged Requests for Settlement Authority in connection with the Estimation Proceeding or the related testimony of witnesses, as set forth in this Order, and any such disclosure or testimony also is not, and shall not be, a waiver in any other federal or state proceeding.

11. For the avoidance of doubt, this Order does not address whether the Resolved Claim Sample complies with the separate prior rulings of the United States District Court for the District of Delaware (the “Delaware District Court”) in connection with the Debtor’s service of subpoenas on the Trusts. *See In re Bestwall LLC*, Misc. No. 21-141 (CFC) (June 1 and 17, 2021 D. Del.) [Order, Dkts. 30, 33; Memorandum Dkt. 29]. If a new subpoena later becomes the subject of another motion to quash in the Delaware District Court, all questions of compliance with any orders of that court will be left for that court to determine.

12. In the event the Debtor receives Trust information for a different group of claims than those in the Resolved Claims Sample, it will seek to negotiate appropriate revisions to this Order with the Claimant Representatives or, in the absence of agreement, seek additional relief from this Court.

13. This Court shall retain exclusive jurisdiction over issues relating to the interpretation, modification, application, and enforcement this Order to the full extent permitted by law.

This Order has been signed electronically. The judge’s signature and court’s seal appear at the top of the Order.

United States Bankruptcy Court



## EXHIBIT A

Bates White claimant id	PACE reference id	PACE reference id 2
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10024417	GP.11E86A4	
10008960	GP.125227B	
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1001305406	GP.2E88484	
10004458	GP.2DD1624	
20066918	GP.1250EAD	
10001210	GP.2CD2325	
10001590	GP.2E72136	
1001318084	GP.30302FB	
20181107	GP.11A5821	
1001225556	GP.118C275	
20152584	GP.11A0DAD	
1001257250	GP.11B12E6	
10002690	GP.11D8261	
1001259419	GP.11B76D1	
20051383	GP.11CEEE5	
20109035	GP.11D9978	
1001225495	GP.118C1BB	
20267640	GP.11A6239	
40021855	GP.11AE35F	
1001255256	GP.11AD4F5	
20036828	GP.1191690	
20185823	GP.11B1019	
10011696	GP.11B0AAC	
20232687	GP.1198A9E	
1001300193	GP.16DF73B	

# EXHIBIT L



Deposition of:  
**Mark Peterson**

*July 27, 2021*

In the Matter of:  
**DBMP LLC, In re**

**Veritext Legal Solutions**

800.743.DEPO (3376) | [Calendar-carolinas@veritext.com](mailto:Calendar-carolinas@veritext.com) |  
[www.veritext.com](http://www.veritext.com)

1 UNITED STATES BANKRUPTCY COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 BANKRUPTCY DIVISION  
4

5 -----  
6 DBMP, LLC

Chapter 11

Case No. 20-30080

7 Debtor.

(JCW)

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9  
10 ZOOM VIDEOTAPED DEPOSITION OF  
11 MARK PETERSON  
12 Thousand Oaks, California  
13 Tuesday, July 27, 2021  
14 Volume I  
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18  
19  
20  
21

22 Reported by:

LORI M. BARKLEY

23 CSR No. 6426  
24

25 PAGES 1 - 199



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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
BANKRUPTCY DIVISION

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DBMP LLC, ) Chapter 11  
) Case No. 20-30080  
Debtor. ) (JCW)  
)

Zoom Videotaped deposition of Mark Peterson,  
Volume I, taken at Thousand Oaks, California,  
beginning at 11:07 a.m., and ending at 5:04 p.m.,  
Eastern Daylight Time, on Tuesday, July 27, 2021,  
before LORI M. BARKLEY, Certified Shorthand Reporter  
No. 6426.

1 minimum. Doubt, would be several thousand unless we  
2 felt the need for a census.

3 Q. Okay. What can you tell me about the  
4 general plan that you have?

5 A. Basically did. That if you look at those  
6 cases that were resolved for some -- for a high value  
7 and something like at trial or half a million or  
8 more, it would get one -- they would be all taken  
9 because they're of the most financial significance  
10 and then as you go down, something like -- this is  
11 hypothetical now.

12 Just illustrative, you go down to 200,000  
13 and above or some value like that and take a smaller  
14 sample of them, and as you go down in value to  
15 100,000, 50,000, so on, you take a smaller sample of  
16 that, because you've got a higher number of claims,  
17 you take -- well, I'm confusing this.

18 You take a smaller percentage of that, but  
19 because of the larger number of claims at low value,  
20 you get a large number of claims, you just don't want  
21 -- they don't have as much -- significance and you  
22 don't want to do it. So it's overwhelmed.

23 I think that's the best I can do.

24 Q. Okay. Have you -- yeah. You've studied the  
25 debtors 'claims database in this case?

1 against CertainTeed resolved and A is withdrawn, and  
2 there's a question, was the claim subsequently  
3 refiled.

4 What's the relevance of that information?

5 A. It's now an open claim. If you just looked  
6 at this and thought that it was withdrawn, you would  
7 think it's a dismissed claim. If it's not been  
8 re-opened, it's not a dismissed claim.

9 Q. What are you doing for the claims that were  
10 withdrawn and dismissed, what -- how are you  
11 evaluating that, what are you --

12 A. You're excluding them from the analysis.

13 Q. What claims are you including this the  
14 analysis?

15 A. Claims that got paid, were filed since 2007  
16 and they'll be sampled probably weighted with regard  
17 to the amount of money that they got.

18 So the claims included maybe some selection  
19 on who the law firm is, because we don't want to over  
20 burden any particular law firm.

21 Q. So the claims that you're going to be focus  
22 it ing on were the ones settled for payment?

23 A. The claims that have a value, yes. We  
24 may -- we may pick up some claims that have zero  
25 payments if there are issues we think we need to

# EXHIBIT G

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re  BESTWALL LLC, <sup>1</sup>  Debtor.	Chapter 11  Case No. 17-31795 (LTB)
--------------------------------------------------------	-------------------------------------------

**DECLARATION OF JORGE GALLARDO-GARCIA, PHD**

I, Jorge Gallardo-García, PhD declare:

- (1) I am a Partner with Bates White, LLC (“Bates White”), an economic consulting firm with its primary office located in Washington, DC. The U.S. Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) authorized Bestwall LLC (“Bestwall”) to retain Bates White in its chapter 11 case by an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.<sup>2</sup> I am duly authorized to make this Declaration as a consultant for Bestwall in this action.

**Qualifications**

- (2) I specialize in the application of statistics and computer modeling to economic and financial issues, and I have extensive experience working on the construction and design of complex databases for econometric and statistical analyses. I have more than 20 years of experience in the management, design, and analysis of large complex databases using statistical and econometric tools. Further, I have 15 years of experience in the management, design, and analysis of large complex asbestos personal injury and wrongful death claims’ databases using statistical and econometric tools for valuation and forecasting. In particular, I have designed representative and efficient random samples of claims for multiple asbestos-related matters, and those samples have been used in central valuation analyses in those matters. I have submitted expert reports and

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 5815. The Debtor’s address is 133 Peachtree Street, N.E., Atlanta, GA 30303.

<sup>2</sup> *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC, as Asbestos Consultants as of the Petition Date*, No. 17-31795 (Bankr. W.D.N.C. Nov. 2, 2017) (Dkt. 40).

testified in U.S. Bankruptcy Court regarding the construction and reliability of asbestos claims databases.

- (3) I received a PhD and an MA in Economics from the University of Pennsylvania, and a BS in Economics, a BS in Business Administration, and an MA in Economics from the Instituto Autónomo de México in Mexico City.
- (4) A complete and accurate copy of my curriculum vitae is attached as Exhibit 1 to this Declaration.
- (5) I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, would testify competently to such facts under oath.

### **Background**

- (6) Bestwall retained Bates White in its chapter 11 case to perform, among other things, a reliable estimation of Bestwall's legal liability for mesothelioma claims; that is, estimating Bestwall's share of final judgments that would be obtained by current and future Bestwall mesothelioma claimants.
- (7) Since the commencement of Bestwall's chapter 11 case, I have been leading Bates White's work to construct an analytical database containing information about the asbestos personal injury and wrongful death claims filed against Bestwall and its predecessors (the "Bestwall Analytical Database"). This Bestwall Analytical Database will be the foundation for most of the analyses Bates White will perform in Bestwall's case, including Bates White's estimate of Bestwall's legal liability.
- (8) I led Bates White's design, construction, and implementation of a random sample of historical Bestwall mesothelioma claims for further review and analysis (the "Bestwall Random Sample"), as one of the components for the Bestwall Analytical Database. The Bestwall Random Sample is comprised of 2,407 claims, of which 35 are verdicts, 1,466 are settled claims, and 906 are dismissed claims. I described the statistical foundation, the methodology, and the design for the Bestwall Random Sample in my June 29, 2021 Declaration (the "June Declaration").<sup>3</sup> In the June Declaration, I also explained that the Bestwall Random Sample was designed to be a representative and efficient sample that can provide a reliable characterization of Bestwall's

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<sup>3</sup> Declaration of Jorge Gallardo-García, PhD, June 29, 2021 (Dkt. 1924-G).

mesothelioma resolution history. The opinions I offered in the June Declaration concerning the reliability and efficiency of the Bestwall Random Sample remain unchanged.

- (9) It is my understanding that Bestwall’s counsel provided the list of 2,407 Bestwall claims comprising the Bestwall Random Sample to the Official Committee of Asbestos Personal Injury Claimants (the “ACC”) and the Future Claimants’ Representative (the “FCR” and, together with the ACC, the “Claimant Representatives”). It is my further understanding that Bestwall’s counsel also provided to the Claimant Representatives information about how Bates White designed the Bestwall Random Sample and that such information was then provided to the FCR’s consultant, Ankura Consulting Group, LLC (“Ankura”). According to an email from the FCR’s counsel,<sup>4</sup> Ankura, on behalf the Claimant Representatives, randomly selected 500 settled mesothelioma claims (the “ACC/FCR Additional Claims”) that were not already part of the Bestwall Random Sample.<sup>5</sup> The email from the FCR’s counsel further represented that the ACC/FCR Additional Claims were drawn from the settled claims not sampled in the Bestwall Random Sample using a stratified random sampling technique in which Ankura first assigned the non-sampled settled claims to groups based on claim amount and then drew claims randomly from certain groups using simple random sampling.<sup>6</sup> Upon review of the ACC/FCR Additional Claims, Bates White has determined that all those claims appear in the Bestwall claims database with settlements for less than \$400,000 each.
- (10) Taken together, the Bestwall Random Sample and the ACC/FCR Additional Claims include a total of 1,966 settled mesothelioma claims. Thus, accounting for **the 35 verdicts that were randomly selected** in the Bestwall Random Sample, there are a total of 2,001 Bestwall verdict and settled mesothelioma claims within the combined samples (the “Combined Random Sample”).<sup>7</sup> The Combined Random Sample, when weighted appropriately, is also a

<sup>4</sup> Sharon M. Zieg, Young Conaway Stargatt & Taylor LLP, email message to Davis L. Wright and Natalie D. Ramsey, Robinson & Cole LLP; James M. Jones, Jennifer L. Del Medico, Gregory M. Gordon, Jeffrey B. Ellman, and Jeff A. Kaplan, Jones Day; Garland Cassada and Stuart Pratt, Robinson Bradshaw; Erin Edwards, Edwin Harron, Elisabeth Bradley, and Paul Loughman, Young Conaway Stargatt & Taylor LLP; Richard Schneider, King & Spalding; with copy to Anne M. Steadman, Young Conaway Stargatt & Taylor LLP (July 8, 2021), attached as Exhibit 2 to this Declaration.

<sup>5</sup> Thus, the set of ACC/FCR Additional Claims do not overlap with the Bestwall Random Sample.

<sup>6</sup> I understand that Ankura separated the settled claims that were not part of the Bestwall Random Sample into groups defined by cutoffs of \$50,000. Then, the ACC/FCR Additional Claims were randomly selected from the groups with cutoff values up to \$400,000. At this time, certain questions remain about details of the stratified random sample methodology the ACC and FCR consultants used in selecting the ACC/FCR Additional Claims. For purposes of this Declaration and for designing the subsample described herein, I accept the FCR’s counsel’s representations as accurate.

<sup>7</sup> 2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the ACC/FCR Additional Claims.

representative sample of Bestwall's mesothelioma verdicts and settlement history because the Bestwall Random Sample is a representative sample of that resolution history and the ACC/FCR Additional Claims were drawn randomly, as described by the FCR's counsel. The Combined Random Sample, however, is less efficient as it includes more claims than necessary given that representativeness was already provided by the Bestwall Random Sample.

- (11) While both the Bestwall Random Sample and Combined Random Sample are reliable random samples for performing analyses related to Bestwall's liability estimation, Bestwall's counsel requested that I prepare a third sample that accounts for the ACC/FCR Additional Claims. In particular, Bestwall's counsel requested that, using the Combined Random Sample, Bates White prepare a random sample of approximately 1,500 verdict and settled claims (the "Joint 10% Random Sample"). As explained below, the claims in the Joint 10% Random Sample were randomly selected from the 2,001 Bestwall verdict and settled mesothelioma claims in the Combined Random Sample, which include the ACC/FCR Additional Claims.

### Overview

- (12) I make this Declaration at the request of Bestwall's counsel in connection with Bestwall's *Motion to (A) Approve the Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence* filed in the above-referenced chapter 11 case. This Declaration describes the Joint 10% Random Sample for use in Bestwall's estimation proceeding.
- (13) The Joint 10% Random Sample was constructed by random sampling from the 2,001 verdict and settled cases in the Combined Random Sample. Like for the Bestwall Random Sample, Bates White followed well-established and generally accepted methods of statistical sampling when designing the Joint 10% Random Sample. This included accounting for Bates White's use of stratified random sampling for the Bestwall Random Sample and Ankura's reported use of stratification and supplemental random sampling methods for the ACC/FCR Additional Claims.
- (14) A stratified random sample of Bestwall mesothelioma claims can be designed to be representative of claims settled with different amounts by ensuring that the resulting sample includes sufficient examples from the whole distribution of amounts. I explained this in detail in my June Declaration. The Joint 10% Random Sample preserves the stratification structure that was in place for the Bestwall Random Sample and accounts for the ACC/FCR Additional Claims. Further, with detailed information about the methodology followed by Ankura in



selecting the ACC/FCR Additional Claims,<sup>8</sup> the Joint 10% Random Sample can be used as representative of Bestwall's mesothelioma verdicts and settlements history and can be used for robust statistical analyses in this matter.

### **Random Sampling Techniques**

- (15) As explained in my June Declaration, sampling is a useful strategy if gathering and reviewing information for the whole population by conducting a census is not an option, for example, due to the financial cost or time delay associated with such an exercise. Because a sample includes only a fraction of the whole population, it invariably increases the analytical burden and can reduce the precision of results when compared to performing the same analysis on data for the whole population. Thus, any sample of a population should be designed in a manner that reduces the analytical burden and the uncertainty in the results. Such a sample should include elements from all segments of the target population, with sufficient numbers to allow for robust inferences. In order to draw a representative random sample that can be used to make robust inferences about the population, the sampling technique chosen in a specific situation must take into account the characteristics of the population and the level of precision desired.
- (16) Stratified random sampling is a technique that involves dividing the target population based on known characteristics into smaller non-overlapping groups such that every element of the population belongs to one and only one group. Then, within each group, simple random sampling is applied, where each element within the group has an equal probability of being sampled.<sup>9</sup>

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<sup>8</sup> At this time, Bates White has not received the sampling weights Ankura calculated for each of the settled claims not in the Bestwall Random Sample. Additionally, Bates White has not received information on the exact stratification followed by Ankura. However, based on representations from the FCR's counsel, the Joint 10% Random Sample is a representative sample of Bestwall's mesothelioma verdicts and settlements history. Should those representations prove incorrect, I reserve the right to update my opinions in this Declaration.

<sup>9</sup> Stratified random sampling is used in a wide range of fields and applications by economists, statisticians, researchers, and statistical agencies. For example:

The Current Population Survey (CPS), published by the Bureau of Labor Statistics, is one of the most recognized surveys in the United States (<https://www.bls.gov/cps/>). The CPS technical documentation describes the stratified sampling design for this survey (*see* [https://www.bls.gov/cps/sample\\_redesign\\_2014.pdf](https://www.bls.gov/cps/sample_redesign_2014.pdf)).

The American Community Survey (ACS) is conducted by the Census Bureau (<https://www.census.gov/programs-surveys/acs>). Its "Design and Methodology" publication describes how it uses a stratification strategy based on a measure of the size of the *Census Block* (*see* [https://www2.census.gov/programs-surveys/acs/methodology/design\\_and\\_methodology/acs\\_design\\_methodology\\_previous.pdf](https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_previous.pdf)).

For textbook examples of the theoretical foundation and applications of stratified random sampling methods *see*:

**The Joint 10% Random Sample**

- (17) As described in detail in my June Declaration, Bates White designed and identified the Bestwall Random Sample as a stratified random sample representative of Bestwall’s historical mesothelioma claims that were resolved through verdict, settlement, or that were dismissed by the claimants.
- (18) Bestwall’s asbestos tort experience shows an uneven distribution of the number of claims it resolved, including the divergence of settlement values, and the rarity of cases resolved through verdict and by settlements over \$1 million. My June Declaration provides a detailed description of Bestwall’s distribution of its mesothelioma settlement amounts and rarity of verdicts. For example, of the approximately 15,000 settled mesothelioma claims in Bestwall’s tort history, more than 60% settled for \$50,000 or less while less than 1% were settled for amounts of more than \$1 million. Further, the 35 mesothelioma verdicts (7 plaintiff verdicts and 28 defense verdicts) Bestwall experienced in its tort history represent only about 0.23% of the mesothelioma claims that Bestwall resolved through verdict or settlement.
- (19) Therefore, to ensure that the Joint 10% Random Sample includes sufficient observations of claims with different claimant and claim characteristics, especially those that are rare—e.g., verdicts and claims with high settlement values—I maintained the same stratification used to draw the Bestwall Random Sample.
- (20) The Joint 10% Random Sample is a subsample drawn from the Combined Random Sample which incorporates the Bestwall Random Sample and the ACC/FCR Additional Claims, and that can be used as a representative sample of Bestwall’s historical mesothelioma verdicts and settlements population.
- (21) Specifically, the Joint 10% Random Sample was designed as follows. First, Bates White pooled the 2,001 Bestwall verdict and settled claims from the Bestwall Random Sample and the ACC/FCR Additional Claims into a single set of Bestwall claims (the Combined Random Sample). Second, Bates White classified each of the 2,001 claims in this combined set using the same stratification for verdict and settled claims used for the Bestwall Random Sample.<sup>10</sup> That is,

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Paul S. Levy and Stanley Lemeshow, *Sampling of Populations: Methods and Applications*, 4th ed. (Hoboken, N.J.; Wiley, 2013).

William G. Cochran, *Sampling techniques*, 3rd ed. (New York; Wiley, 1977).

<sup>10</sup> As explained in my June Declaration, for purposes of asbestos trust discovery, dismissed claims were not included in the 1,501 random sample described in such declaration and are also not included in the Joint 10% Random Sample described herein.

the pooled set of 2,001<sup>11</sup> mesothelioma verdict and settled claims from the Combined Random Sample were parsed into 157<sup>12</sup> non-overlapping groups as follows:

- Verdicts (including plaintiff and defense verdicts)
  - For simplification, these claims were assigned to only one group.
- Settlements
  - Bates White separated settled claims into 156<sup>13</sup> non-overlapping groups based on the period of claim resolution,<sup>14</sup> injured party/claimant gender,<sup>15</sup> settlement amount category,<sup>16</sup> and an indicator for law firms with the majority of claims resolved through group settlements.<sup>17</sup>

(22) Third, within each group defined above, Bates White randomly sampled claims with equal probability.<sup>18</sup>

- For simplicity and computational convenience, all 181 claims in the groups including verdicts and settlements of more than \$1 million were included in the Joint 10% Random Sample. This is because, if these 181 claims were assigned to groups using the same factors used for the rest of the settlements, the number of claims in those resulting groups would be small. This would result in having to include all claims within those groups in a representative sample to account for differences across those claims, as those claims present large variation across claimant characteristics of interest for analysis. Further, as

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<sup>11</sup> 2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the ACC/FCR Additional Claims.

<sup>12</sup> This is comprised of one group for verdicts and 156 groups for settlements.

<sup>13</sup> Bates White divided settled claims into 3 categories by claim resolution period, 2 categories by injured party/claimant gender, 13 categories by settlement amount, and 2 categories by the indicator for law firms with the majority of claims resolved through group settlements. Therefore, there were a total of 156 groups for settled claims ( $156 = 3 \times 2 \times 13 \times 2$ ). The definitions of these categories are described in the next footnotes.

<sup>14</sup> The resolution years in the Bestwall database were divided into three periods: through 2000, from 2001 through 2010, and from 2011 through Bestwall's bankruptcy petition date (November 2, 2017).

<sup>15</sup> Claimants were identified as male or female based on the gender field included in the database.

<sup>16</sup> Settlement amounts were divided into 13 categories, based on cut-off levels observed in the data at \$10,000, \$25,000, \$50,000, \$75,000, \$100,000, \$200,000, \$300,000, \$400,000, \$500,000, \$1 million, \$2 million, \$5 million, and greater than \$5 million.

<sup>17</sup> Bates White classified claim records based on whether a claim was represented by a plaintiff law firm with which Bestwall entered into settlement agreements to resolve multiple claims at once, as part of inventory deals, docket clearing deals, or matrix agreements. That classification had two categories: (1) claims represented by law firms whose group settlements accounted for 50% or less of their Bestwall settled claims, and (2) claims represented by law firms whose group settlements accounted for more than 50% of their Bestwall settled claims.

<sup>18</sup> The random sampling algorithm was designed to select a minimum of two claims from each group.

explained in my June Declaration, because these cases were important in terms of liability concerns for Bestwall, importance sampling techniques also result in their inclusion in the sample.

- Bates White then drew the rest of the random sample from each defined group that contained one or more of the remaining 1,820 (= 2,001 – 181) claims.
  - Because 181 claims (verdicts and settlements for more than \$1 million) out of the approximate 1,500 target sample size<sup>19</sup> were already selected, 1,319 claims remained to be drawn. To approximate the distribution from the 2,001 target population, which includes the ACC/FCR Additional Claims, Bates White drew 72.5% of the claims in each group, with the resulting sample size rounded to the nearest integer.<sup>20</sup> The rounding in the number of claims resulted in an additional 1,320 claims drawn in this stage, only one more claim than the initial target.

- (23) The resultant Joint 10% Random Sample includes 1,501 claims: 35 verdicts and 1,466 settled claims. Of the 1,466 randomly selected settled claims, 358 were part of the ACC/FCR Additional Claims. Thus, 72% of the ACC/FCR Additional Claims were randomly selected for inclusion in the Joint 10% Random Sample.<sup>21</sup> Further, the percentage of claims in amount groups to which Ankura added claims (those with settlements of up to \$400,000) increased from about 71% in the Bestwall Random Sample to 76%<sup>22</sup> in the Joint 10% Random Sample. Because the 1,501 claims in the Joint 10% Random Sample were randomly selected from the verdict and settled claims from the representative Combined Random Sample using stratified random sampling, the resulting sample is also a representative random sample that can be reliably used for analysis.
- (24) To summarize, the Joint 10% Random Sample is a representative random subsample from the representative Combined Random Sample, which is composed of the Bestwall Random Sample and the ACC/FCR Additional Claims.

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<sup>19</sup> The 1,500 target represents about 10% of the approximately 15,000 resolved mesothelioma claims.

<sup>20</sup> The 72.5% is the result of calculating the percentage that the 1,319 claims still to be drawn ( $1,319 = 1,500 - 181$ ) represent out of the remaining target population of 1,820 ( $1,820 = 2,001 - 181$ ); i.e.,  $72.5\% = (1,500 - 181) \div (2,001 - 181)$ .

<sup>21</sup>  $72\% = 358 \div 500$ .

<sup>22</sup> These percentages assume that Ankura included the amount \$400,000 in the boundary for the top group to which they added claims. If Ankura defined that top group as “less than \$400,000” (excluding the amount \$400,000 in the boundary), the percentage represented by the supplemented groups increased from 69% in the Bestwall Random Sample to 74% of the Joint 10% Random Sample.

- (25) My understanding that the claim documents for both the Bestwall Random Sample and the ACC/FCR Additional Claims (and, therefore, for the Joint 10% Random Sample) have already been collected.
- (26) Bates White's work on this matter is ongoing. I reserve the right to update or supplement my Declaration at the request of counsel, or in the event that I receive any new information that has a material impact on my opinions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 28, 2021



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Jorge Gallardo-García, Ph.D.  
Partner  
Bates White, LLC





2001 K Street NW North Building, Suite 500  
Washington, DC 20006  
Main 202. 408. 6110

## JORGE RAÚL GALLARDO-GARCÍA, PHD

Partner

### AREAS OF EXPERTISE

- Product liability forecasting
- Statistical analysis
- Insurance allocation
- Applied econometrics
- Financial reporting
- Labor and health economics



### SUMMARY OF EXPERIENCE

Jorge Gallardo-García has authored and submitted expert reports and declarations and provided deposition testimony in several litigation matters. He has extensive experience in statistical modeling and data analysis and performs economic analysis, valuation, forecasting, sample design, and research, as well as discovery support. He has worked on numerous engagements involving product liability issues, in the context of bankruptcy procedures, insurance coverage disputes and settlement support, financial reporting, and strategic consulting. In addition, he has presented results of his work at national conferences on asbestos litigation topics and actuarial methods.

Prior to joining Bates White, Dr. Gallardo-García conducted empirical research on social program evaluation, labor and health economics, and demography. As part of his research, he simulated policy experiments for evaluating effects of different government health policies may have on health outcomes.

### EDUCATION

- PhD, Economics, University of Pennsylvania
- MA, Economics, University of Pennsylvania
- MA, Economics, ITAM, México City, México (*summa cum laude*)
- BS, Business Administration, ITAM, México City, México (*summa cum laude*)
- BS, Economics, ITAM, México City, México (*magna cum laude*)

### SELECTED BATES WHITE EXPERIENCE

- Retained as a complex database construction and statistics expert on behalf of the debtor in the matter *In re DBMP LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.
- Retained and authored declarations as a complex database construction and statistics expert on behalf of the debtor in the matter *In re Bestwall LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.

- Retained and authored declarations as a complex database construction and statistics expert on behalf of Truck Insurance Exchange in the matter *In re Kaiser Gypsum Company, Inc., et al.* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.
- Retained and authored declarations as a complex database construction and statistics expert on behalf of certain insurance carriers in the matter *Rapid American Corporation, et al., v Travelers Casualty and Surety Company, et al.* in the US Bankruptcy Court for the Southern District of New York.
- Engaged as expert by John Crane Inc. and authored declarations in relation to Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuits it filed against certain law firms in connection with the firms' conduct in previous personal injury and wrongful death cases alleging exposure to John Crane's asbestos-containing products.
- Authored expert reports and declarations and provided deposition and trial testimony on behalf of the Debtors in the matter *In re Garlock Sealing Technologies, LLC*, No. 10-BK-31607 (US Bankruptcy Court for the Western District of North Carolina). Analyzed large, complex data sets and developed robust random samples that were used to assess the value of pending and future asbestos-related personal-injury claims. The resulting database constructed in this matter was described by the presiding Judge as "...the most extensive database about asbestos claims and claimants that has been produced to date. It is the most current data available and is the only data that accurately reflects the pool of claims against Garlock."
- Submitted a declaration on behalf of insurance companies in relation to the matter *In re Pittsburgh Corning Corporation*, No. 00-22876-TPA (US Bankruptcy Court for the Western District of Pennsylvania). Discussed the overlap between the claimants who cast a ballot in the PCC bankruptcy and the claimants who appear in the publicly available Garlock Analytical Database.
- Produce annual and quarterly estimates of companies' potential asbestos and other tort-related expenditures, and author opinion letters to help clients ensure compliance with Sarbanes-Oxley, SEC, and other comprehensive reporting requirements.
- Led team supporting the asbestos claims valuation and forecasting expert in arbitration on behalf of Cooper Industries in *Pepsi-Cola Metropolitan Bottling Co. et al. v. Cooper Industries et al.*
- Led team in support of expert in asbestos claims valuation for financial reporting purposes on behalf of certain Halliburton stockholders (US District Court, Northern District of Texas) regarding Halliburton's financial disclosures of its asbestos liabilities after its acquisition of Dresser.
- Led team supporting the expert in asbestos claims valuation, estimation methodology, and asbestos reinsurance billing on behalf of American Re-Insurance Company and ACE Property and Casualty Company (New York Court of Appeals) regarding the proper reinsurance bill associated with USF&G's reinsurance of its asbestos-related payments to Western MacArthur.
- Estimated and simulated future asbestos-related expenses in litigation contexts.
- Implemented insurance allocation of asbestos-related losses in financial reporting, invoicing, and litigation contexts.
- Designed and implemented statistically representative samples for claim file audits regarding asbestos claims. Samples were used in the estimation of future asbestos-related expenses and insurance allocations in litigation and consulting contexts.



- Directed protocol design and database construction based on data collected through claim file reviews regarding asbestos claims. The products were used to estimate future asbestos-related expenses and insurance allocations in litigation and consulting contexts.

## ACADEMIC EXPERIENCE

- At the University of Pennsylvania, conducted empirical research on infant health, labor market participation, and healthcare insurance availability
- Participated as part of the external evaluation team at the University of Pennsylvania in the largest experiment-designed social program, the Progres/Oportunidades from México
- Collaborated as a teaching assistant for the Microeconomic Theory course of the PhD in Economics program at the University of Pennsylvania
- Held recitation sessions on Introductory Macroeconomics at the University of Pennsylvania
- Conducted economic research as visiting researcher at Centre for Economic Research (CIE), ITAM, México City, México
- Taught Applied Econometrics as an invited lecturer at ITAM, México City, México
- Conducted research on inflation as a visiting researcher at the Economic Research Department in Banco de México, México
- Participated as Economic Advisor on topics involving electricity demand estimation at Miguel Estrada Iturbide Foundation, Congress of México, México City, México
- Participated as Economic Analyst at the Centre for Economic Analysis and Research (CAIE), ITAM, México City, México

## DISTINCTIONS AND HONORS

- First place in the research category of the 2006 Banamex Economics Award, one of the most prestigious prizes to economic research in México that has been awarded by the Banco Nacional de México since 1951. This international competition is focused on conducting research on development economics and public policy applicable to México. The panel of judges includes the Secretary of Finance, the Governor of the Central Bank, deans of the economics departments from the most prestigious universities in México, and members of the Economics Research Department of Banamex.

• Dissertation Fellowship, Department of Economics, University of Pennsylvania.

- Mellon Award for Latin American Demographic Studies, University of Pennsylvania.
- Inaugural recipient, President Emerita Judith Rodin Graduate Fellowship Award.
- University Fellowships, Department of Economics, University of Pennsylvania.
- Academic Excellence Scholarship, CONACYT, México City, México.

## PUBLICATIONS

- “Are Conditional Cash Transfers Effective in Urban Areas? Evidence from Mexico,” joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd, and Viviana Vélez-Grajales, in *Education Economics*, Taylor and Francis Journals, vol. 20, no. 3 (2012): 233–59.

- “Oportunidades Impact on Children and Youths Education in Urban Areas after One-year of Program Participation,” (in Spanish) with Petra E. Todd, Jere R. Behrman and Susan W. Parker, in *External Evaluation of the Impact of Oportunidades Program 2004: Education*, eds. B. Hernández-Prado, and M. Hernández-Avila, Chapter 3, Vol. 1, 167–227 Cuernavaca, México: National Institute of Public Health, 2005.

### SELECTED SPEAKING ENGAGEMENTS

- “The Future of Mesothelioma in the US and the Increasing Portion of Diagnoses Not Related to Asbestos Exposure: Estimation and Forecasting.” 1st Annual Asbestos Litigation Strategies ExecuSummit, Dec. 2–3, 2014.
- “Emerging Trends in Asbestos Reserving.” Casualty Actuarial Society 2014 Casualty Loss Reserve Seminar, Sept. 15, 2014.
- “An Asbestos Defendant’s Legal Liability—the Experience in Garlock’s Bankruptcy Asbestos Estimation Trial.” Bates White webinar, July 29, 2014.
- “By the Numbers: The Future of Mesothelioma in America.” Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference, Mar. 18, 2014.

### RESEARCH PAPERS

- “Health Insurance and Pregnancy Outcomes: An Analysis of Fertility, Prenatal Care and Employment in México,” PhD Dissertation, University of Pennsylvania, 2006
- “How School Subsidies Impact Schooling and Working Behaviors of Children and Youth in Urban México,” joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd and Viviana Vélez-Grajales (working paper, University of Pennsylvania, 2005)
- “Forecasting Inflation with Factor Analysis: A Two Countries Application,” Banco de México and University of Pennsylvania, 2003
- “Interest Rate Parity and Risk Premium in Mexico,” ITAM, 2001, México City, México
- “Evidence of Long Memory in the Mexican Currency Market,” ITAM, 2001, México City, México

### LANGUAGES

- Spanish (native)

**Exhibit 2**

**From:**  
**Sent:**  
**To:**

**Cc:**  
**Subject:**

In follow-up to our call yesterday regarding the negotiation of the 502(d) order, the following is a description of how the additional 500 claims were selected:

- Ankura divided the population of settled claims into non-overlapping groups, using cutoffs that were multiples of \$50k
- Ankura randomly selected additional claims so that the overall sample size (Bates + Ankura/LAS) for each of the 5 groups between \$150K and \$400K, is 110
- Next, Ankura randomly sampled from the three most underrepresented groups (other than the "less than \$50K" group) until the overall sampling rate (Bates + Ankura/LAS) in each of the three groups was 17%
- Finally, Ankura randomly sampled 39 claims from the "less than \$50K" group

Regards,  
Sharon



**Sharon M. Zieg, Partner**  
 Young Conaway Stargatt & Taylor, LLP  
 Rodney Square, 1000 North King Street  
 Wilmington, DE 19801  
 P: 302.571.6655 | F: 302.576.3350  
[SZIEG@ycst.com](mailto:SZIEG@ycst.com) | [www.youngconaway.com](http://www.youngconaway.com) | [vCard](#)

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**From:** Wright, Davis L. <DWright@rc.com>  
**Sent:** Tuesday, July 6, 2021 9:13 PM  
**To:** Jones, James M. <jmjones@JonesDay.com>; Ramsey, Natalie D. <NRamsey@rc.com>; Del Medico, Jennifer L. <jdelmedico@JonesDay.com>; Edwards, Erin <eedwards@ycst.com>; Gregory M. Gordon <gmgordon@jonesday.com>; Jeffrey B. Ellman <jbellman@jonesday.com>; Garland Cassada (GCassada@rbh.com) <GCassada@rbh.com>; Harron, Edwin <eharron@ycst.com>; Bradley, Elisabeth <EBradley@ycst.com>; Kaplan, Jeff A. <jkaplan@jonesday.com>; Schneider Richard (King & Spalding - Atlanta, GA) <dschneider@kslaw.com>; Pratt, Stuart <SPratt@robinsonbradshaw.com>; Loughman, Paul <PLoughman@ycst.com>; Zieg, Sharon <SZIEG@ycst.com>  
**Cc:** Steadman, Anne M. <ASteadman@ycst.com>  
**Subject:** Re: Bestwall - Sampling Meet & Confer  
 Jim,

Following last week's meet and confer and further discussions with LAS and the FCR, we would propose the following options for addressing the scope of the 502(d) proposal:

1. The Committee and the FCR would be willing to consider a smaller sample size of approximately 1,500 to 1,600 claims files (out of the total 2,907 Sample Resolved Mesothelioma Files) as the scope of the 502(d) production.

The Committee/FCR would provide a spreadsheet of the claimants that would form the sample. The Debtor, the Committee, and the FCR would all have to agree that this would be the sample for estimation.

2. The 502(d) order would apply to the claims files of all claimants identified in the Bates Reliance Materials and the Debtor would produce all documents, including privileged documents, related to those claim files. The Committee would be amenable to granting an extension on the production of the Additional 500 claims files, however these additional files would not be subject to the 502(d) Order; or
3. The Debtor would provide all documents for all 2,907 claim files (less the 200 or so for which there is allegedly no documentation) pursuant to the 502(d) order.

With respect to each of the above options, the Committee and the FCR reserve all rights with respect to seeking additional 502(d) documents or claims files depending on the outcome of the trust-related litigation pending in Delaware and/or any decision by the Debtor or its agents to modify the scope of the sample size, utilize a different sample or sample size, or modify the individuals assigned to the sample. We can discuss further on tomorrow's call but thought it would make sense to provide the Debtor with insight on our current thinking.

Best,  
Davis  
**Davis Lee Wright**

Robinson & Cole LLP  
1201 North Market Street  
Suite 1406  
Wilmington, DE 19801  
Direct 302.516.1703 | Fax 302.516.1699  
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Los Angeles | Wilmington | Philadelphia | Albany | New London

**From:** "Jones, James M." <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>

**Date:** Tuesday, July 6, 2021 at 2:25 PM

**To:** "Wright, Davis L." <[DWright@rc.com](mailto:DWright@rc.com)>, "Ramsey, Natalie D." <[NRamsey@rc.com](mailto:NRamsey@rc.com)>, "Del Medico, Jennifer L." <[jdelmedico@JonesDay.com](mailto:jdelmedico@JonesDay.com)>, "Edwards, Erin" <[eedwards@ycst.com](mailto:eedwards@ycst.com)>, Gregory Gordon <[gmgordon@jonesday.com](mailto:gmgordon@jonesday.com)>, Jeffrey Ellman <[jbellman@jonesday.com](mailto:jbellman@jonesday.com)>, "Garland Cassada ([GCassada@rbh.com](mailto:GCassada@rbh.com))" <[GCassada@rbh.com](mailto:GCassada@rbh.com)>, "[eharron@ycst.com](mailto:eharron@ycst.com)" <[eharron@ycst.com](mailto:eharron@ycst.com)>, "Bradley, Elisabeth" <[EBradley@ycst.com](mailto:EBradley@ycst.com)>, "Kaplan, Jeff A." <[jkaplan@jonesday.com](mailto:jkaplan@jonesday.com)>, "Schneider Richard (King & Spalding - Atlanta, GA)" <[dschneider@kslaw.com](mailto:dschneider@kslaw.com)>, "Pratt, Stuart" <[SPratt@robinsonbradshaw.com](mailto:SPratt@robinsonbradshaw.com)>, "Loughman, Paul" <[PLoughman@ycst.com](mailto:PLoughman@ycst.com)>, Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>

**Cc:** "Steadman, Anne M." <[ASTeadman@ycst.com](mailto:ASTeadman@ycst.com)>

**Subject:** RE: Bestwall - Sampling Meet & Confer

I can make that work.

James M. Jones ([bio](#))  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
250 Vesey Street  
New York, NY 10281-1047  
Office +1.212.326.7838

**From:** Wright, Davis L. <[DWright@rc.com](mailto:DWright@rc.com)>  
**Sent:** Tuesday, July 6, 2021 2:22 PM  
**To:** Ramsey, Natalie D. <[NRamsey@rc.com](mailto:NRamsey@rc.com)>; Del Medico, Jennifer L. <[jdelmedico@JonesDay.com](mailto:jdelmedico@JonesDay.com)>; Edwards, Erin <[eedwards@ycst.com](mailto:eedwards@ycst.com)>; Gordon, Gregory M. <[gmgordon@JonesDay.com](mailto:gmgordon@JonesDay.com)>; Ellman, Jeffrey B. <[jbellman@JonesDay.com](mailto:jbellman@JonesDay.com)>; Garland Cassada ([GCassada@rbh.com](mailto:GCassada@rbh.com)) <[GCassada@rbh.com](mailto:GCassada@rbh.com)>; Edwin J. Harron <[eharron@ycst.com](mailto:eharron@ycst.com)>; Bradley, Elisabeth <[EBradley@ycst.com](mailto:EBradley@ycst.com)>; Kaplan, Jeff A. <[jkaplan@jonesday.com](mailto:jkaplan@jonesday.com)>; Schneider Richard (King & Spalding - Atlanta, GA) <[dschneider@kslaw.com](mailto:dschneider@kslaw.com)>; Pratt, Stuart <[SPratt@robinsonbradshaw.com](mailto:SPratt@robinsonbradshaw.com)>; Loughman, Paul <[PLoughman@ycst.com](mailto:PLoughman@ycst.com)>; Sharon Zieg <[szieg@ycst.com](mailto:szieg@ycst.com)>; Jones, James M. <[jmjones@JonesDay.com](mailto:jmjones@JonesDay.com)>  
**Cc:** Steadman, Anne M. <[ASteadman@ycst.com](mailto:ASteadman@ycst.com)>  
**Subject:** RE: Bestwall - Sampling Meet & Confer

\*\* External mail \*\*

All,  
We think we need some additional time to address some issues on our side. Could we reschedule this for 1:30 pm tomorrow?  
Thanks,  
Davis  
**Davis Lee Wright**

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[dwright@rc.com](mailto:dwright@rc.com) | [www.rc.com](http://www.rc.com)

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----Original Appointment----

**From:** Wright, Davis L.  
**Sent:** Friday, July 2, 2021 10:44 AM  
**To:** Wright, Davis L.; Ramsey, Natalie D.; Del Medico, Jennifer L.; Edwards, Erin; Gregory M. Gordon; Jeffrey B. Ellman; Garland Cassada ([GCassada@rbh.com](mailto:GCassada@rbh.com)); Edwin J. Harron; Bradley, Elisabeth; Kaplan, Jeff A.; Schneider Richard (King & Spalding - Atlanta, GA); Pratt, Stuart; Loughman, Paul; Zieg, Sharon; Jones, James M.  
**Cc:** Steadman, Anne M.  
**Subject:** Bestwall - Sampling Meet & Confer  
**When:** Tuesday, July 6, 2021 3:00 PM - 4:00 PM (UTC-04:00) Eastern Time (US & Canada).  
**Where:** <https://robinsoncole.zoom.us/j/99440279877?pwd=UXlMZWk3OGVVRWNzOE51cWVTT01nUT09>



Davis Lee Wright is inviting you to a scheduled Zoom meeting.

[Join Zoom Meeting](#)

Meeting <https://robinsoncole.zoom.us/j/99440279877?pwd=UXIMWkI3OGVVRWNzOE51cWVTT01nUT09>

URL:

Meeting 994 4027 9877

ID:

Passcode:334727

Dial In 334727

Passcode:

**Join by Telephone**

Phone US: [+13017158592](tel:+13017158592),[,99440279877#](tel:+13017158592) or [+13126266799](tel:+13126266799),[,99440279877#](tel:+13126266799)  
one-tap:

Dial: US: +1 301 715 8592 or +1 312 626 6799 or +1 646 876 9923

Meeting 994 4027 9877

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Dial In 334727

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H.323: [162.255.37.11](tel:1622553711) (US West) or [162.255.36.11](tel:1622553611) (US East)

H.323 994 4027 9877 (Passcode: 334727)

Meeting

ID:

SIP: [99440279877@zoomcrc.com](mailto:99440279877@zoomcrc.com) (Passcode: 334727)

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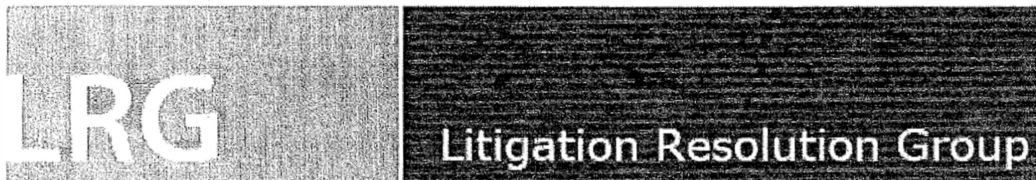
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# EXHIBIT H





**Our market**

LRG's value proposition

Defense-side

Asbestos: LRG vs. 524(g)

Plaintiff-side

Additional resources

**OUR MARKET | ASBESTOS: LRG VS. 524(G)**

	LRG	524(g)
Who has control?	Client	Asbestos Claimants Committee
Is it confidential?	Yes	No
How long does it take to finalize?	3 to 12 months	2 to 7 years
Are insurance assets affected?	No	Yes (at risk)
Who can use it?	Open to all companies	Restricted
What about the future?	Large capped indemnification	Congressional injunction
Wall Street's perception?	Company is asbestos free	Company is asbestos free

As evidenced by past corporate reorganizations that involve Section 524(g) of the US Bankruptcy Code, many companies facing the specter of legacy asbestos-related claims benefit by paying sums above the direct costs of their asbestos litigation to attain finality and eliminate these indirect litigation costs. LRG's product offers companies an attractive and more cost-effective alternative to Section 524(g) that provides for a quicker time line to resolution and enables the company to retain procedural control of the litigation throughout the process.

Case 1:09-cv-00061-1 Document 1-1 Filed 02/07/24 Entered 02/07/24 15:55:59 Desc Exhibit B Page 2 of 12





Code, many companies facing these costs benefit by paying sums above the direct costs of their asbestos litigation to attain finality and eliminate these indirect litigation costs. LRG's product offers companies an attractive and more cost-effective alternative to Section 524(g) that provides for a quicker time line to resolution and enables the company to retain procedural control of the litigation throughout the process.

[Click here for a case study on how LRG's product works for asbestos defendants.](#)

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Key personnel

Charles H Mullin, PhD  
Andrew R Evans  
Peter R Kelso

**OUR TEAM | CHARLES H MULLIN, PHD**

**Dr. Mullin is a founding Principal of LRG and a Partner with the economic consulting firm Bates White LLC.** Dr. Mullin has more than 15 years of experience providing economic and statistical analysis in both the private and public sectors. His areas of expertise include robust estimation strategies, econometric analysis, statistics and statistical analysis, economic modeling, and micro-simulation modeling.

As a founding member of LRG, Dr. Mullin is responsible for marshalling and coordinating the legal, financial, and valuation expertise required to assess and manage client transactions. Dr. Mullin also works with members and representatives of both firms to adapt Bates White's valuation models for use in potential LRG transactions.

Most of Dr. Mullin's work at Bates White has involved assessing aggregate future asbestos expenditures, segmenting asbestos costs between "products" and "non-products," assessing liability in other environmental matters, and allocating long-tail losses to coverage lines. Dr. Mullin has also provided advice and expert testimony on issues that include insurance coverage disputes, bankruptcies, financial reporting, and due diligence for mergers, acquisitions, and spin-offs.

Previously, Dr. Mullin worked at Chicago Partners providing damage assessment for antitrust matters. Before then, he worked at Quantum Consulting conducting demand-side management for utility companies. In addition to his professional experience, Dr. Mullin taught courses in advanced statistical economic analysis and labor economics while on the faculty in the Department of Economics at Vanderbilt University and at the University of California at Los Angeles.









**Key personnel**

Charles H Mullin, PhD  
Andrew R Evans  
Peter R Kelso

**OUR TEAM | PETER R KELSO**

Mr. Kelso is a Principal at LRG and a leading expert on asbestos law and toxic tort litigation. His expertise in mass tort litigation includes asbestos, lead, welding rods, benzene and pharmaceutical litigation.

Mr. Kelso's responsibilities at LRG include identifying potential clients, analyzing clients' litigation exposure and helping to structure LRG services to meet client needs. He also conducts research to stay abreast of market developments and leverages his knowledge and experience to assist LRG with capitalizing on emerging trends in asbestos litigation and other types of toxic tort litigation.

He is the former Senior Editor of the LexisNexis Mealey Publications: Asbestos Liability Report and founded LexisNexis' Asbestos Bankruptcy Report and International Asbestos Liability Report. He personally conceived the idea of disseminating product-specific litigation information for Wall Street's financial community and championed the launch of publications and the development of conferences to accomplish this. Today, there are multiple publications in circulation and several annual seminars.

Since 2000, Mr. Kelso has been retained as a litigation consultant for many of the top investment firms on Wall Street and has given numerous speeches on asbestos and other mass-tort litigation for the financial and legal communities. During efforts to pass a \$140 billion federal trust fund for asbestos legislation, he was a leading advisor to a variety of corporations, insurers and investors on the financial implications of the bill and its chances for passage.

Because of his expertise, Mr. Kelso has been interviewed by numerous publications on the issues

of asbestos, lead and other mass-tort litigation, including the Wall Street Journal, New York Times, Washington Post, L.A. Times, CBS Marketwatch and Forbes Magazine. He has also spoken about emerging legal issues at the AEI-Brookings Institute and conferences hosted by Goldman Sachs, Bear Stearns, Bank of America Securities and Citigroup.

Mr. Kelso holds a BA in History and Political Science from Immaculata University.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

IN RE: ) Misc. No. \_\_\_\_\_  
 )  
ALDRICH PUMP, LLC, et al. ) Underlying Case: 20-BK-30608 (JCW)  
 ) (U.S. Bankr. W.D.N.C.)  
Debtor. )

**[PROPOSED] ORDER**

Upon consideration of the Manville Trust Matching Claimants’ Motion to Quash or Modify Subpoenas (the “Motion”), and any response thereto, it is hereby ORDERED:

The Motion is GRANTED. The July 5, 2022 Subpoena seeking the production of documents from the Manville Trust is QUASHED.

It is FURTHER ORDERED that any revised subpoena must:

- (i) limit the production of Trust Claimants’ data to a random sample of no more than 10% of the 12,000 mesothelioma victims at issue; and (ii) authorize the ManvilleTrust, or a neutral third party, to anonymize the Trust Claimants’ data before producing it.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
United States District Court Judge