Docket #2264 Date Filed: 6/13/2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	Chapter 11
ALDRICH PUMP LLC, et al.,[1]	Case No. 20-300608 (JCW)
Debtors.	

DEBTORS' OBJECTION TO THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' OBJECTION TO AND MOTION TO STRIKE SUBPOENAS ISSUED BY THE DEBTORS TO BESTWALL LLC, AND DBMP LLC

Aldrich Pump LLC and Murray Boiler LLC (the "Debtors") respond in opposition to the *Official Committee of Asbestos Personal Injury Claimants' Objection to and Motion to Strike Subpoenas Issued by Debtors to Bestwall LLC and DBMP LLC* (Dkt. 2256) (the "Motion"), in which the Official Committee of Asbestos Personal Injury Claimants in the Debtors' chapter 11 case (the "Committee") seeks an order striking document subpoenas (the "Subpoenas") served by the Debtors on non-parties Bestwall LLC ("Bestwall") and DBMP LLC ("DBMP").[2]

[1] The last four digits of the Debtors' taxpayer identification numbers are 2290 (Aldrich Pump LLC) and 0679 (Murray Boiler LLC). The Debtors' address is 800 E. Beaty Street, Davidson, NC 28036.

[2] Separate objections and motions to quash these Subpoenas also were filed in Bestwall's chapter 11 case by the Official Committee of Asbestos Claimants in the Bestwall proceeding (the "Bestwall Committee") and in DBMP's chapter 11 case by the Official Committee of Asbestos Personal Injury Claimants in DBMP case (the "DBMP Committee"). *See Motion By the Official Committee of Asbestos Claimants to Quash Subpoena Sent to Debtor*, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. May 31, 2024) (Dkt. 3424); *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtor*, *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. May 31, 2024) (Dkt. 2814).

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INTRODUCTION

This is at least the third time precisely these same issues have been raised both before this Court and the *Bestwall* Court. As occurred in each of those instances, the Committee's Motion should be denied.

Just a few short weeks ago, the Court recognized this procedural history when ruling on Motions to Quash that were, for all practical purposes, the same as the motions at issue here, noting, "[t]his one's déjà vu all over again." 04/25/2024 Hr'g Tr., In re DBMP LLC, Case No. 20-30080 (Bankr. W.D.N.C.), In re Aldrich Pump LLC, Case No. 20-30608 (Bankr. W.D.N.C.) at 8:23-8:24 (attached as Ex. A). The Motions at issue here comprise déjà vu parts two or three, depending on how you count:

- In March 2022, Bestwall served subpoenas, seeking identical categories of information as those at issue here, on both DBMP and the Debtors. The ACCs in Bestwall, DBMP, and Aldrich, in each of their respective cases, raised objections to those subpoenas, materially identical to those that have been raised here. In each case, separately by this Court and Judge Beyer, the objections to the subpoenas were largely overruled.
- Less than two months ago, DBMP served subpoenas, seeking categories of information identical to (a) the Bestwall subpoenas as approved by the Court in 2022, and (b) the Subpoenas at issue here, on both Bestwall and the Debtors. Again, the ACCs in Bestwall, DBMP, and Aldrich, in each of their respective cases, raised objections to those subpoenas, materially identical to those that have been raised by the instant motion. And, again, both this Court and the Bestwall Court overruled

the objections to those subpoenas.

Undeterred, the Committee has yet again sought to strike the Subpoenas served by the Debtors in this case (attached as Exhibit A to the Motion), and the Committees in the Bestwall and DBMP cases have sought to quash those subpoenas as well. The Aldrich Committee offers no legitimate reason why this Court should revisit or reconsider its prior rulings, and no such reason exists. As with those that came before them, these objections should be denied.

PROCEDURAL HISTORY

The facts underlying the issuance of the Subpoenas are well known to the Court. Pre-petition, the Debtors, Bestwall, and DBMP all maintained claims databases administered by PACE to track information about the hundreds of thousands of claims asserted against them. The Debtors, Bestwall, and DBMP have all produced to their respective Committees and FCRs a database extract that contains numerous fields of non-privileged data. In each case, the data extracts are protected by an Agreed Protective Order Governing Confidential Information. (*See* Dkt. 337 in Bestwall, Dkt. 251 in DBMP, and Dkt. 345 in Aldrich/Murray).

The first round of proceedings relating to subpoenas amongst Bestwall, DBMP, and these Debtors took place in 2022 when Bestwall served subpoenas on the Debtors and DBMP requesting limited, non-privileged, non-confidential information on a small subset of claimants from their respective PACE claims databases.[3] After ensuring that any information produced would be

[3] *See Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor, In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 20, 2022)(Dkt. 1373); *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors*, (Dkt. 1056), *Official Committee of Asbestos Claimants' Motion (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of any Matched Claimant, In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 21, 2022) (Dkt. 2470).

governed by the applicable protective orders in the respective cases, DBMP and these Debtors did not object or otherwise raise issues in regard to the Bestwall subpoenas and agreed to produce the requested information. However, the Bestwall, DBMP, and Aldrich/Murray Committees raised numerous objections to the subpoenas issued by Bestwall. Those objections were overruled by Judge Beyer and this Court.[4] Both this Court and the Bestwall Court found the subpoenas sought limited, relevant, non-confidential, non-privileged information that was proportional to the needs of the case.[5]

This subpoena-related litigation was repeated virtually verbatim only a few weeks ago. It related to subpoenas served by DBMP on Bestwall, Aldrich, and Murray, seeking the same categories of information sought, approved, and produced with the Bestwall subpoenas. Notwithstanding the previous litigation of the identical issues in relation to the Bestwall subpoena, the Bestwall, DBMP, and Aldrich/Murray Committees raised numerous objections to the subpoenas.[6] Again, both the Bestwall Court and this Court overruled the Committees' objections

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[4] *See Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor, In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. June 14, 2022) (Dkt. 1465); *Order Granting in Part and Denying in Part the Official Committee of Asbestos Claimants' (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of any Matched Claimant, In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. June 13, 2022) (Dkt. 2608); *Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 1204).

[5] *Id*.

[6] *See Official Committee of Asbestos Personal Injury Claimants of DBMP LLC's Objection and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC, In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2730). As was the case in *Bestwall*, separate objections and motions to quash the subpoenas served by DBMP also were filed in Bestwall's chapter 11 case by the Official Committee of Asbestos Claimants in the Bestwall proceeding and in the Aldrich/Murray chapter 11 case by the Aldrich Committee. *See Motion by the Official Committee of Asbestos Claimants to Quash Subpoena Sent to Debtor, In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 22, 2024) (Dkt. 3327); *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors, In re Aldrich Pump LLC, et al.*, Case No. 20-300608 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2157).

to the subpoenas served by DBMP on the Debtors and Bestwall.[7] Consistent with this Court's ruling on the nearly identical subpoenas litigated two years prior, this Court held:

1. The discovery sought by the subpoenas is proportional to the needs of the case. 04/25/2024 Hr'g Tr., *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C.), *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C.) at 10:21-10:23.
2. The targets of the subpoenas are not objecting, so undue burden or expense is not an issue. *Id.* at 11:23-12:1.
3. The information sought is not cumulative, and the fact that the debtor had some claimant information did not obviate the need for it to obtain more. *Id.* at 12:1-12:6.
4. The subpoenas do not seek personal, sensitive, confidential, or privileged information, and the information sought is subject to a protective order. *Id.* at 12:19-13:4.
5. Notice to the claimants whose data is sought by the subpoenas is not necessary. *Id.* at 13:14-13:19.
6. The *Barton* Doctrine does not apply. *Id.* at 10:2-10:3

Shortly after the Court's ruling on the subpoenas issued by DBMP, the Debtors issued the Subpoenas to Bestwall and DBMP that sought information materially identical to the subpoenas issued by DBMP.[8] Importantly, the categories of information sought by the Subpoenas at issue here

[7] *See Order Denying Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 2242); *Order Denying the Motion by Official Committee of Asbestos Claimants to Quash Subpoena Sent to Debtor, In re Bestwall LLC,* Case No. 17-31795 (Bankr. W.D.N.C. May 3, 2024) (Dkt. 3410); *Order Overruling the Official Committee of Asbestos Personal Injury Claimants' Objection and denying Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC, In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. May 9, 2024) (Dkt. 2785).

[8] During the motions practice associated with the DBMP subpoenas, the Debtors informed the Court and all parties that, assuming the DBMP subpoenas were found to be appropriate by both this Court and the Bestwall Court, the Debtors would issue similar subpoenas in the near future. 04/17/2024 Hr'g Tr., *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C.), *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C.) at 51:15-52:17. The Debtors

are materially identical to the information sought by the Bestwall subpoena.[9] Although neither Bestwall nor DBMP have objected to the Subpoenas, the Aldrich Committee has filed an Objection and Motion to Strike in this case, and the Bestwall Committee and DBMP Committee have filed Motions to Quash in the Bestwall and DBMP cases, respectively, that are, for all practical purposes, identical to the Objections and Motions already litigated in relation to both the Bestwall and DBMP subpoenas.[10] That is, the Committees have filed papers that raise issues and arguments that have now been rejected by the Court multiple times. The Court should again reject the Committee's arguments and deny the Motion.

STATEMENT OF RELEVANT FACTS

On May 17, 2024, the Debtors served the Subpoenas on Bestwall and DBMP seeking limited information about: (1) mesothelioma claimants who had resolved a mesothelioma claim asserted against the Debtors or their predecessors prior to the Petition Date and who are identified in the agreed sample used in this case for estimation purposes as identified on Exhibit A to the Agreed Order with Respect to Resolved Claims Sampling for Purposes of Estimation Discovery (Dkt. 2028) (such claims on Exhibit A, the "Aldrich/Murray Agreed Claims"); and (2) mesothelioma claimants who filed and did not withdraw a Proof of Claim in this case pursuant to the Order (I) Establishing Bar Date for Certain Known Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Granting Related Relief (Dkt.

issued the subpoenas at issue here roughly two weeks after this Court's ruling on the DBMP subpoenas. (Dkt. 2249).

[9] *Compare* Exhibit A to *Official Committee of Asbestos Claimants' (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of any Matched Claimant, In re Bestwall LLC,* Case No. 17-31795 (Bankr. W.D.N.C. March 21, 2022) (Dkt. 2470) and Exhibit A to *Official Committee of Asbestos Personal Injury Claimants of DBMP LLC's Objection and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC, In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2730) to Exhibit A to the Motion filed by the Committee in this case.

[10] *Compare* Objections and Motions cited in footnotes 3 and 6, *supra*, with the Objections and Motions filed in connection with the Subpoenas issued by the Debtors, and those cited in footnote 2, *supra.*

1093) (the "Aldrich/Murray Pending Claims"). Collectively, there are just over 5,600 claimants, in total between both Debtors, whose information is potentially the subject of the Subpoenas.11 The Subpoenas are, for all practical purposes, identical to the subpoenas approved by this Court and Judge Beyer in 2022 in connection with the Bestwall case. Further, the database information fields are exactly the same as the fields requested in the subpoenas issued by DBMP that were approved by this court only a few weeks ago. The information contains no medical, private, or confidential information, and, indeed, most can be obtained by a review of the claimants' public filings in the tort system. The information sought by the Subpoenas includes:

- Law firm(s) representing Injured Party or any Related Party
- Jurisdiction and state in which claim was filed
- Claim status (*e.g.*, settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.)
- Date of resolution (if applicable)
- Date(s) on which settlement or judgment was paid (if applicable)
- Exposure-related information for Injured Party, including fields reflecting the following data:
- Date(s) exposure(s) began
- Date(s) exposure(s) ended
- Manner of exposure
- Location of exposure
- Occupation and industry when exposed
- Products to which Injured Party was exposed

[11] The Subpoenas, however, seek information about these claimants only to the extent they also asserted pre-petition mesothelioma claims against Bestwall or DBMP. As a result, the actual number of claimants whose information will be produced in response to the Subpoenas will almost certainly be smaller than the number of claimants listed.

The Motion repeats the same objections that this Court and Judge Beyer rejected both two years ago and again just over a month ago. The Aldrich Committee argues that (1) this discovery is not proportional to the needs of the case, (2) the Subpoenas seek personal, sensitive, and/or confidential information, and (3) permitting this discovery will undermine the integrity of the bankruptcy process. (Motion at ¶¶ 3-10). All these arguments were included in the motions challenging both Bestwall's and DBMP's subpoenas and all were addressed and expressly or implicitly rejected by this Court's and Judge Beyer's rulings on those Motions.[12]

Cognizant of this Court's prior admonition that while the Bestwall, DBMP, and Aldrich cases present different issues that may lead to different results, where "the facts and circumstances appear to be all but identical, I believe consistency will be helpful," (06/15/2023 Hr'g Tr., In re Aldrich Pump LLC, Case No. 20-30608 (Bankr. W.D.N.C.), at 18:25-19:2 (attached as Ex. B), the Committee has recognized that "the issues raised in this Motion and issues similar to those raised in this Motion were previous addressed in this case as well as in the *Bestwall* and *DBMP* bankruptcies." (Motion at ¶ 14) When the Debtors attempted to reach a stipulation that would obviate the Committee's filing of the Motion, the Committee relayed (and has repeated in its Motion) that the Motion is "for the purposes of preserving its arguments in connection with any potential appeals in these cases." (*Id*.) Regardless of the motivation for again asserting its positions, the Aldrich Committee offers no legitimate reason why this Court should revisit or reconsider its prior rulings, nor has it raised any new facts or governing law.

The Motion, as were past virtually identical motions, should be denied.

[12] *See* pleadings and Orders cited in footnotes 3, 4, 6, and 7, *supra*.

ARGUMENT

Parties are broadly entitled to obtain discovery on "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026, 9014(c). Moreover, "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). "The rules of discovery are to be accorded broad and liberal construction." *Greene v. Shapiro & Ingle, LLP*, No. 3:17-CV-263-RJC-DCK, 2018 WL 1566336, at *1 (W.D.N.C. Mar. 30, 2018).

As the party objecting to discovery, the Committee has the burden of persuasion to show that "the requested discovery is not relevant to the issues in this litigation." *Spell v. McDaniel*, 591 F. Supp. 1090, 1114 (E.D.N.C. 1984). "District courts within the Fourth Circuit have long held that the burden of persuasion rests with the party opposing discovery." *Ultra- Mek, Inc. v. Man Wah (USA), Inc*., 318 F.R.D. 309, 316 (M.D.N.C. 2016); *Kinetic Concepts, Inc*. v. *ConvaTec Inc.*, 268 F.R.D. 226, 243 (M.D.N.C. 2010) ("[D]istrict judges and magistrate judges in the Fourth Circuit (including members of this Court) have repeatedly ruled that the party or person resisting discovery, not the party moving to compel discovery, bears the burden of persuasion.").

It is clear that the Committee cannot meet its burden, and its arguments have now been rejected by this Court multiple times. The information sought in the Subpoenas is relevant to the primary issue for estimation: the extent of the Debtors' liability for current and future asbestos claims. The Subpoenas have been narrowly tailored to seek only limited, non-privileged, non-

confidential information about claimants with Aldrich/Murray Agreed Claims or Aldrich/Murray Pending Claims who also asserted pre-petition claims against Bestwall and/or DBMP. The burden on Bestwall and DBMP to produce information in response to the Subpoenas is minimal and, as noted, both debtors have indicated that they have no objection to the Subpoenas.

Rather than reiterate briefing already submitted to this Court on at least two occasions, the Debtors adopt, and incorporate by reference as if fully set forth herein, the briefing and arguments filed by DBMP and these Debtors in association with the litigation of the DBMP subpoenas.[13] Rather, to aid the Court in refreshing its recollection as to the previous motions practice, the Debtors' argument below will focus on the prior rulings of both this Court and the Bestwall Court on the arguments raised.

I. The Subpoenas Issued by the Debtors Are Limited in Scope, Proportional to the Needs of the Case, and do not Seek Duplicate Information.

The Committee complains that these subpoenas are "unnecessary, duplicative, and disproportionate to the needs of this case" and "harass and burden claimants" who have settled their claims. (Motion at ¶ 2). However, the Subpoenas seek information on the same categories of claims as that sought by DBMP and approved by the Bestwall Court: data on the claims in the resolved claim sample and on pending claimants who also filed pre-petition claims against the applicable debtor.[14] That is, the Subpoenas issued by the Debtors seek data only on the Aldrich/Murray Agreed Claims and the Aldrich/Murray Pending claims.[15] Further, the targets of

[13] *See Debtor's Objection to the Official Committee of Asbestos Personal Injury Claimants' Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC In re DBMP LLC,* Case No. 20-30080 (Bankr. W.D.N.C. April 3, 2024) (Dkt. 2735); *DBMP's Objection to the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 2181); *Debtors' Response to the Official Committee of Asbestos Personal Injury Claimants' Motion to Quash Subpoenas Sent to Debtors* (Dkt. 2173) (attached as Ex. C.).

[14] This was consistent with Judge Beyer's ruling in *Bestwall* limiting Bestwall's subpoenas to Bestwall claimants with pending claims or who were included in the Bestwall resolved claim sample.

[15] *See* Subpoenas, attached as Exhibit A to the Motion: "Claimants" shall mean, collectively, the individuals identified

the subpoenas, Bestwall and DBMP, have not raised any objection to the burden associated with compliance with the Subpoenas. With the same record before it, this Court ruled regarding the DBMP subpoenas that, "the discovery, in my mind, is proportional to the needs of the case." (04/25/2024 Hr'g Tr. at 10:21-10:23).

The Committee also argues that "the Debtors have already subpoenaed and received significant volumes of claimant information." (Motion at ¶ 4). However, this argument was also addressed by, and rejected by this Court when ruling on the subpoenas issued by DBMP that requested identical information. "The fact that, in my mind, that [the debtor] has some claimant information, doesn't seem, to me, to obviate the need for it to obtain more, given the central relevance of that information to estimation." (04/25/2024 Hr'g Tr. at 12:3-12:6). In addition, the Committee's argument that "the Debtors have made no attempt to demonstrate that this latest round of information requested from the Subpoenaed Parties is necessary in light of the flood of information they have already requested and received" (Motion at ¶ 5) was also squarely addressed by the Court in its ruling: "I agree with the debtors that it's not….the articulation test isn't in the Rule." (04/25/2024 Hr'g Tr. at 12:1-12:2).

In addition, the Committee argues that compliance with the Subpoenas may deplete "precious estate resources." (Motion at ¶ 5). This argument was also raised in connection with the litigation of the DBMP subpoenas.[16] As with the Bestwall and DBMP subpoenas, there is no indication that reviewing the information sought by the Subpoenas will materially impact the

on Schedule 1 to this Exhibit, each of whom either (a) resolved a mesothelioma claim asserted against Aldrich Pump LLC, Old IRNJ, Murray Boiler LLC, or Old Trane, and is identified on Exhibit A to the Agreed Order with Respect to Resolved Claims Sampling for Purposes of Estimation Discovery [Dkt. 2048], or (b) has a Pending Claim, as defined below, against Aldrich Pump LLC, Old IRNJ, Murray Boiler LLC, or Old Trane.

[16] *See Official Committee of Asbestos Personal Injury Claimants of DBMP LLC's Objection and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2730 at ¶ 6).

Debtors' costs in preparing for estimation. Indeed, those costs are likely to be less than the costs to the Debtors associated with the serial litigation of these issues advanced by the Committee concerning this Motion as well as the motions filed by the Bestwall and DBMP Committees.[17]

II. The Subpoenas Do Not Seek Privileged, Sensitive, or Otherwise Protected Data.

Despite the Court's comment that "I don't think the [DBMP] subpoenas seek personal and sensitive or confidential information," (04/25/2024 Hr'g Tr. at 12:19-12:21), the Committee argues that the Subpoenas "burden settled claimants" because they seek "highly personal, confidential and sensitive information." (Motion at ¶ 6). Neither the "settled claimants" nor the Committee are the target of the Subpoenas, however, and so it is hard to see how any supposed burden on them is relevant.

None of the data sought by the Subpoenas implicate "highly personal, confidential, or sensitive" information, as alleged by the Committee. (Motion at ¶ 6). The Committee makes no contention that the Subpoenas seek any privileged information, yet the Committee must show that the data sought requires disclosure of "potentially privileged and otherwise protected matter." *CineTel Films, Inc. v. Does 1-1,052*, 853 F. Supp. 2d 545, 554 (D. Md. 2012) (citations omitted); *accord United States v. Idema*, 118 Fed. Appx. 740, 744 (4th Cir. 2005) ("[A] party does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena.") (citations omitted); 9A Wright & Miller § 2459 (party has no standing to quash a subpoena issued to nonparty "unless the objecting party claims some personal right or privilege with regard to the documents sought"); Fed. R. Civ. P. 45(d)(3). Instead the Committee cites to a "strong privacy interest in medical information" and a "right to privacy." (Motion at ¶ 6)

[17] There is some level of irony in the Committee's claim that it is concerned with preserving estate resources while filing yet another Motion on the exact same issues that were ruled on by this Court about a mont,h ago.

The Committee seems to overlook that none of the information sought implicates any medical information whatsoever. Indeed, as Judge Beyer observed, most of the information sought may be gleaned from a review of the Claimants' Complaints and other public filings in their tort litigation. *See e.g.*, Bestwall 05/18/2022 Hr'g Tr. at 21:25-22:2 (attached as Ex. D). ("Most of the information sought pursuant to the subpoenas could be found in complaints and other public court filings.")

Further, the Subpoenas do not request any potentially confidential settlement information such as settlement amounts or settlement terms. The only settlement data sought are the claim status, *i.e.*, whether the claimant settled with Bestwall or DBMP, and, if so, the date of settlement and the date of payment. None of this information is confidential. *E.g.*, *McCauley v. Trans Union, L.L.C.*, 402 F.3d 340, 342 (2d Cir. 2005) (plaintiff not obliged to accept Rule 68 offer of judgment conditioned on fact of settlement being confidential because "party engaged in litigation is not entitled to insist on confidentiality"); *Arbour v. Alterra Wynwood of Meridian*, No. 1:09-CV-246, 2010 WL 11688550, at *2 (W.D. Mich. Mar. 9, 2010) (court agrees to redaction of settlement amounts in settlement agreement filed on public court docket but "fact of settlement itself need not and should not be redacted"); *Church v. Dana Kepner Co., Inc*, No. 11- cv-02632-CMA-MEH, 2013 WL 24437 at *7 (D. Colo. Jan. 2, 2013) (denying plaintiffs' motion for a protective order against information sought by defendant on settlements of mesothelioma claims and requiring the plaintiffs "to provide information concerning the fact of the settlements in the California litigation, including the identities of each defendant with whom the Plaintiffs [] settled and the date of each settlement.") (emphasis added); *see also* D.C. Bar Ethics Op. 355 (2006) (settlement agreement that seeks to compel counsel to keep confidential "fact that the case has settled" violates D.C. Rule of Prof. Conduct 5.6(b)).

In short, for the reasons set forth above and by this Court in prior rulings, the information sought by the Subpoenas is not confidential and is not sensitive, and indeed most of it is already in the public domain.

III. The Subpoenas Do Not Implicate, Undermine, or Compromise the "Integrity of the Bankruptcy Process."

The Committee argues that "[t]he Debtors have continued the effort started by Bestwall and furthered by DBMP to obtain discovery from historic co-defendants for Aldrich and Murray's own litigation purposes without seeking approval either from this Court or the courts presiding over the DBMP or Bestwall bankruptcy cases," presumably arguing a violation of the *Barton* Doctrine. (Motion at ¶ 9). This argument ignores the Court's ruling on the subpoenas issued by DBMP. "The ACC has argued that the *Barton* Doctrine applies here and I look at that as a bit of a dead letter…..[t]here are a couple of reasons why I don't think the *Barton* Doctrine under the present circumstances should be imposed or applied." (04/25/2024 Hr'g Tr. at 10:2-10:3; 10:7-10:9). The Committee also alleges that the Subpoenas somehow undermine the integrity of the bankruptcy process because the various debtors are represented by some of the same law firms. (Motion at ¶ 10) This argument is again premised on the false notion that the information sought by the Subpoenas is confidential, which this Court has rejected. While the Committee contends that "the rights of settled claimants to have their confidential information vigorously protected should not turn on the vagaries of which law firm represents the tortfeasor with whom the claimants settled," (Motion at ¶ 10) the Court has already made clear, "the subpoenas don't seek confidential information." (04/25/2024 Hr'g Tr. at 14:6-14:7).

While there are some shared counsel among the debtors, each debtor also has separate counsel. The information sought is not confidential, and will be subject to a confidentiality order nonetheless. Judge Whitley said it best, "I don't know that it's, again, a misuse of the bankruptcy

to, to allow this type of information. It's certainly unique, but like Judge Beyer, I don't see a reason there not to do it." (05/26/2022 Hr'g Tr. at 116:10-13) (attached as Ex. E).

IV. There Is No Need to Impose the Confidentiality and Use Restrictions Adopted in Connection with Trust Discovery.

As with the past objections, the Motion argues alternatively that if the Court allows the Subpoenas, it should impose the same confidentiality and use restrictions imposed in connection with the information the Debtors obtained from the various asbestos bankruptcy trusts. (Motion at 7). This, too, was rejected in relation to the DBMP subpoenas: "[A]s to this alternative suggestion that we use the trust protective orders as opposed to the one we used earlier for provision of documents to the ACC and FCR, I think the latter are sufficient," (04/25/2024 Hr'g Tr. at 14:3-14:6). Further, there would be no need for any such action, since, as previously found, there is no confidential or private information sought by the Subpoenas.

Nonetheless, consistent with Judge Beyer's and this Court's prior rulings, the Subpoenas expressly provide that the Debtors will deem the information produced in response confidential pursuant to the Protective Order entered in this case. (Motion, Ex. A.). Indeed, the Protective Order, which was negotiated with and agreed to by the Committee, is what protects the much more extensive PACE claims database extract that was produced by the Debtors to the Committee and FCR, and their respective professionals, at the outset of this case. Substantially similar protective orders protect the Bestwall and DBMP claimant databases that were produced to the claimant representatives and professionals in those cases and that will be the source of any information produced to the Debtors in response to the Subpoenas. There is no reason to subject the limited, non-confidential, non-sensitive information sought by the Subpoenas to more stringent restrictions than those imposed on the entire claims database extract previously produced.

CONCLUSION

Every argument advanced by the Committee has been squarely addressed and rejected multiple times. The issues presented by the Motion have been repeatedly litigated, and have been ruled on by both this Court and Judge Beyer as recently as April, 2024. Acknowledging the similarities between the arguments made in connection with the subpoenas issued by both Bestwall and DBMP, this Court ruled, "I am not going to belabor all these points because we've talked about them at length before, but as you will imagine….I am inclined to make the same rulings as before. The motions are denied." (04/25/2024 Hr'g Tr. at 9:15-9:18). The Committee's duplicative Motion does not present any reasons that should lead this Court to a different conclusion. For the foregoing reasons, the Motion should be denied, and the Committee's Objections overruled.

Dated June 13, 2024

Respectfully submitted,

/s/ John R. Miller, Jr

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30080-JCW
DBMP LLC,	:	Chapter 11
Debtor,	:	Charlotte, North Carolina Thursday, April 25, 2024
	:	9:30 a.m.

: :

ALDRICH PUMP LLC, *et al.*,	:	Case No. 20-30608 (JCW)
Debtors.	:	Chapter 11

: :

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

APPEARANCES:

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

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	Cordes Law, PLLC BY: STACY C. CORDES, ESQ. 1800 East Boulevard Charlotte, NC 28203
ALSO PRESENT:	JOSEPH GRIER FCR - Aldrich and Murray 521 E. Morehead St, Suite 440 Charlotte, NC 28202

APPEARANCES (via telephone):

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	Caplin & Drysdale BY: SERAFINA CONCANNON, ESQ. One Thomas Circle, N.W., Washington, DC 20005
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SANDER L. ESSERMAN
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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Have a seat, all.

All right. Picking up on, on the 9:30 calendar, we have -- this is the joint hearing, if you will. In DBMP, we have the motion of the Committee, the motion to object/strike subpoenas issued by the debtor to Aldrich Pump, Bestwall, and Murray. And then in Aldrich, the motion of the Committee, other Committee, of personal injury claimants to quash the subpoenas sent to the debtors. This one is also on for ruling.

Let's start with -- some of you announced about half an hour ago in DBMP. If there are any other parties, I'm going to first assume that those who announced earlier are still here, unless you think you need to tell me otherwise, and then I'll ask if there are any other parties wishing to announce in, in DBMP, and then we'll do the same for Aldrich.

So any additions in, in the DBMP end of this? Anyone?

Star 6 unmutes.

Okay, great.

MR. SCHNEIDER: Yes, yes --

THE COURT: Yes.

MR. SCHNEIDER: Yes, your Honor. Richard Schneider from King & Spalding for Bestwall LLC on the line.

THE COURT: Okay. Thank you.

MR. SCHNEIDER: Thank you.

THE COURT: Anyone else?

(No response)

THE COURT: All right.

Then we'll turn over to the Aldrich side of the table and, and ask if there are announcements there, starting with the debtors.

MR. EVERT: Your Honor, Michael Evert from Evert Weathersby Houff for the debtors.

THE COURT: All right.

Anyone else needing to announce?

MR. MASCITTI: Greg Mascitti, your Honor, on behalf of Trane Technologies Company LLC and Trane U.S. Inc. And I'm joined by Stacy Cordes of Cordes Law and Brad Kutrow from McGuireWoods.

THE COURT: All right..

Any others for the debtors?

MR. MILLER: Your Honor, not to unnecessarily complicate it, are, are we going to take appearances for the in-person hearing in Aldrich as well later?

THE COURT: Well, yeah. I thought under the circumstances we might have a slightly different group.

MR. MILLER: Fair enough. I will sit down and not say a word. Thank you, your Honor.

THE COURT: Very good.

For the joint ruling in Aldrich, on the Aldrich side

of the joint ruling, do we have anyone appearing on behalf of the ACC that, who needs to announce there?

Mr. Wright.

MR. WRIGHT: Your Honor, Davis Wright of Robinson & Cole on behalf of the ACC. I'm joined in the courtroom today by my partner, Katherine Fix, also of Robinson & Cole, and by Rob Cox of Hamilton Stephens Steele & Martin. And on the phone, at least, is Natalie Ramsey, also of Robinson & Cole. And I don't know. Based on the deposition schedule, I don't know who is on from Caplin & Drysdale or Winston & Strawn. So I'll let them introduce, your Honor.

THE COURT: All right. We'll get telephonics in a moment.

How about the FCR in Aldrich?

MR. GUY: Good morning, your Honor. Jonathan Guy for the FCR and Mr. Grier is here with me in the courtroom, for the record.

Thank you.

THE COURT: Okay, very good.

Anyone else in the courtroom needing to announce from Aldrich?

(No response)

THE COURT: All right. Telephonic appearances, going back to the debtors. Anyone else needing to announce in Aldrich and Murray?

(No response)

THE COURT: That got it?

(No response)

THE COURT: How about for the ACC?

Star 6 unmutes.

MS. CONCANNON: Good morning, your Honor. Serafina Concannon, again, of Caplin & Drysdale on behalf of the ACC.

THE COURT: All right.

Anyone else for the ACC, telephonic appearances only?

(No response)

THE COURT: How about the FCR? Anyone there?

(No response)

THE COURT: I wouldn't think so.

Affiliates? Any Affiliates?

(No response)

THE COURT: Okay, great.

Any preliminaries, or are you ready to get a ruling on the motions?

(No response)

THE COURT: Nothing to talk about. Y'all are very quite today. That's, I don't know what to make of that. Maybe we'll have more joint hearings. I don't know. Just kidding.

Okay. As Yogi Berra would say, "This one's a déjà vu all over again" pair of motions, that being déjà vu from 1922 [sic] when the Bestwall subpoenas got sent out to DBMP and

Aldrich and Murray and then hearings ensued, first in front of Judge Beyer, then myself dealing with the objections of the Committees. And effectively, Judge Beyer then found that the subpoenas in question sent by one debtor, Bestwall, to the other debtors did not impugn, that it was relevant information, but it did not impugn privilege and it was otherwise protected. I came along behind, about a week later, in a combined hearing and, and ruled consistent with that.

Now we have the shoe on the other foot as DBMP tries to seek the same type of information from the other debtors, Bestwall and Aldrich and Murray. Aldrich of the three has not yet issued such subpoenas, but those are promised.

As before, the debtors don't resist. The, the subpoenaed debtors don't resist, but the Claimant Committees do on a variety of reasons. I am not going to belabor all these points because we've talked about them at length before, but as you will imagine, I am like, I am inclined to make the same rulings as before. The motions are denied.

I can talk at, in greater detail about all that, but it's essentially the same arguments. I don't agree that we have a case of *res judicata* in that for a variety of reasons, different debtors issuing the subpoenas, different Committees responding, slightly different factual circumstances in different cases. Potentially, it's a different fact situation and these rulings were interlocutory and not appealable. So I

wouldn't feel comfortable foreclosing the motions themselves.

The ACC has argued that the Barton Doctrine applies here and I look at that as a bit of a dead letter. Clearly, one debtor sought to serve subpoenas on the fiduciary of a bankruptcy estate, Aldrich and Murray, and that requires the expenditure of estate assets. Frankly, that may be a technical violation, but there are a couple of reasons why I don't think the Barton Doctrine under the present circumstances should be imposed or applied.

In the first instance, as the ACC has argued at length, this is a full-pay case, meaning that the combination of the debtor and the affiliates certainly are solvent and we don't have the usual concerns about outside interests interceding to make demands on the debtor in possession. That would consume limited estate resources that need to be preserved for creditors. That takes us out of the, the reasoned etra (phonetic) for the Barton Doctrine.

And the second part is that all three of these cases are in this small two-judge court and I've got two of them, in fact. So I think it's almost a moot point, but the bottom line is I think the ruling should be the same as before. The discovery, in my mind, is proportional to the needs of the case. While the ACC argues the discovery is cumulative in that DBMP has already gotten significant volumes of claimant information and has failed to articulate the need for any more,

I agree with the debtors that it's not, the articulation test isn't in the Rule. It's really that discovery is broad and it extends to relevant information. The limitation is that it need be proportionate to the needs of the case.

Well, here, the parties are trying to demonstrate at the estimation hearings the reliability or the nonreliability of historical settlements to extrapolate from that an estimation of aggregate liability. The debtors' theory, what I call the true-value theory, essentially says that you can't use the historical values because they are tainted by evidence suppression and the like.

So to that end, they want to find out as much as they can about which claimants make what claims and which claims were not mentioned. Now I understand we've got an issue there as to how much reliance was made on anything or whether there's even a question of reliance, but that's for another day.

But the bottom line is that we are trying to use what happened in, across thousands of, of cases to extrapolate an estimation of aggregate liabilities for present and future. That's a huge subject matter and enormous sums are at issue, at least $540 million in the Aldrich case, probably that much more in the, in the DBMP case. Who knows.

But the bottom line is that the issues are significant and the subject matter is wide. The targets of the subpoenas are not objecting. So undue burden or expense in that sense,

in the strict sense, is not an issue. And I don't think I can find that it's cumulative, or at least not at this point in time. The fact that, in my mind, that one of the debtors has, DBMP, has some claimant information doesn't seem, to me, to obviate the need for it to obtain more, given the central relevance of that information to estimation. And at the estimation hearing -- well, the bottom line is the fact that you know what some claimants might have done with regard to one trust doesn't tell you what the claimants might have done to another debtor in the tort system or a defendant in the tort system. And effectively, it's hard to know at this point in time whether it's cumulative or not and I don't think for the reasons argued that what is already in the debtors' possession can be just presumed to be sufficient. If we knew all of the claims filed by all the claimants and had excess to all that information as against any party in a single place, then we could sample and, hopefully, get true estimates. But we don't have one central clearinghouse like that.

I don't think the subpoenas seek personal and sensitive or confidential information for the reasons argued and what I articulated before. Effectively, I think this is the companies' property, not the claimants' property. It's not that personal or sensitive. There's no diagnoses. There's no medical information and it's just, effectively, data about settlement-related information, just the date of the settlement

and the date of the payment.

So I don't see anything really privileged about any of that. And if there were any prospect that there might be some harm to come out of it, the data is subject to a protective order, like the one that we're operating under and which all the data is available to the ACC and FCR because of the agreement with the debtor in that protective order.

As to the ACCs' contention about the flood of similar requests and this giant, super database that's available to anyone, well, who knows what might happen in the future. But as argued, this started two years ago and these cases are the only ones that we have seen it. So I'm not willing to extrapolate into the future.

As I said, I also believe that the information is not, essentially, the claimants', but it belongs to -- the settled claims. Excuse me -- that this information was compiled from public sources in the main and belongs to the companies. So I don't think notice to those parties needs to be given as, as before.

And essentially, if there is a need for protection in these most unusual cases where, essentially, the, the Official Committees are formulated effectively by the tort law firms themselves, the leading tort law firms, I think that whatever arguments that could be made by individual claimants have already been made by parties with a similar interest to theirs

and, and who have wonderfully articulated the arguments themselves. So I, I take some confidence in that.

As to this alternate suggestion that we use the, the trust protective orders as opposed to the one that we used earlier for provision of documents to the ACC and FCR, I think the latter are sufficient. Because again, the subpoenas don't seek confidential information and I believe that if there's going to be a problem, if it's not going to come out of the, the bigger documents and information provided to the Committees and the FCR, it's, it's not very likely to come out of this.

So effectively, I am denying those two motions.

That being the case, the parties opposing, the debtors, I will call upon you for a short order, again consistent with these remarks, and you can cite verbal findings so we don't have to repeat all that *ad nauseam*, all right?

Anybody got anything?

(No response)

THE COURT: Do you need a break before we move on to the next matter?

(No response)

THE COURT: Ready to pitch right in. Okay.

Those of you who are only interested in DBMP, feel free to either ring off or leave the courtroom at this point in time. But, if you want to hang around, that, you're welcome for that purpose as well. But we will move on, then.

(This portion of the hearing concluded at 9:45 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* April 29, 2024

Janice Russell, Transcriber Date

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, June 15, 2023 10:31 a.m.
	:	
ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 22-00303 (JCW) (Transferred from District of Delaware)
Plaintiffs,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Defendants,	:	
AC&S ASBESTOS SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 23-00300 (JCW) (Transferred from District New Jersey)
Petitioners,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Respondents,	:	
VERUS CLAIM SERVICES, LLC,	:	
Interested Party,	:	
NON-PARTY CERTAIN MATCHING CLAIMANTS,	:	
Interested Party.	:	

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

APPEARANCES (via Teams):

For Debtors/Defendants, Aldrich Pump LLC and Murray Boiler LLC:	Jones Day BY: BRAD B. ERENS, ESQ. MORGAN R. HIRST, ESQ. 110 North Wacker Dr., Suite 4800 Chicago, IL 60606
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For Non-Party Certain Matching Claimants:	Hogan McDaniel BY: DANIEL K. HOGAN, ESQ. 1311 Delaware Avenue Wilmington, DE 19806
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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Okay. Have a seat, those of us in the courtroom.

We are back today in the Aldrich Pump and Murray Boiler cases in the miscellaneous proceedings, primarily, with regard to a request for, by the debtors for rehearing for what I will generically call the trust subpoena-related issues, essentially talking about whether we are going to sample data from the Trusts or whether the entire 12,000-person population will be required and we'll get to that in a second.

I thought beforehand -- we're doing this by a Teams videoconference call just to get the announcement of the decision from last week's hearing -- let me ask who's on the phone and, and who needs to make appearances, starting with the debtors.

MR. HIRST: Your Honor, Morgan Hirst and Brad Erens are here for the debtors. I'm sure there are others on the line as well, but the primary speakers today.

THE COURT: All right.

Anyone else on the debtors' side needing to announce? Don't feel the need unless it's, it's important to you and your client or you're planning to actively participate.

(No response)

THE COURT: How about for the ACC? Anyone?

MR. WRIGHT: Yeah. It's -- good morning, your Honor. Davis Wright from Robinson & Cole. I'm actually joined today by Jim Wehner from Caplin & Drysdale and Rob Cox from Hamilton Stephens Steele & Martin.

THE COURT: Okay.

How about the FCR?

MR. GUY: Good morning, your Honor. Jonathan Guy for the FCR. I believe Mr. Grier is also on, online, too.

Thank you.

THE COURT: Okay.

And how about on the Delaware Trusts and administrator? I'm gonna say DBMP if I'm not, not careful here, the DCPF Trusts?

MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-Schnoll from Ballard Spahr for the DCPF Trusts.

THE COURT: Thank you.

MR. GUERKE: Good morning, your Honor. Kevin Guerke from Young Conaway on behalf of DCPF Facility and I'm here this morning with our local counsel, Felton Parrish.

THE COURT: Okay.

How about the Facility, the Delaware Facility?

MR. GUERKE: That's Kevin Guerke, your Honor, DCPF.

THE COURT: Okay. That's Guerke. Okay. Trying to keep 'em all straight here.

How about with the Verus Trusts?

MS. BENNETT: Good morning, your Honor. Lynda Bennett from Lowenstein Sandler on behalf of the Verus Trusts and my local counsel, Andy Houston's, also on the line.

THE COURT: Okay.

And then Verus Claims Services?

MR. ANSELMI: Good morning, your Honor. Andrew Anselmi from Anselmi & Carvelli and I believe our local counsel, Jay Bender, is on as well.

THE COURT: All right.

Any Affiliates appearing?

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter & English, on behalf of Trane U.S. Inc. and Trane Technologies Company LLC.

THE COURT: Okay.

Others? Anyone else needing to announce?

MR. HOGAN: Good morning, your Honor. Daniel Hogan on behalf of the Certain Matching Claimants. I, I am here, your Honor.

THE COURT: Okay. I'd overlooked you folks. Sorry about that.

MR. HOGAN: No worries.

THE COURT: Anyone else?

MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-Schnoll, again. I neglected to introduce Lance Martin, our local counsel for the DCPF Trusts.

THE COURT: All right.

MS. MOSKOW-SCHNOLL: He's also on the line.

THE COURT: Very good. Thank you.

That got it?

(No response)

THE COURT: Okay. Should be a short hearing this morning and I won't beat around the bush. I appreciate the quality, as I said, of the presentations that were made last, a week or so ago and you, as always, gave me a lot to think about.

Just to put this procedurally, technically we're, primarily, today in the two miscellaneous proceedings. That would be Nos. 22-303 and 23-300, but these also bleed over into the base case matter since I asked for everybody's appearances and not just the direct participants.

As you know, we've taken this in, now, three steps with multiplicity of, of filings. We started out in Round 1, I guess, with the debtors' request for the subpoenas and then the subpoenas were issued, and then we got, the Delaware and the New Jersey District Courts became involved and ultimately, this all ended up down here. I made a ruling back in November that I announced from the bench in favor of sampling with a 10 percent sample and after, as, as y'all have recounted, after a good bit of negotiation and scurrying around, the debtors asked for, for a, whatever you wanna consider it, rehearing or

reconsideration, depending on your perspective of that. I personally view it as a rehearing because I had nothing but a bench ruling and no written order had been entered and that being the case, bench rulings kinda have an interesting perspective there. They're -- they are -- courts generally expect you to adhere to them if we're in a hurry, but technically speaking, they are not binding decisions until they are actually entered.

So my view was that it was rehearing and for several reasons, even though a written order hadn't been entered, I thought that it would be appropriate to reconsider the matter and, or rehear the matter with the focus today of whether or not a sample would suffice for the debtors' purposes, as I had announced in November, or whether the full, if you will, population data of 12,000 settled meso claims should be produced by the various trusts.

That we are having to do this at all comes from several reasons. You know what I did in DBMP and you know what Judge Beyer did before in Bestwall, but part of this is my fault and I will just fall on my sword and say that, that when we got to talking about this earlier and I announced the 10 percent ruling, part of that was about concern for privacy and I had neglected to think about the double-scrubbing provisions that we had included in DBMP and were being proposed here that would allow first the Trusts and then Bates White to take out

any inadvertently produced PII. That was, that was my mistake, but the ruling also had to do with other concerns, one of which was that instead of moving forward, these cases appeared to be spreading out horizontally and increasing the number of disputes and the attendant costs and, and basically, bogging down. I called it "ballooning" earlier, but litigation that was not being accompanied with, with meaningful progress and I was concerned about those costs concerns.

I also was aware that the Delaware District Court had and ruled on a couple occasions that a 10 percent sample would be sufficient and as I was concerned about costs and efficiencies and moving these cases forward, my second thought on that day was this might be a good spot where we can start reining in our ever-expanding discovery demands by using a sample. I still have the same concerns, but in short, I am reluctantly holding today that I think the debtors could have a legitimate need for the full population of 12,000 and that the 10 percent sample is likely to be inadequate for all purposes.

So I'm gonna require that production. I don't want to go on at, drone on at length, but I need to at least identify so that I can ask for the debtors to provide a proposed order.

Places where I disagree with their arguments, let me say at the outset I thought the handiest way of dealing with this after poring through all of your various pleadings was to take the debtors' reply, which in, consolidated reply filed at

Docket No. 146 in Miscellaneous Proceeding 22-303, and work off of that and if that will enable you to go back to your prior documents and eyeball what, what has been said, I generally agree with the arguments made there with a couple of exceptions. So let me see if I can, without boring you to death as I read to you through all of, all of this, go back and try to address what we have need of here.

I guess the first thing was about the uncertainty that might be inherent in sampling. I agreed, if you're looking on Page 6 of the debtors' rebuttal part, the Trust Discovery Order did, in fact, authorize a, a number of permitted uses, including estimation and plan purposes for this data. So it's broader than what we've had. On the other hand, where the debtor argues that they only asked for, essentially, 3 percent of the settled claims data, meaning 12,000 out of 400,000, I thought that was a little bit misleading. As we all know, the money in these cases is out of meso claims, not, not, the other diseases and they tend to drive these asbestos cases, particularly for plan purposes and trust distribution purposes.

So I looked at it more in terms of the way that the objecting parties were viewing it, that what we were essentially asking for was half of all the meso claims ever presented and effectively, all of 'em, for whatever it was, the last 15 years. So that, I didn't totally agree with.

As to whether there is sampling error and, and the

magnitude of that, that was a difficult decision to make. Both experts, Mr. Wyner, Mr. Mullin, were eminently qualified, excellent witnesses, obviously experts in some very rare air of, of analysis, and if you want to coarsely analogize a court's role in evaluating expert testimony as judging a beauty contest, you would have to say that both would be finalists. They were both excellent and both know what they're talking about, certainly more than the Court itself, whose last statistics class came in the 1970s. So I'm not, I have every intention of thinking this was helpful and that I was going to have to rely on their viewpoint.

I agreed with the general principle that Dr. Wyner said that he didn't think there'd be a material practical effect by sampling, but that is found in context, as, as pointed out in the debtors' brief on, on Page 7 and beyond, that that makes a bit of an assumption that is effectively generalizing that he's assuming that the primary thrust of this is to assess whether or not there is document suppression, information suppression in the files and I believe, as Dr. Mullin states, that his need is beyond that and the debtors' need is beyond that. I would think if we were just trying to come up with an overall estimate of the, of the numbers without anything further, that you could get by on 10 percent, which is a large sample.

I did agree with Dr. Wyner and didn't agree with

Dr. Mullin that if you have a multi-variant analysis, that the increase in uncertainty would be, I think Dr. Wyner said it would be additive, not multiplicative, and I agreed that that was my understanding of the way statistics work. But that doesn't answer the question.

The bottom line is that even if we can't fully identify how much the magnitude of uncertainty was, I thought Dr. Mullin had a couple of observations that were particularly relevant and gave me pause. Essentially, that there is a need to forecast not just today, but off into the future and the farther out you get, the more uncertainty there is. So the better the information you needed and bleeding into that, the fact that there would be subsets who would have different rates of diminishment, if you will, of the disease over a period of time and it might be that with, if you sampled, you wouldn't have enough data on the subsets to make meaningful analysis and that would greatly increase uncertainty and as --

(Joseph Lemkin exited the videoconference)

THE COURT: Okay. Might be a good time, if you haven't already, to mute your receivers.

But basically, that with sampling we might end up with subgroups that weren't large enough to really have good information. So that's where I, I believe Dr. Mullin has the long end of the stick. Whether that actually comes about or not, I don't know at this point, but it is a rational,

reasonable concern and it may affect the forecast of future claims. I am foursquare with the FCR on this topic, that if we are happy enough to get a confirmed plan and a trust at some day that is agreed to by the parties, that I wanna make sure that trust is funded properly and that the future claimants don't get short shrift because they were late and things happened that we had not foreseen in the, as time passed and we wanna be as accurate as we possibly can. And that's my primary motivation for saying that we need the full data. It might make it, the study of those subgroups inaccurate and I don't really want to do that.

Now I will say that there, the argument goes that the debtors' side needs this to, to support their legal liability method and as you know, I was not in Garlock at the time that Judge Hodges entered the estimation ruling. I didn't hear all that evidence. I have no idea of what theory, whether legal liability or historical settlement, is the proper approach and I will reserve judgment on any of those thoughts. I've intentionally not gone back and read that opinion because I wanted it to be fresh and I wanted everyone to get an independent view.

But the bottom line is that we'll reserve that, but I think, as I said before, I want the two parties to be able to, to present the evidence and the theory for this very difficult topic that they believe is appropriate and I think this, the

full population of 12,000, that data is necessary for the debtors to make that attempt.

Let me see where we go from there. One moment.

(Pause)

THE COURT: I generally agreed, at least in principle, that in the same measure the reliance by the debtor on Page 13 of its reply brief that whether the debtor has the information -- the objecting parties say a lot of this information is already in the claims database that, that the debtors possess -- the debtor makes the pitch that half of the Garlock claims involved misrepresentation and, and then extrapolates from that they're likely not to have the information in their own files. I have no idea. Again, same thing. I didn't hear the evidence in Garlock, but we'll jump that, that hurdle when we get to it. So I really express no opinion on that.

Let's see.

Again, the, on Page 14 of the debtors' reply brief, Dr. Gallardo-García's declaration in Bestwall. I adopted the debtors' view of that, that effectively, that was done after Bestwall, after the District Court in Delaware had declared that only a 10 percent sample would be required and if, if Dr. Gallardo-García was, was taking the position that the sample he, he had formulated was adequate, well, what else would he say under those circumstances that, "By the way, you shouldn't rely on this." He didn't say it was ideal.

As to the cost benefit analysis that is discussed, I did not agree with the debtors on 15 and 16 of their reply brief, that it was not necessary for the Trusts to review that documentation. I think that ignores legal realities. If I were the administrator of the Trusts, I would certainly feel obliged to take a look and make sure I didn't let any PII get out there, particularly since it might not be the claimants' PII, but some coworkers.

So I think they do need to do that. The compensating balance, of course though, is the debtor is reimbursing for the expense and I think that takes care a lot of the problems.

As to the Objectors' complaint that there are opportunity costs, non-quantifiable burdens in producing delays, distraction, staff, etc., that one, I think, is just too ethereal factually to, for me to believe and I do note the arguments that, well, these Trusts were looking to get into this case to review PIQ information. So it appears they've got some time to do this. I don't know what's going on in those Trusts and how much claim administration is underway. There's an argument made by the debtors on that that I don't know one way or the other or whether there's plenty of free time.

But the bottom line is that complying with subpoenas is an unfortunate, but necessary fact of modern life. Lawyers have to do it. Businesses have to do it. In this case, our goals are the same goals as, as to our present and future

claimants that is the goals of the Trusts are with regard to the settled claims. We wanna get these people paid as quickly as possible. So while I fully appreciate that it's a burden and fully appreciate that, that claimants would like to get their money quickly, the same applies here and we need it for this purpose. So -- and as, I generally otherwise agreed with the debtors' arguments in that regard.

As to whether or not there are confidentiality concerns by the, by the full-population production as opposed to the 10 percent sample, I'll just tell you at this juncture I think it's a minimum risk and it's a risk that is borne by all people these days who have their, their data in electronic formats being held by corporations that, with which they do business, but in this case I think it's pretty minimal about the risk. I think the fight really here is that we've got a, and the reality, we've got a fight about who gets the information that they think they need to present their cases and there's a desire on one end by the debtors to make that as expansionistic as possible, even to the point of subpoenaing other debtors, and then on the claimants' side, particularly the, the law firms which are affiliated with the Trusts in some form or measure, to minimize that for obvious reasons and the bottom line is you wanna win and also, you don't wanna be embarrassed in the press. I get all of that, but the bottom line is that at the end of the day, there shouldn't be any PII

to begin with because it wasn't requested. If it comes in the narrative forms, then the data will have been reviewed twice and redacted twice and then it gets subject to the protective order which further ensures it and it would ultimately take a hack of the computers at Bates White to ultimately, for that to get out. Now we're getting into some really remote possibility and I don't think it's strong enough to overcome the force of a subpoena.

The last reason -- and, and there are confidentiality demands in the Trust Discovery Order that limits how this information could be used -- and the last one is that, consistency. I've spoken about this before. The last thing I want you folks to do is feel like you need to start trying to appear in the DBMP case lest something happened there that you're gonna be stuck with. I've told you before that just as you learn and adapt case-to-case, the Court does as well. We're trying to learn by prior experiences and each case stands alone. They are different cases in one major respect as to whether or not the FCR supports the debtors' plan proposal and they are going to have a different life, they have different products, and they were filed at different times. I am not capable of doing the same thing in each one.

At the same time on this particular issue, Bestwall and DBMP have already established a full population as to these items and as the facts and circumstances appear to be all but

identical, I believe consistency will be helpful in this respect. So that's the last reason, even though I, I cannot promise nor would I think it appropriate to have full consistency across the cases.

So that's the ruling. I'd call on the debtor to provide a proposed order. Since I've effectively relied on the debtors' reply brief and noted where I, I differ from it, I think we can keep it relatively short, but, and just make reference to it in the event of an appeal.

Anything? That got it?

MR. HIRST: Your Honor, just one -- this is Morgan Hirst for the debtors.

Just one question, which is can we set some sort of compliance date in the order for compliance with the subpoena? I'm open to, you know, I understand the time that it takes to do this, but we would like to at least have a compliance date so it's not hanging out there.

THE COURT: Let me inquire whether this would be a good time for me to take a ten-minute recess and let you talk amongst yourselves. I'll -- we'll keep the, the equipment on.

Can we keep it on without, and turn the recorder off?

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

THE COURT: Okay.

Do y'all need to discuss compliance time periods?

Anyone?

MS. BENNETT: Your Honor, this is Lynda Bennett on behalf of the Verus Trusts.

My suggestion is let us caucus with our clients and then we're happy to reach out to Mr. Hirst to provide a timetable. I'm not in a position today to say how long it's gonna take. We're gonna have to speak with the Verus Facility before we'll be able to commit.

THE COURT: Anyone else?

MR. GUERKE: Your Honor, Kevin -- your Honor, Kevin Guerke on behalf of Delaware Claim Processing Facility.

We would also like a little bit of time to consult with our client before setting a compliance deadline.

THE COURT: Okay. That seems reasonable enough. I just don't want this to drag out and become another delay on trying to get an answer of what the compliance period is and I don't -- we don't come back until July the 14th in this case.

So my suggestion would be that if y'all can't agree -- if you can agree, put it in the, in the order and send it on down. I'm sure whatever you can agree to will be satisfactory to the Court.

If you can't agree, I've got a chapter 11 calendar on the 27th. I'm pretty well wall-to-wall next week, but we could set this on at 9:00 before I start with my regular calendar and, and just get that one issue ironed out. That work?

And again, you don't need to fly to Charlotte for that. We'll, we'll set it up with the clerk.

MR. HIRST: That works for the -- for the, for the debtors, your Honor, that works. It won't be me, but we got lots of people.

THE COURT: Okay.

MS. BENNETT: We appre -- your Honor, this is Lynda Bennett for the Verus Trusts.

We appreciate the accommodation --

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

MS. BENNETT: -- and we'll, we'll work to iron it out, to not be in your calendar, but if not, that will work for us.

THE COURT: Okay.

It'll be 9:00 Eastern, of course, on the 27th, if we need it. Otherwise, send the order down if you, if you come to terms.

All right. Well, thank you all. I appreciate the quality of it. These are -- it is -- the old expression about the, the blind man describing the elephant sometimes well-describes how the Court is trying to phantom right and wrong and, and proper and efficient ways of dealing with a case of this size not being in on all of your discussions. So we grope around in the dark occasionally, but try to, to get a, a good and accurate ruling for you and I hope this one suffices. I

understand reasonable people can differ on this particular issue, but that's the way I see it.

So if there's nothing else, we'll recess and let you go about your day.

(Counsel thank the Court)

(Proceedings concluded at 11:01 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* June 19, 2023

Janice Russell, Transcriber Date

EXHIBIT C-1

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	Chapter 11
DBMP LLC,[1]	Case No. 20-30080 (JCW)
Debtor.	

DEBTOR'S OBJECTION TO THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' OBJECTION TO AND MOTION TO STRIKE SUBPOENAS ISSUED BY DEBTOR TO ALDRICH PUMP LLC, BESTWALL LLC, AND MURRAY BOILER LLC

DBMP LLC ("**DBMP**" or the "**Debtor**") objects to the *Official Committee of Asbestos Personal Injury Claimants' Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC* (Dkt. 2730) (the "**Motion**"), by which the Official Committee of Asbestos Personal Injury Claimants in DBMP's chapter 11 case (the "**DBMP Committee**") seeks an order striking document subpoenas (the "**Subpoenas**") served by the Debtor on non-parties Bestwall LLC ("**Bestwall**"), Aldrich Pump LLC ("**Aldrich**"), and Murray Boiler LLC ("**Murray**," and together with Aldrich, "**Aldrich/Murray**").[2]

[1] The last four digits of the Debtor's taxpayer identification number are 8817. The Debtor's address is 20 Moores Road, Malvern, Pennsylvania 19355.

[2] Separate objections and motions to quash these Subpoenas also were filed in Bestwall's chapter 11 case by the Official Committee of Asbestos Claimants in the Bestwall proceeding (the "**Bestwall Committee**") and in Aldrich/Murray's chapter 11 case by the Official Committee of Asbestos Personal Injury Claimants in the Aldrich/Murray proceeding (the "**Aldrich/Murray Committee**"). *See Motion By the Official Committee of Asbestos Claimants to Quash Subpoena Sent to Debtor*, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 22, 2024) (Dkt. 3327); *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors*, *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2157). The motion in *Bestwall* is scheduled to be heard on April 18, 2024, and the motion in *Aldrich* is scheduled to be heard, together with the motion in this case, on April 17, 2024.

INTRODUCTION

Pre-petition, and over the course of their decades in the litigation, each debtor (Bestwall, Aldrich, Murray, and DBMP) assembled in its own database information about the hundreds of thousands of claims asserted against it in the tort system. Upon demand of the various Committees and FCRs at the inception of their cases, each debtor produced to its respective Committee and FCR an extract of non-privileged data from these databases. DBMP, for example, produced to the DBMP Committee and FCR an extract consisting of 125 substantive data fields regarding over 320,000 claimants. That data extract is protected by the *Agreed Protective Order Governing Confidential Information* (Dkt. 251) (the "**Protective Order**") that DBMP negotiated with the DBMP Committee and that expressly governs confidentiality of the database extract. Substantially similar agreed protective orders in *Bestwall* and *Aldrich* protect the claimant database extracts produced in those cases.

In 2022, Bestwall served subpoenas on DBMP and Aldrich/Murray requesting limited information from their respective databases. With regard to DBMP, for example, the Bestwall subpoena requested just 14 of the 125 substantive non-privileged data fields that had previously been produced to the DBMP Committee and FCR, and it only sought such information regarding a small fraction of the over 320,000 claimants whose information is contained in the DBMP claims database (less than 3%). *See Debtor's Objection to the Official Committee of Asbestos Personal Injury Claimants' Motion to Quash Subpoena* (Dkt. 1434), at 5-8. Upon securing Bestwall's agreement to be bound by the applicable protective orders, DBMP and Aldrich/Murray agreed not to object to Bestwall's subpoenas. *Id.* at 10.

The Bestwall, DBMP, and Aldrich/Murray Committees, however, raised numerous objections to the Bestwall subpoenas that this Court and Judge Beyer overruled, concluding that

the subpoenas sought relevant, non-privileged information that was proportional to the needs of the *Bestwall* case. Among other things, in ruling on the DBMP and Aldrich/Murray Committees' objections, this Court observed that the Protective Order acknowledges that DBMP has control over disclosure to third parties of the information contained in its own database, and that the same is true with respect to the Aldrich/Murray database and the protective order entered in *Aldrich/Murray*. *See* 5/26/22 Hr'g Tr. at 115:20-23 ("[t]he wording of the protect[ive] orders almost implies that the debtor has, or the party that is disclosing the information has some control over its disclosure on its own."); Protective Order ¶ D ("a Party may use or disclose its own information as it wishes"). Indeed, the DBMP and Aldrich/Murray protective orders provide that a non-disclosing party can disclose confidential information to third parties—including extracts from the claims databases—so long as it obtains the disclosing party's prior written consent. *E.g.*, Protective Order ¶¶ F, J.

The Subpoenas seek from the Bestwall and Aldrich/Murray claimant databases the same limited claimant data DBMP produced to Bestwall from DBMP's database, namely fields concerning: (1) claimant's law firm; (2) jurisdiction and state; (3) claim status; (4) date of resolution; (5) date of payment; and (6) exposure allegations.[3] Like DBMP in 2022, Bestwall and Aldrich/Murray are willing to produce an extract from their claimant database containing this information, which production will, as the Subpoenas provide, be subject to the Protective Order.

In filing its Motion, the DBMP Committee thus seeks to relitigate issues resolved by both this Court and by Judge Beyer two years ago. Specifically, during a May 26, 2022 combined hearing in this case and *Aldrich*, this Court overruled the objections of the DBMP and Aldrich/Murray Committees and held that the discovery sought by Bestwall was appropriate and

[3] Copies of the Subpoenas are attached as Ex. A to the Motion.

did not implicate personal identifying information. See 5/26/22 Hr'g Tr. at 112-16. In her May 18, 2022, ruling in *Bestwall*, Judge Beyer similarly overruled the objections of the Bestwall Committee, finding that the Bestwall subpoenas sought relevant information and did not seek privileged or otherwise protected data.[4] *See* 5/18/22 Hr'g Tr., *In re Bestwall*, Case No. 17-31795 (Bankr. W.D.N.C.), at 20-25 (attached as Ex. 1) ("**Bestwall 5/18/22 Hr'g Tr.**"). This Court and Judge Beyer subsequently issued orders incorporating these rulings.[5]

Barely acknowledging these directly on-point decisions, the Motion repeats the same objections that this Court and Judge Beyer rejected two years ago. The DBMP Committee argues that (1) this discovery is not proportional to the needs of the case, (2) the Subpoenas seek personal, sensitive, and/or confidential information, and (3) permitting this discovery will undermine the integrity of the bankruptcy process. (Motion at ¶¶ 1-14.) But **all** these arguments were included in the motions challenging Bestwall's subpoenas and **all** were addressed and expressly or implicitly rejected by this Court's and Judge Beyer's 2022 rulings.[6]

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[4] Judge Beyer did limit the universe of claimants about whom Bestwall could obtain information from DBMP and Aldrich/Murray (based on the agreed claims sample in use in the *Bestwall* case) and also ruled that the information produced to Bestwall should be subject to a protective order; as explained below, DBMP's Subpoenas abide by these limitations.

[5] *See Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor* (Dkt. 1465); *Order Granting in Part and Denying in Part the Official Committee of Asbestos Claimants' (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of any Matched Claimant*, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. June 13, 2022) (Dkt. 2608); *Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors*, *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C. June 9, 2022) (Dkt. 1204).

[6] *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor* (Dkt. 1373) (the "**DBMP Committee Motion to Quash**"), at ¶¶ 16-19, 26, 33; *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors*, *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C. March 19, 2022) (Dkt. 1056), at ¶¶ 17-20, 27, 36; *Official Committee of Asbestos Claimants' Motion (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of any Matched Claimant*, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 21, 2022) (Dkt. 2470), at ¶¶ 4-21, 34-36.

Cognizant of this Court's prior admonition that while the *Bestwall*, *DBMP*, and *Aldrich* cases present different issues that may lead to different results, where "the facts and circumstances appear to be all but identical, I believe consistency will be helpful," 6/15/23 Hr'g Tr., *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C.), at 18:25-19:2 (attached as Ex. 2), DBMP asked the DBMP Committee to withdraw its Motion. The DBMP Committee refused.[7]

The DBMP Committee offers no legitimate reason why this Court should revisit or reconsider its prior ruling, nor any new facts or governing law. Instead, it argues first that DBMP has already obtained "significant volumes" of claimant information and has "failed to articulate any need for more." (Motion at 3.) But that "articulation" test is found nowhere in the relevant federal rules. To the contrary, the scope of discovery is broad, and extends to information "relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026, 9014(c).

Notably, none of the targets of the Subpoenas object or otherwise argue that responding will impose upon them an undue burden or expense. Further, the fact that DBMP already has some claimant information does not obviate the need for it to obtain additional information, given the central relevance of such information to estimation. As it has previously explained, DBMP at estimation will present a legal liability methodology that depends, in significant part, on assessing DBMP claimants' claims against other parties and exposure to their products. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 73, 96 (Bankr. W.D.N.C. 2014). The information sought by DBMP's Subpoenas—whether and when Bestwall, Aldrich, and Murray settled

[7] *See* March 22, 2024, letter from Valerie E. Ross to Kevin C. Maclay, *et al.* (attached as Ex. 3); March 27, 2024, letter from Davis Wright to Valerie E. Ross (attached as Ex. 4).

DBMP claimants' claims, and exposures claimed against those companies—is directly relevant to this issue.

The information sought by the Subpoenas also bears on DBMP's rebuttal of the Committee's and the FCR's anticipated plan to rely on DBMP's historical settlements to value the company's current and future liability. DBMP contends that historical settlements overstate its liability; the extent to which DBMP claimants asserted claims against co-defendants, identified exposures to their products, and settled those claims, will be relevant to DBMP's expert's response to the Committee's and the FCR's settlement methodology. *See* Bates Decl. (Dkt. 417-3), ¶¶ 32-35, 38-40 (attached as Ex. 5).

Second, the Motion completely ignores Judge Beyer's ruling that the Bestwall subpoenas "don't seek highly personal, sensitive, confidential, or privileged data," Bestwall 5/18/22 Hr'g Tr. at 21, and this Court's ruling that "I don't see the discovery requested here being, having PII. I don't think that we have a real threat of identity theft under the circumstances." 5/26/22 Hr'g Tr. at 115. Instead, the DBMP Committee contends without support or example that "highly confidential" information would be produced in response to the Subpoenas, including "medical information" and "settlement information." (Motion at ¶¶ 2, 7-11.) But no diagnosis or other medical information is sought by the Subpoenas, and the only settlement-related information is whether a claimant settled with Bestwall or Aldrich/Murray (a yes or no proposition) and, if so, the date of such settlement and the date of any settlement payment. (Motion, Ex. A.) There is nothing confidential, privileged, or sensitive about these matters, as this Court and Judge Beyer already have found.

Third, again repeating previously rejected arguments, the DBMP Committee maintains that allowing the discovery here will somehow "undermine the integrity of the bankruptcy

process." (Motion at ¶¶ 12-14.) They contend allowing this discovery will initiate a flood of similar requests and result in a database holding the "confidential information of any bankrupt entity facing mass torts." This Chicken Little argument is belied by the fact that the Bestwall Committee made identical arguments two years ago, and yet the DBMP Subpoenas—which DBMP indicated it intended to serve in its pleadings filed two years ago in connection with the Bestwall subpoenas—are apparently the only similar requests yet made. Moreover, because the Subpoenas do not seek any confidential information at all, allowing them will not lead to the creation of the sort of database imagined by the DBMP Committee.

Implicitly acknowledging the weakness of their arguments, the DBMP Committee alternatively suggests that any information gathered pursuant to the Subpoenas should be subject to the strict confidentiality and use restrictions imposed by this Court in connection with DBMP's discovery of information from various asbestos bankruptcy trusts. (Motion at ¶¶ 15-17.) This request too ignores that the Subpoenas do not seek the sort of personal or confidential information warranting such heightened and unusual protections. Moreover, the Subpoenas expressly provide that DBMP will treat any information produced in response as confidential in accordance with the Protective Order. *See*, *e.g.*, Subpoena to Bestwall, Ex. A at ¶ 12. This is consistent with the protections this Court and Judge Beyer ordered for the information produced in response to Bestwall's subpoenas and also is consistent with the protections provided to the much more extensive DBMP claimant database produced to the DBMP Committee at the outset of this case. There is, accordingly, no reason for imposition of the more stringent restrictions imposed in connection with the data produced by the asbestos bankruptcy trusts.

STATEMENT OF RELEVANT FACTS

On February 29, 2024, DBMP served the Subpoenas on Bestwall and Aldrich/Murray seeking limited information about: (1) each mesothelioma claimant who had resolved a mesothelioma claim asserted against DBMP or its predecessor, the former CertainTeed Corporation, prior to the Petition Date and who is identified in the agreed sample used in this case for estimation purposes as identified on Exhibit A to the *Agreed Order with Respect to Resolved Claims Sampling for Purposes of Estimation Discovery* (Dkt. 2506) (such claims on Exhibit A, the "**DBMP Agreed Claims**"); and (2) mesothelioma claimants who timely filed and did not withdraw a Proof of Claim in this case pursuant to the *Order (I) Establishing Bar Date for Pending Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants* (Dkt. 1461) (the "**Pending Claims**"). (Motion, Ex. A at ¶¶ 1, 4.) Collectively, there are just over 4,000 claimants whose information is potentially the subject of the Subpoenas. The Subpoenas, however, seek information about these claimants only to the extent they also filed pre-petition mesothelioma claims against Bestwall or Aldrich/Murray, and so it is anticipated that the actual number of claimants whose information will be produced in response to the Subpoenas will be smaller.

The Subpoenas seek information identical to the information sought by the Bestwall subpoenas approved by this Court and Judge Beyer in 2022. The information sought is a small subset of that contained within each company's pre-petition claims database, namely only fields that record: (1) the name of the law firm or firms who represented the claimant; (2) the jurisdiction and state in which the claimant filed his or her claim against the relevant entity; (3) the status of the claim against the entity (*e.g.*, settled, dismissed, etc.); (4) if resolved, the date

the claim was resolved; (5) if a settlement or judgment were paid, the date of payment; and (6) the claimant's exposure allegations, including dates, manner, and location of exposure. (*See* Motion, Ex. A.)

None of the target companies objected to the Subpoenas. Each is prepared to produce the requested information.[8]

ARGUMENT

Parties are broadly entitled to obtain discovery on "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026, 9014(c). Moreover, "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). "The rules of discovery are to be accorded broad and liberal construction." *Greene v. Shapiro & Ingle, LLP*, No. 3:17-CV-263-RJC-DCK, 2018 WL 1566336, at *1 (W.D.N.C. Mar. 30, 2018).

As the party objecting to discovery, the DBMP Committee has the burden of persuasion to show that "the requested discovery is not relevant to the issues in this litigation." *Spell v. McDaniel*, 591 F. Supp. 1090, 1114 (E.D.N.C. 1984). "District courts within the Fourth Circuit have long held that the burden of persuasion rests with the party opposing discovery." *Ultra-Mek, Inc. v. Man Wah (USA), Inc*., 318 F.R.D. 309, 316 (M.D.N.C. 2016); *Kinetic Concepts, Inc.*

[8] Following the filing of the Motion, DBMP informed Bestwall and Aldrich/Murray that they need not produce responsive documents until the Motion (and motions to quash filed in *Aldrich/Murray* and *Bestwall*) are resolved. *See* March 21, 2024, e-mails from Valerie Ross to C. Michael Evert, Jr. and Doc Schneider (attached as Ex. 6).

v. ConvaTec Inc., 268 F.R.D. 226, 243 (M.D.N.C. 2010) ("[D]istrict judges and magistrate judges in the Fourth Circuit (including members of this Court) have repeatedly ruled that the party or person resisting discovery, not the party moving to compel discovery, bears the burden of persuasion.").

The DBMP Committee does not come close to satisfying its burden. The information sought in the Subpoenas is relevant to the primary issue for estimation: the extent of the Debtor's liability for current and future asbestos claims. And the Subpoenas have been narrowly tailored to seek only non-confidential information about claimants with DBMP Agreed Claims or Pending Claims who also asserted pre-petition claims against Bestwall and/or Aldrich/Murray, namely data concerning the status of their Bestwall and/or Aldrich/Murray claims (if any) and the exposures that serve as the basis for those claims. The burden on Bestwall and Aldrich/Murray to produce information in response to the Subpoenas is minimal and, as noted, they have indicated that they have no objection to the Subpoenas and are prepared to produce the requested data.

I. The DBMP Subpoenas Are Limited in Scope and Proportional to the Needs of the Case.

The DBMP Committee objects that the subpoenas are "unnecessary, duplicative, and disproportionate to the needs of this case" and "harass and burden claimants" who have settled their claims. (Motion at 2.) As explained above, and consistent with Judge Beyer's limiting of the Bestwall subpoenas to Bestwall claimants with pending claims or included in the Bestwall resolved claim sample, Bestwall 5/18/22 Hr'g Tr. at 24, the DBMP subpoenas seek information only about the subset of the just over 4,000 DBMP Agreed Claims and Pending Claims who also filed pre-petition claims against Bestwall, Aldrich, or Murray. As also explained above, the data sought about each overlapping claimant consists of a limited number of data fields from the pre-

petition databases of Bestwall, Aldrich, and Murray.[9] The targets of the Subpoenas do not argue or object that it would be burdensome for them to produce this limited information, and the DBMP Committee does not contend otherwise.

Instead, adopting an argument made by the Bestwall Committee when challenging the Bestwall subpoenas, the DBMP Committee blithely claims that "the Debtor has access to the same sources of information as the Subpoenaed Parties, rendering the defendant-specific information in the Subpoenaed Parties' hands of diminishing value." (Motion at 3.) However, as Bestwall explained in opposing the Bestwall Committee's motion, that argument is flawed for several reasons, including that: (i) some claims were resolved through a private administrative procedure not visible to DBMP; (ii) DBMP may not have been apprised when another entity resolved a claim; (iii) DBMP may have resolved cases before claimants settled with Bestwall, Aldrich and/or Murray, and thus would not have any record of what happened later in the case; (iv) certain claimants may have asserted claims in lawsuits DBMP never knew about, and (v) one of the primary purposes of the discovery is to test whether or not the exposure and claims resolution information DBMP received from claimants in the tort system was accurate and complete. Although claimants are aware of which entities they filed and resolved claims against, DBMP does not have the full picture of settlements claimants may have received from other

[9] When DBMP responded to the similar subpoena from Bestwall, in addition to three numeric or alpha-numeric fields used to identify claimants and lawsuits, DBMP's production consisted of 14 (out of 125) substantive data fields from its pre-petition database: State, Jurisdiction, Injured_Party_Lawsuit_Status_Description [*e.g.*, "Settled", "Open", "Dismissed With Prejudice"], Injured_Party_Lawsuit_Status_Category [*e.g.*, "Sett", "Open", "Zero"], Resolution_Date, First_Paid_Date, Jobsite, Occupation, Start_Date, End_Date, Is_Secondary [a check box], Counsel, Primary [a check box], and Type [either "Local Plaintiff Counsel" or "National Plaintiff Counsel"]. Note that the same company that maintained DBMP's pre-petition database also maintained the pre-petition databases of Bestwall, Aldrich, and Murray, and so DBMP anticipates that their productions would contain similar if not the identical data fields.

parties. This information is vital to estimating the share of liability that could be attributed to DBMP for a particular claimant.

Judge Beyer credited similar arguments from Bestwall in finding that "the discovery the debtor seeks is consistent with discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case." Bestwall 5/18/22 Hr'g Tr. at 23:11-15. And this Court likewise found that "the discovery is appropriate under the circumstances." 5/26/22 Hr'g Tr. at 114:24-25.

The DBMP Committee tries to distinguish Judge Beyer's denial of the similar motion in *Bestwall* on the grounds that DBMP has already obtained information from various bankruptcy trusts, as well as through the PIQ process. They point to Judge Beyer's observation at the May 2022 hearing that Bestwall had not yet been able to acquire claims data from the asbestos trusts and that multiple Bestwall claimants had refused to submit PIQs. (Motion at ¶ 5 (citing Bestwall 5/18/22 Hr'g Tr. at 23:22-24:1)). This ignores, however, that Judge Beyer described Bestwall's difficulties in obtaining discovery from the asbestos trusts and from certain pending claimants to explain why she was allowing the Bestwall subpoenas despite a concern that the then-scheduled October 2023 estimation hearing was fast approaching and might be jeopardized if Bestwall were allowed to pursue significant new discovery. In other words, the fact that the estimation hearing had already been scheduled led Judge Beyer to question whether the discovery sought by the Bestwall subpoenas was proportional to the needs of that case. Bestwall 5/18/22 Hr'g Tr. at 22:11-15 ("I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with

our estimation hearing date of October 2023.").[10] Judge Beyer ultimately decided proportionality was satisfied because of the issues Bestwall had with obtaining information from the trusts and through the PIQ process.

DBMP does not have those same issues obtaining other discovery, but also no scheduled date for DBMP's estimation hearing will potentially be jeopardized by allowing DBMP to pursue this discovery. To the contrary, this Court recently suspended the previously set deadlines in the Estimation Case Management Order. (Dkt. 2718.) The parties are in the midst of document discovery, and deadlines for discovery after the completion of written discovery (such as for expert reports and depositions) have not even been set. Accordingly, Judge Beyer's concerns about proportionality and expediency of discovery, and her related overcoming of those concerns based on the difficulties Bestwall was then having in obtaining information from other sources, simply do not apply in this case.

The DBMP Committee further argues that the information requested in the Subpoenas is not "necessary" given the "flood of information [DBMP] has already requested and received." (Motion at ¶ 6.) But as this Court has recognized several times in the related context of DBMP's efforts to subpoena information from various asbestos trusts, estimation involves "a difficult chore of trying to get our arms around how much is really owed for, for these claims by this particular debtor." 10/31/22 Hr'g Tr. at 73:15-16. And, because that is "an inexact science," "it requires a great deal of data and we have to find it where we can." *Id.* at 73:17-18.[11] The DBMP Committee relatedly complains, without citation to any evidence, that permitting this discovery

[10] Ultimately, the October 2023 trial date was not maintained for other reasons. Currently, no estimation hearing is scheduled in *Bestwall*.

[11] In connection with the DBMP Committee's and the DBMP FCR's discovery requests to DBMP in the estimation proceeding, DBMP has collected and is in the process of reviewing for potential production over two million documents. *See* 3/7/24 Hr'g Tr. at 68:3-13.

will deplete estate resources. (Motion at ¶ 6.) In fact, DBMP does not anticipate that obtaining and reviewing the information sought by the Subpoenas will materially impact its costs associated with preparing for estimation. At a minimum, those costs are likely to be less than the costs to DBMP associated with litigating this Motion as well as the related motions filed by the Bestwall and Aldrich/Murray Committees.

II. The Subpoenas Do Not Seek Privileged or Otherwise Protected Data.

The DBMP Committee argues that the Subpoenas "burden settled claimants" because they seek "highly personal, confidential and sensitive information." (Motion at 5.) Neither the "settled claimants" nor the DBMP Committee are the target of the Subpoenas, however, and so any supposed burden on them is not at issue. Rather, the DBMP Committee must show that the data sought requires disclosure of "potentially privileged and otherwise protected matter." *CineTel Films, Inc. v. Does 1-1,052*, 853 F. Supp. 2d 545, 554 (D. Md. 2012) (citations omitted); *accord United States v. Idema*, 118 Fed. Appx. 740, 744 (4th Cir. 2005) ("[A] party does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena.") (citations omitted); 9A Wright & Miller § 2459 (party has no standing to quash a subpoena issued to nonparty "unless the objecting party claims some personal right or privilege with regard to the documents sought"); Fed. R. Civ. P. 45(d)(3).

The DBMP Committee does not contend that the Subpoenas seek anything privileged. Instead, its objection rests on the unsubstantiated claim that the data DBMP seeks includes "[s]ensitive information of a highly personal nature (*e.g.*, medical diagnoses, exposure-related information)." (Motion at ¶ 8.) But even if that were sufficient grounds under Rule 45 to challenge a third-party subpoena, the DBMP Committee is flat wrong. As this Court and Judge Beyer previously ruled when considering the identical requests of Bestwall, most of the data

sought such as the claimants' law firm, the court where the claim was filed, and certain basic exposure information, are derived from the claimants' public court filings. *E.g.*, Bestwall 5/18/22 Hr'g Tr. at 21:25-22:2 ("Most of the information sought pursuant to the *subpoenas* could be found in complaints and other public court filings.") (emphasis in original).[12]

Nor, contrary to the DBMP Committee's contentions (Motion at ¶¶ 10-11), do the Subpoenas request any potentially confidential settlement information like settlement amounts or specific settlement terms. The only settlement data DBMP seeks are the claim status, *i.e.*, whether the claimant settled with Bestwall or Aldrich or Murray, and, if so, the date of settlement and the date of payment. None of this information is confidential. *E.g.*, *McCauley v. Trans Union, L.L.C.*, 402 F.3d 340, 342 (2d Cir. 2005) (plaintiff not obliged to accept Rule 68 offer of judgment conditioned on fact of settlement being confidential because "party engaged in litigation is not entitled to insist on confidentiality"); *Arbour v. Alterra Wynwood of Meridian*, No. 1:09-CV-246, 2010 WL 11688550, at *2 (W.D. Mich. Mar. 9, 2010) (court agrees to redaction of settlement amounts in settlement agreement filed on public court docket but "fact of

[12] In addition, the DBMP Committee is precluded from relitigating whether the Subpoenas request any "[s]ensitive information of a highly personal nature (e.g., medical diagnoses, exposure-related information)." (Motion at ¶ 8.). Issue preclusion applies where: "(1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding." *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004). In determining the relevant issue for issue preclusion, it is enough if there is "substantial overlap" between the "argument to be advanced in the second proceeding and that advanced in the first," particularly if the claims in the two proceedings are "closely related." Restatement (Second) of Judgments § 27 cmt. c (1982). Here, after the DBMP Committee raised its argument that the subpoenas served by Bestwall requested "highly personal and confidential" information, *see* DBMP Committee Motion to Quash at 6-8, the Court found that those subpoenas did not implicate personal identifying information. *See* 5/26/22 Hr'g Tr. at 112-16. Importantly, the Subpoenas here and the subpoenas served by Bestwall are closely related because the subpoenas all seek the same type of non-confidential information. As a result, the parties have already litigated, and this Court already resolved, the issue of whether the information sought here is highly personal in nature. Further, the Court's order denying the DBMP Committee Motion to Quash was not appealed, and the DBMP Committee had a full and fair opportunity to litigate the issue of the nature of the information sought. The Court should not countenance the DBMP Committee's efforts to relitigate previously decided issues.

settlement itself need not and should not be redacted"); *Church v. Dana Kepner Co., Inc*, No. 11-cv-02632-CMA-MEH, 2013 WL 24437 at *7 (D. Colo. Jan. 2, 2013) (denying plaintiffs' motion for a protective order against information sought by defendant on settlements of mesothelioma claims and requiring the plaintiffs "to provide information concerning **the fact of the settlements** in the California litigation, including the identities of each defendant with whom the Plaintiffs [] settled and **the date of each settlement**.") (emphasis added); *see also* D.C. Bar Ethics Op. 355 (2006) (settlement agreement that seeks to compel counsel to keep confidential "fact that the case has settled" violates D.C. Rule of Prof. Conduct 5.6(b)).

In short, nothing about the substance of the information sought by the Subpoenas is problematic or grounds for granting the Motion.

III. The Subpoenas Do Not Implicate the "Integrity of the Bankruptcy Process."

The DBMP Committee next argues that the Subpoenas are evidence that "[t]he floodgates…have opened" with respect to aggregate discovery on debtors in mass-tort bankruptcy cases. (Motion at ¶¶ 12-14.) It concedes that Judge Beyer did not agree when the Bestwall Committee made the same argument in connection with the Bestwall subpoenas; she found that any potential discovery abuses could be addressed on a "case-by-case basis." *Id.* But it suggests that a case-by-case approach is not working, and that allowing the DBMP Subpoenas "raises the prospect that the confidential information of any bankrupt entity facing mass torts, willing or not, will be vacuumed into a single database as a matter of course." (Motion at ¶ 13.)

To begin, this argument ignores that it has been two years since the rulings on the Bestwall subpoenas, and yet the Subpoenas at issue are the first similar discovery request of which DBMP is aware. That is hardly a flood. Indeed, the DBMP Committee was put on notice two years ago of DBMP's intent to subpoena Bestwall, Aldrich, and Murray. Specifically, in its filing in this Court in connection with the DBMP Committee's motion challenging the Bestwall

subpoena, DBMP stated that "DBMP will likely serve similar subpoenas in DBMP's estimation proceeding." (Dkt. 1434 at 4-5.) Nor, as shown above, is any of the information sought by the Subpoenas confidential, and so that part of the DBMP Committee's prophecy fails as well.

The DBMP Committee also contends that the Subpoenas undermine the integrity of the bankruptcy process because the various debtors have some overlapping counsel. (Motion at ¶ 14.) This argument is again premised on the false notion that the information sought by the Subpoenas is confidential. (*Id.* ("The rights of settled claimants to have their confidential information vigorously protected should not turn on the vagaries of which law firm represents the tortfeasor with whom the claimants settled.").) Regardless, while there are some shared counsel, each debtor also has separate counsel, including in the case of DBMP its Chief Legal Officer and undersigned counsel from the ArentFox Schiff law firm.

As this Court previously ruled, it is not "a misuse of the bankruptcy to, to allow this type of information. It's certainly unique, but like Judge Beyer, I don't see a reason there not to do it." 5/26/22 Hr'g Tr. at 116:10-13.

IV. There Is No Need to Impose the Confidentiality and Use Restrictions Adopted in Connection with Trust Discovery.

The Motion argues alternatively that if the Court allows the Subpoenas, it should impose the same confidentiality and use restrictions imposed in connection with the information DBMP obtained from the various asbestos bankruptcy trusts. (Motion at ¶¶ 15-17.) Once again, this contention is premised on the false assertion that the information requested by the Subpoenas is private or confidential. (*E.g.*, *id.* at ¶ 15 (referencing possible "impingement on the asbestos claimants' privacy rights"); ¶ 16 (discussing need to protect "claimants' underlying personal information" and "confidential claimant information").) As shown above, and as previously found, there is nothing confidential or private sought by the Subpoenas.

Nonetheless, consistent with Judge Beyer's and this Court's prior rulings, the DBMP Subpoenas expressly provide in Exhibit A that DBMP will deem the information produced in response confidential pursuant to the Protective Order entered in this case. (Motion, Ex. A.) Indeed, the Protective Order, which was negotiated with and agreed to by the DBMP Committee, is what protects the much more extensive claimant database that was produced by DBMP to the DBMP Committee and FCR, and their respective professionals, at the outset of this case. Substantially similar protective orders protect the Bestwall and Aldrich/Murray claimant databases that were produced to the claimant representatives and professionals in those cases and that will be the source of any information produced to DBMP in response to the Subpoenas. *See Agreed Protective Order Governing Confidential Information*, *In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C. Sept. 23, 2020) (Dkt. 345), at ¶¶ A(3), J; *Agreed Protective Order Governing Confidential Information*, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. March 26, 2018) (Dkt. 33), at ¶¶ A(3), J.

In the years since these various claimant databases were produced, there has been no indication of any data breach or other improper use of the claimant data. Nor, more generally, is there any evidence that the debtors experienced any such issues during the decades pre-petition in which they maintained and relied upon their claimant databases in the litigation. There is, accordingly, no reason to require DBMP to comply with significantly more onerous restrictions with respect to a much more limited data set.

CONCLUSION

The issues presented by the Motion have been litigated three times and have been ruled on by both this Court and Judge Beyer. The DBMP Committee's Motion does not present any compelling reasons to litigate these same issues a fourth time. For these reasons, and those stated above, the Motion should be denied.

Dated: April 3, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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ATTORNEYS FOR DEBTOR AND DEBTOR IN POSSESSION

Exhibit 1

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: : Case No. 17-31795-LTB

BESTWALL LLC, : Chapter 11

Debtor. : Charlotte, North Carolina
Wednesday, May 18, 2022
: 9:33 a.m.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

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

ALSO PRESENT (via telephone):

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: All right. Good morning.

We are here in the Bestwall case, Case No. 17-31795. We've got a few matters on the calendar and admittedly, I'm having to remember how to do this by Teams. But I think, probably, rather than having everybody who is on the camera announce their appearance, what I'm going to ask you to do is to turn on your camera if you anticipate having a speaking role at today's hearing. Otherwise, if everybody would turn your camera off -- and I don't see too -- so that we can announce appearances.

So go ahead and turn your camera on if you anticipate having a speaking role and then I'm going to, I'll call your name and ask you to announce your appearance. I think that might be the best way to go about doing this. All right.

Mr. Waldrep, you were the first one in my screen. So I'll ask you to announce your appearance, please.

MR. WALDREP: Good morning, your Honor. Tom Waldrep on behalf of several claimants.

THE COURT: All right.

Mr. Wolf? It says Richard Wolf, but you are not Richard Wolf. Mr. Worf. Sorry. I just --

MR. WORF: That makes me sound a --

THE COURT: I looked --

MR. WORF: -- a lot more fierce than I am.

Richard Worf, your Honor, Robinson Bradshaw, for the debtor. I'm in the room with Hana Crandall and I believe Mr. Cassada, Preetha Rini, and Kevin Crandall are also on the phone.

THE COURT: Okay, very good.

MR. WORF: Thank you.

THE COURT: My apologies, Mr. Worf. I just read the name. I didn't even look at your face.

Ms. Zieg.

MS. ZIEG: Good morning, your Honor. Sharon Zieg of Young Conaway Stargatt & Taylor on behalf of the Future Claimants' Representative. It's interesting, your Honor. My team asked me how this was going to work this morning and I said, "It's been so long I can't even remember. You introduce yourself or I introduce you."

With that said, the members of Young Conaway that are on the phone today or participating via Teams are Ms. Edwards, Ms. Bradley, and Mr. Harron. North Carolina counsel, Felton Parrish, is on the line and Mr. Esserman is also on the line.

THE COURT: Okay, very good. Thank you.

MS. ZIEG: Thank you.

THE COURT: I think they're laughing at our expense, Mr. Worf.

Ms. Ramsey.

MS. RAMSEY: Good morning, your Honor. Natalie Ramsey on behalf of the Asbestos Claimants' Committee and also on the line is Mr. Wright from my office.

THE COURT: Okay, very good. Thank you.

And Mr. Gordon.

MS. RAMSEY: Thank you.

MR. GORDON: Good morning, your Honor. Greg Gordon, Jones Day, on behalf of the debtor. Also with me are Jeff Ellman and Jim Jones.

THE COURT: Okay, very good.

So in looking, folks, we've got a couple matters on the calendar and I'll start by noting that the hearing on the motion to reconsider the order and debtor's response -- that's the way it's listed on the calendar -- that that has been continued to June 23, 2022.

And so that leaves us with the continued hearing on the motion to strike for which the Court will give its ruling, but in looking at the Notice of Agenda, of course, we also have the status conference regarding the debtor's supplemental motion to enforce the PIQ order and as we tend to do, we, we typically start with that.

And so, Mr. Worf and Mr. Waldrep, is that what you all were anticipating?

MR. WALDREP: Yes, ma'am, I was.

MR. WORF: That is just fine with us, your Honor.

THE COURT: All right. So, Mr. Worf -- and we do have -- and if I call you Mr. Wolf, that is the name on the screen. So bear with me if I do that -- we will start with the status conference regarding the debtor's supplemental motion to enforce PIQ order with respect to non-compliant claimants.

MR. WORF: Thank you, your Honor. Richard Worf for the debtor, Robinson Bradshaw.

So your Honor entered the sanctions order on April 25th which set forth sanctions that were imposed on certain claimants who had failed to comply with one or more of Parts 8, 8A, 10 or Tables A, B, and C in the PIQ and had been found in contempt. The order provided that claimants would incur a daily fine beginning on the 14th day after entry of the order if they had not purged their contempt and that day was May 9th.

Since the sanctions order was entered, there has been additional compliance with your Honor's orders and I'll put up on the screen a, some slides that summarize the current state of compliance.

So as your Honor will recall, as of the April 6th hearing 493 claimants remained noncompliant with one or more of those parts and then there was no additional compliance between the April 6th hearing and the entry of the sanctions order on April 25th, but since the entry of the order on April 25th there has been additional compliance and, in the debtor's view, 111 of the 493 claimants, or about a quarter, have now fully

complied with those PIQ parts and, in the debtor's view, have purged their contempt. Eighty-four of those 111 claimants, in the debtor's view, fully complied before any fine was incurred beginning on May 9th, while 27 of those claimants fully complied after some amount of fine was incurred. And I'll get into the, the details of that in, in a moment. 382 claimants remain noncompliant with one or more of those PIQ parts, but even among those claimants 357 of those claimants have provided partial additional compliance since the Court entered the sanctions order on April 25th. And I'll get into more detail on that as well.

We have provided to the Court and the parties an exhibit that is modeled on the Exhibit A that your Honor has seen on previous occasions and this exhibit lists the 493 claimants who are subject to the sanctions order and lists their law firms and their names. We shared a version of this with counsel for the claimants last Friday and then shared a version of it yesterday when we shared it with the Court with claimants as well as the ACC and the FCR. The exhibit like previous versions of this exhibit indicates the parts that claimants still have not complied with in the columns listed Part 8, 8A, Table A, B, and C, and Part 10. Additional columns that we've now added are the Date Complied column and the Sanctions Owed column. The Date Complied column lists if a claimant is still noncompliant with one or more of those parts

or, alternatively, lists the date the claimant fully complied with those parts. And finally, the Sanctions Owed column calculates the, the sanctions that each claimant owes based on when the claimant complied with the Court's order.

One note about how we calculated the sanctions that are in the Sanctions Owed column. The order said that sanctions would start accruing on May 9th. The debtor adopted a claimant-friendly interpretation of that under which the sanction on a particular day is not accrued until the end of the day so that claimants whose materials were received and, and who became fully compliant on May 9th did not incur any fine, in the debtor's view, and claimants who complied on May 10th incurred a fine of a hundred dollars and so on and so forth.

We provided a slightly updated exhibit, version of this exhibit to the Court this morning. We heard yesterday afternoon that 49 of The Gori Law Firm claimants who are now fully compliant believed their responses had been received by the claims agent on May 9th rather than May 10th. Donlin had told us they were received on May 10th, but we went and checked on that and it turns out that Donlin's mailroom had received those responses on May 9th. They didn't make their way to the relevant personnel at Donlin until May 10th, but, long story short, we did agree with The Gori Law Firm on that and changed the date of compliance for them to May 9th which meant that

those 49 claimants did not incur any fine. And that change has, has been made in the exhibit.

The other change from the version we shared with the Court yesterday is that we learned later yesterday that five of the SWMW law firm claimants are no longer asserting pending claims. And so we've also provided that those claimants are compliant as of yesterday.

So where does this leave us? This is a version of a slide that the Court has seen before which summarizes where compliance stands by part and one of the interesting things is that because of the partial compliance that we've had over the last almost a month there are now relatively few claimants who are not compliant with Part 8 on aggregate settlement amounts and aggregate recoveries from trusts as well as Part 8A on lawsuit information. Notably, the Shrader law firm, which represents 330 of the 382 remaining non-compliant claimants, has now responded to Part 8 for almost all of the claimants they represent and that, that's a striking result because Part 8 has been the most hotly contested PIQ part since the original litigation over the PIQ.

So there are now, of the claimants who submitted PIQs indicating that they assert pending claims, there are now only 56 claimants out of the 1,955 who, who have not answered Part 8, which is 3 percent. The 1,955 has gone down some because additional claimants informed us that they do not have pending

mesothelioma claims.

But the problem is now with sections that historically have been much less controversial, including Tables A, B, and C on tort claims, trust claims, and claims against other entities as well as Part 10 requiring submission of trust claim forms. We do believe we're moving in the right direction and the Court's order is accomplishing what it is intended to do.

On this slide, I've broken it out by law firm and the Court can see the approaches to this still do vary by law firm. Some law firms' claimants have now fully complied or, or almost fully complied, including the Dean Omar firm, the Robins Cloud firm, and, with, with just a few exceptions, The Gori Law Firm. Other law firms have, have claimants who, who have partially complied in, in a uniform way, including the Shrader firm and the Provost Umphrey firm, and we understand that the Provost firm is in the process of fully complying and we, and we hope they will finish that as soon as they possibly can. Other firms' claimants have not provided any additional compliance and your Honor can see those on this list.

But the debtor thinks it, it make sense to continue to play this process out and we hope that by the time of the next omnibus hearing that all or most of these claimants will have fully complied. Only nine claimants appealed the Court's sanctions order to the district court and all but the same nine claimants have now dismissed their appeal of the contempt order

that led to the sanctions order.

So we hope that is a sign that there will be additional compliance and the debtor will, as we have been doing, will continue to diligently monitor additional submissions and determine whether claimants have fully complied with the Court's orders.

In the meantime, the debtor believes that it also makes sense before the next omnibus hearing for the parties to brief the question the Court left open in the sanctions order which is when, to whom, and at what intervals the daily fine will be paid. At the time your Honor entered the order the debtor urged the Court and the Court agreed that those matters should be deferred as the debtor observed at that time claimants had not incurred any sanctions and we hoped that no claimants would. But claimants now have incurred sanctions and the questions the Court deferred do need to be decided and we think it makes sense for the parties to submit simultaneous briefs on that before the next hearing. Also, perhaps the prospect that fines are going to have to start being paid on some regular basis would inspire further compliance and get us to the point where we have all or the vast majority of these claimants fully complying with the Court's orders.

So the debtor would request that the Court entertain that briefing and we think it makes sense to submit simultaneous briefs by June 16th, if your Honor is amenable to

that.

As part of those briefs, the parties could also brief another dispute that has arisen which is how to treat claimants who first told us that they do not have pending mesothelioma claims only after the fine under the Court's sanctions order started accruing? I believe so far this affects seven claimants, including the five claimants that we first heard this for yesterday. The debtor does believe those claimants incurred a fine. All of those claimants had previously told us they did have pending claims and they had checked the, the box so indicating in Part 1 of the PIQ. They could have told us at any time in the many months of litigation before sanctions were ordered that they did not have pending claims and why, but chose not to do so and apparently would not have done so without a fine and the debtor does not think that claimants should have the opportunity to essentially wait and see what the fines are and then unilaterally escape a fine by asserting they are no longer asserting a pending claim and we urge any claimants who are not asserting pending claims to let us know at the earliest opportunity so we can mark them as compliant with the PIQ order.

So unless your Honor has questions, that is the debtor's status update.

THE COURT: I don't. Thank you, Mr. Worf.

MR. WORF: Thank you, your Honor.

THE COURT: Thank you.

We'll hear from Mr. Waldrep.

MR. WALDREP: Thank you, your Honor.

So I'll start with the, the numbers. I don't think that the claimants are in any substantial disagreement about the numbers. There is some disagreement. We have, as before, your Honor, been going back and forth with looking at versions of Exhibit A and, and, and us questioning certain ones. They making changes.

So that process has gone on many times. I won't say it goes on daily, but almost daily quite a bit. There are even some that we challenged as to whether they really are in compliance or not and Bestwall's still looking at that.

So that's an ongoing process, but our numbers are not that different from the numbers. We would have said there are 362 non-compliant claimants which would mean that overall compliance is at 81.5 percent. Now Bestwall's number is a little higher than that, 382, which would be 80.5 percent, but that's not, you know, a 1 percent difference, that's not enough to, to really matter.

Now on the idea of the briefing, your Honor remembers at April, at the April 21st status hearing -- and there the terms of the status order were discussed -- I urged the Court on behalf of the claimants to provide in the sanctions order for further terms, such as to whom the fines were to be paid,

when they were to be paid, and we advocated for a position, a provision, rather, that any fine be set off against any claim against the future trust, that that was -- and so we, we took those positions on that day and Bestwall argued there was no need for any of that.

April 25th, the sanctions order was entered and then on May 3rd we appealed the sanctions order. We stated the issues on appeal and one of them was that the sanctions order was fatally flawed because it failed to provide the terms that we urged the Court to include. Now today, May 18th, Bestwall now realizes their error and advocates what we urged the Court to do and exactly the opposite of what they urged the Court to do on April 21st. Since then the -- since the appeal -- the appeal of the contempt order and the appeal of the sanctions order have been consolidated by the district court, as they should be, with no opposition by Bestwall and we -- and -- and we all understand it's all part of the same process.

So with regard to the position of Bestwall that we should now brief these issues, I want to raise what I think is a threshold issue and that is does the appeal divest the Court of jurisdiction to amend or add to the sanctions order? I think, I think that is a threshold issue that if the Court is inclined now to consider these additional terms, I think that threshold issue also needs to be briefed. Again, it was what we advocated on April 21st.

And the additional issue of, you know, claimants who said they were nonpending only after the fine, yeah, we can brief that as well if the Court wants to, to hear that.

So that's our response, your Honor.

THE COURT: All right. Thank you.

And let me ask you to respond to that last issue that was raised by Mr. Waldrep, Mr. Worf, with respect to did the, does the appeal divest the Court of jurisdiction to basically alter or amend the sanctions order at this point?

MR. WORF: Yes, your Honor.

As to the jurisdictional question, we do not believe it divests the Court of jurisdiction, although we're happy to brief that as part of the, the brief we contemplated. The debtor is, is going to be filing a motion to dismiss the appeals. Your Honor may recall we filed a motion to dismiss the previous contempt appeals with respect to the Illinois lawsuit matter and for many of the same reasons we believe that the sanctions and contempt order, the latest contempt and sanctions orders, are not final, including for the additional reason that the Court did not decide the issue of to whom the fine is paid and when and, and under what terms.

So we think that's another reason why there's not a final order and, and it's not appealable.

But putting that to the side, these issues because they were not addressed by the Court's prior orders, they are

not encompassed by the matters that the nine claimants have appealed. And, and I would emphasize that only nine claimants have appealed. So there are a great many, hundreds of claimants who, who have not appealed and, therefore, do not have a pending appeal before the district court which also affects the jurisdictional analysis.

But these are matters that, that were not encompassed by the Court's previous order and, you know, if this jurisdictional point were taken to, to, to its logical conclusion, it would prevent the Court from deciding when the fines stop, which the Court has the authority to do and, and would have the authority to do, and I'm sure the claimants would, would, would not want the Court to lack that authority while their appeal is pending because appeals can take quite a long time to be resolved.

So we don't think there is a jurisdictional issue. We're, we're happy to brief this as part of the briefs we contemplate.

And I also don't believe that Bestwall is admitting any error because our, our position is entirely consistent. We thought it made sense for the Court to defer this issue when no fines had been incurred and it was still two weeks before any fines would be incurred. We hoped that no fines would have to be incurred and, and these issues would not have to be decided. Unfortunately, they have been and so the issue now is ripe and

it does have to be decided. We think it is ripe and it should be decided and should be decided, hopefully, at the next omnibus hearing so the, the claimants and all the parties have clarity on, on this issue as, as they move forward.

Thank you, your Honor.

THE COURT: Uh-huh. Thank you.

Anything further, Mr. Waldrep?

MR. WALDREP: Your Honor, I don't think today is the, is the time or, or the, the procedure for, for deciding that particular issue. I just raised it as a threshold issue.

THE COURT: Okay.

MR. WALDREP: I'm not advocating one way or another at this time. I just think that it needs to be addressed.

And yes, there are -- there -- there will be arguments made as to the logical extension of various positions if, for instance, a court leaves out provisions and, therefore, makes the order not final, then it cannot be appealed. And so there are implications here.

So we need to, we need to think about that --

THE COURT: Okay.

MR. WALDREP: -- Judge. That's all I'm saying.

THE COURT: All right.

Let me take just a brief recess and then I'll come back, okay?

Oh, Ms. Ramsey.

MR. WALDREP: Yes, ma'am.

THE COURT: I'll hear from you before I take that brief recess. I'm sorry.

MS. RAMSEY: Thank you. I would appreciate it. Thank you, your Honor.

I really only have two brief points to make. The first is that based on even the statistic of the largest number of claimants that remain noncompliant to a degree -- I think Mr. Waldrep's calculation and mine is the same, which is 80.5 percent compliance, fully compliant -- again, we advocate that we've now reached the place of substantial compliance for purposes of estimation and that additional proceedings regarding sanctions and further compliance, we do not believe materially affect the estimation proceeding.

And the second is that to the extent that some of the alleged non-compliant folks are people who are now saying they don't have claims, understanding that, that it would have been preferable to know that earlier, those individuals don't have claims. And so it, it really is not affecting the estimation process at all. We don't represent them. They're not going to be considered as part of this case.

And so, again, we would propose that those individuals be eliminated from sort of this consideration, altogether, and that, that sanctions are not benefiting, are not achieving the, the dual goals that the Court had in mind. They're certainly,

it's certainly not motivating (garbled).

Thank you your Honor. That's all I had.

THE COURT: Thank you.

And let me ask before I take that brief recess. Does anybody else have anything to add?

(No response)

THE COURT: All right.

I'll be right back. Thank you.

(Recess from 10:00 a.m., to 10:05 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Having considered the update that Mr. Worf and Mr. Waldrep offered and considering the comments of Ms. Ramsey, we will continue this, obviously, for a further status on the -- at the hearing -- at the omnibus hearing on June 23rd.

And I agree with the suggestion of Mr. Worf that we brief the issue of when, to whom, the daily fine should be paid as well as how to treat those claimants who did not identify themselves as not having a pending claim until after the sanctions order was entered.

And I do think that it makes sense -- and both of you agree -- that we should also address the issue of whether or not the pending appeal divests the Court of jurisdiction to amend the order. And I would also like for you all to go ahead

and address the issue of substantial compliance and, you know, apprise the Court of, of where, where you all think we stand with respect to substantial compliance.

As Mr. Worf suggested, I think that it would make sense for you all to submit simultaneous briefs by the end of the business day on June 16th, which I believe is the week before that June 23rd hearing.

So unless there are further questions, we will just further continue the compliance hearing until June 23rd.

MR. WORF: Thank you, your Honor.

THE COURT: All right. And so I think with that -- and I'm trying to get my hands on the Notice of Agenda -- I believe where that leaves us is with the Court's ruling on the motion to strike and I suspect if I'm wrong about that, somebody will turn their camera on and tell me otherwise. It's easier to have you all in the courtroom than it is to do this by Teams.

So I look forward to having you back here in June.

So with respect to the objection to and motion to strike *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises or, in the alternative, to determine that the debtor has waived privilege to the case files of any matched claimant, having considered the pleadings and the arguments of counsel at the April 21st hearing I conclude that I should grant the motion in part and

deny the motion in part.

As you all know all too well, the motion to strike relates to the *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises seeking data on claims and exposure for approximately 30,000 resolved and pending mesothelioma claims against Bestwall. The fields of data that were sought in the *subpoena* included the law firm which represented the party against the debtor defendant, jurisdiction, status of the claim against the debtor from whom discovery is being sought, the date of resolution of the claim, the date of payment, when exposure began and ended, the manner of exposure, occupation and industry of the claimant when exposed, and the products to which the claimant was exposed.

Based on a review of the motion to strike itself, while I had some pause about Bestwall seeking aggregate discovery from another debtor, I was not inclined to grant the motion primarily for the reasons articulated by the debtor in its response. In short, the ACC did not identify valid reasons under either the discovery rules or pursuant to case law regarding why the discovery sought by the debtor should not proceed.

And to address just a few of those points, the *subpoenas* don't seek highly personal, sensitive, confidential, or privileged data. Most of the information sought pursuant to

the *subpoenas* could be found in complaints and other public court filings. Section 107 of the Code is not applicable because it relates to the kind of information that can be placed on the Court's public docket rather than the discoverability of information. The *subpoenas* don't raise a concern about identity theft because Bestwall already has the personal identifying information about the claimants and they don't seek any medical information. And finally, notice was sufficient and was not required to be served on the claimants.

However, the ACC largely switched gears in its argument at the hearing on the motion and I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with our estimation hearing date of October 2023. That was until I learned about the discovery the ACC served on four of the defense law firms a few weeks ago, but more importantly, the discovery the ACC served on the debtor the Friday before the hearing on the motion to strike which consisted of 31 discovery requests relating to 24,000 resolved mesothelioma claims, which is in addition to the discovery already served pertaining to the 2700 claim sample.

I can't in good conscience grant the motion to strike, given the magnitude of this recently served discovery, particularly having concluded that there isn't anything

otherwise problematic about the discovery sought by the debtor. I don't share the ACC's concerns about this discovery unleashing the floodgates for aggregate discovery on debtors in bankruptcy cases and that issue can be addressed on a case-by-by case basis.

I'm also hard-pressed to feel sympathetic towards the ACC in the face of the discovery that they just served on the debtor. Their major complaint was that it would precipitate discovery by them on those same debtors, but they didn't clearly articulate exactly what that discovery will need to be.

And in addition, the discovery the debtor seeks is consistent with the discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case. Three of the four debtors upon whom the discovery was served did not object to the discovery. DBMP did indicate at the hearing that it was willing to condition production on Bestwall's agreement to protect the responsive data pursuant to a protective order and I will direct that the data be produced subject to such a protective order.

And it appears that the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the

non-compliant claimants.

And we don't hold a crystal ball regarding what the Third Circuit may do on appeal, but my hope is that by getting this information it may accelerate the debtor's discovery, particularly in the event that the debtor does not succeed on appeal in the Third Circuit.

Nevertheless, Ms. Ramsey was right when she said it was time to start contracting the university of, the universe of discovery rather than expanding it and in that regard the debtor conceded at the hearing on the motion to strike that it was really focused on the 2700 claim sample, plus the 6,000 pending mesothelioma claims, and offered that that was the information the debtor really needs.

So in an effort to begin reining in discovery, that's what I will allow and I'll grant the motion to strike as to the balance of the approximately 21,300 claimants.

With respect to at-issue waiver, I'll deny that part of the motion. I can't conclude there's been at-issue waiver pursuant to the Rhône-Poulenc standard where the debtor is seeking discovery from third, from a third party that is not, that is non=privileged information. By seeking this discovery, the debtor has not asserted a claim or a defense and attempted to prove that claim or defense by disclosing an attorney-client communication.

So that is the Court's ruling with respect to the

motion to strike.

And, Mr. Worf, I would ask you to draw the order granting in part and denying in part the ACC's motion to strike.

MR. WORF: Thank you, your Honor. I'll do that.

THE COURT: All right. Thank you.

And in reviewing the transcript from the hearing on April 21st, there was a lot of talk about the, the mini 502(d) order and the large 502(d) order.

So, Mr. Gordon, I didn't know if you all were planning to provide the Court a status of those proposed 502(d) orders.

MR. GORDON: Your Honor, Greg Gordon on behalf of the, the debtor.

We continue to have conversations with the other side about those two orders. We've provided drafts, revised drafts of those orders to the other side. The other side has agreed to continue discussions with us on those issues and other issues related to the estimation and I'm hoping in the next week or two we're going to know exactly where we stand on those orders and some other issues and then we can provide a more definitive report to your Honor about where we are.

THE COURT: Okay. Thank you.

Anything to add to that, Ms. Ramsey, or anybody else?

MS. RAMSEY: No, your Honor. I think that's a, a fair summary of where we are.

THE COURT: Okay.

Ms. Zieg?

MS. RAMSEY: Thank you.

THE COURT: I saw you pop into my screen for about a minute there.

MS. ZIEG: I, I agree. I was going to say the same thing as Ms. Ramsey. That's a fair summary of where we are.

THE COURT: All right.

I think with that, then, folks, we've got some things to tackle on June 23rd or -- I didn't bring my calendar, but -- yeah, June 23rd.

Is there anything else that the Court needs to address today before we recess?

(No response)

THE COURT: All right. Well --

Mr. Gordon?

MR. GORDON: I was just going to say, your Honor -- I'm sorry -- not from the debtor's perspective, your Honor.

And we very much appreciate you allowing us to appear via Teams. We recognize that's not the best for you, but it worked out well for us and we appreciate it.

THE COURT: Sure. And I -- and the Court will be willing to entertain that, particularly if we're going to have, you know, a short hearing like this where I may be offering a ruling and, you know, we're otherwise just conducting a status

hearing. I'm not keen on arguments being offered by Teams, but I, I think for these kinds of issues it's appropriate for us to try to do it by Teams 'cause it saves you time and expense.

So we will consider that request going forward as well, all right?

MR. GORDON: Thank you, your Honor.

THE COURT: Thank you.

And with that, we will recess and let y'all enjoy the rest of your day.

Thank you.

MR. GORDON: Thank you.

MS. RAMSEY: Thank you, your Honor.

(Proceedings concluded at 10:17 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* May 18, 2022

Janice Russell, Transcriber Date

Exhibit 2

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, June 15, 2023 10:31 a.m.
	:	
ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 22-00303 (JCW) (Transferred from District of Delaware)
Plaintiffs,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Defendants,	:	
AC&S ASBESTOS SETTLEMENT TRUST, et al.,	:	Miscellaneous Pleading No. 23-00300 (JCW) (Transferred from District New Jersey)
Petitioners,	:	
v.	:	
ALDRICH PUMP LLC, et al.,	:	
Respondents,	:	
VERUS CLAIM SERVICES, LLC,	:	
Interested Party,	:	
NON-PARTY CERTAIN MATCHING CLAIMANTS,	:	
Interested Party.	:	

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

APPEARANCES (via Teams):

For Debtors/Defendants, Aldrich Pump LLC and Murray Boiler LLC:	Jones Day BY: BRAD B. ERENS, ESQ. MORGAN R. HIRST, ESQ. 110 North Wacker Dr., Suite 4800 Chicago, IL 60606
For the FCR:	Orrick Herrington BY: JONATHAN P. GUY, ESQ. 1152 15th Street, NW Washington, D.C. 20005-1706
For Non-Party Certain Matching Claimants:	Hogan McDaniel BY: DANIEL K. HOGAN, ESQ. 1311 Delaware Avenue Wilmington, DE 19806
For DCPF:	Alexander Ricks PLLC BY: FELTON PARRISH, ESQ. 1420 E. 7th Street, Suite 100 Charlotte, NC 28204
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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For Trane Technologies Company LLC and Trane U.S. Inc.:	McCarter & English, LLP BY: GREGORY J. MASCITTI, ESQ. 825 Eighth Avenue, 31st Floor New York, NY 10019

APPEARANCES (via Teams continued):

For the Verus Trusts:	Moon Wright & Houston, PLLC BY: ANDREW T. HOUSTON, ESQ. 212 N. McDowell Street, Suite 200 Charlotte, NC 28204
	Lowenstein Sandler LLP BY: LYNDA A. BENNETT, ESQ. One Lowenstein Drive Roseland, NJ 07068
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For Non-Party Certain Matching Claimants:	Stark & Stark, PC BY: JOSEPH H. LEMKIN, ESQ. P. O. Box 5315 Lawrenceville, NJ 08648
ALSO PRESENT (via Teams):	JOSEPH GRIER, FCR Grier, Wright & Martinez, PA 521 E. Morehead St, Suite 440 Charlotte, NC 28202

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Okay. Have a seat, those of us in the courtroom.

We are back today in the Aldrich Pump and Murray Boiler cases in the miscellaneous proceedings, primarily, with regard to a request for, by the debtors for rehearing for what I will generically call the trust subpoena-related issues, essentially talking about whether we are going to sample data from the Trusts or whether the entire 12,000-person population will be required and we'll get to that in a second.

I thought beforehand -- we're doing this by a Teams videoconference call just to get the announcement of the decision from last week's hearing -- let me ask who's on the phone and, and who needs to make appearances, starting with the debtors.

MR. HIRST: Your Honor, Morgan Hirst and Brad Erens are here for the debtors. I'm sure there are others on the line as well, but the primary speakers today.

THE COURT: All right.

Anyone else on the debtors' side needing to announce? Don't feel the need unless it's, it's important to you and your client or you're planning to actively participate.

(No response)

THE COURT: How about for the ACC? Anyone?

MR. WRIGHT: Yeah. It's -- good morning, your Honor. Davis Wright from Robinson & Cole. I'm actually joined today by Jim Wehner from Caplin & Drysdale and Rob Cox from Hamilton Stephens Steele & Martin.

THE COURT: Okay.

How about the FCR?

MR. GUY: Good morning, your Honor. Jonathan Guy for the FCR. I believe Mr. Grier is also on, online, too.

Thank you.

THE COURT: Okay.

And how about on the Delaware Trusts and administrator? I'm gonna say DBMP if I'm not, not careful here, the DCPF Trusts?

MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-Schnoll from Ballard Spahr for the DCPF Trusts.

THE COURT: Thank you.

MR. GUERKE: Good morning, your Honor. Kevin Guerke from Young Conaway on behalf of DCPF Facility and I'm here this morning with our local counsel, Felton Parrish.

THE COURT: Okay.

How about the Facility, the Delaware Facility?

MR. GUERKE: That's Kevin Guerke, your Honor, DCPF.

THE COURT: Okay. That's Guerke. Okay. Trying to keep 'em all straight here.

How about with the Verus Trusts?

MS. BENNETT: Good morning, your Honor. Lynda Bennett from Lowenstein Sandler on behalf of the Verus Trusts and my local counsel, Andy Houston's, also on the line.

THE COURT: Okay.

And then Verus Claims Services?

MR. ANSELMI: Good morning, your Honor. Andrew Anselmi from Anselmi & Carvelli and I believe our local counsel, Jay Bender, is on as well.

THE COURT: All right.

Any Affiliates appearing?

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter & English, on behalf of Trane U.S. Inc. and Trane Technologies Company LLC.

THE COURT: Okay.

Others? Anyone else needing to announce?

MR. HOGAN: Good morning, your Honor. Daniel Hogan on behalf of the Certain Matching Claimants. I, I am here, your Honor.

THE COURT: Okay. I'd overlooked you folks. Sorry about that.

MR. HOGAN: No worries.

THE COURT: Anyone else?

MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-Schnoll, again. I neglected to introduce Lance Martin, our local counsel for the DCPF Trusts.

THE COURT: All right.

MS. MOSKOW-SCHNOLL: He's also on the line.

THE COURT: Very good. Thank you.

That got it?

(No response)

THE COURT: Okay. Should be a short hearing this morning and I won't beat around the bush. I appreciate the quality, as I said, of the presentations that were made last, a week or so ago and you, as always, gave me a lot to think about.

Just to put this procedurally, technically we're, primarily, today in the two miscellaneous proceedings. That would be Nos. 22-303 and 23-300, but these also bleed over into the base case matter since I asked for everybody's appearances and not just the direct participants.

As you know, we've taken this in, now, three steps with multiplicity of, of filings. We started out in Round 1, I guess, with the debtors' request for the subpoenas and then the subpoenas were issued, and then we got, the Delaware and the New Jersey District Courts became involved and ultimately, this all ended up down here. I made a ruling back in November that I announced from the bench in favor of sampling with a 10 percent sample and after, as, as y'all have recounted, after a good bit of negotiation and scurrying around, the debtors asked for, for a, whatever you wanna consider it, rehearing or

reconsideration, depending on your perspective of that. I personally view it as a rehearing because I had nothing but a bench ruling and no written order had been entered and that being the case, bench rulings kinda have an interesting perspective there. They're -- they are -- courts generally expect you to adhere to them if we're in a hurry, but technically speaking, they are not binding decisions until they are actually entered.

So my view was that it was rehearing and for several reasons, even though a written order hadn't been entered, I thought that it would be appropriate to reconsider the matter and, or rehear the matter with the focus today of whether or not a sample would suffice for the debtors' purposes, as I had announced in November, or whether the full, if you will, population data of 12,000 settled meso claims should be produced by the various trusts.

That we are having to do this at all comes from several reasons. You know what I did in DBMP and you know what Judge Beyer did before in Bestwall, but part of this is my fault and I will just fall on my sword and say that, that when we got to talking about this earlier and I announced the 10 percent ruling, part of that was about concern for privacy and I had neglected to think about the double-scrubbing provisions that we had included in DBMP and were being proposed here that would allow first the Trusts and then Bates White to take out

any inadvertently produced PII. That was, that was my mistake, but the ruling also had to do with other concerns, one of which was that instead of moving forward, these cases appeared to be spreading out horizontally and increasing the number of disputes and the attendant costs and, and basically, bogging down. I called it "ballooning" earlier, but litigation that was not being accompanied with, with meaningful progress and I was concerned about those costs concerns.

I also was aware that the Delaware District Court had and ruled on a couple occasions that a 10 percent sample would be sufficient and as I was concerned about costs and efficiencies and moving these cases forward, my second thought on that day was this might be a good spot where we can start reining in our ever-expanding discovery demands by using a sample. I still have the same concerns, but in short, I am reluctantly holding today that I think the debtors could have a legitimate need for the full population of 12,000 and that the 10 percent sample is likely to be inadequate for all purposes.

So I'm gonna require that production. I don't want to go on at, drone on at length, but I need to at least identify so that I can ask for the debtors to provide a proposed order.

Places where I disagree with their arguments, let me say at the outset I thought the handiest way of dealing with this after poring through all of your various pleadings was to take the debtors' reply, which in, consolidated reply filed at

Docket No. 146 in Miscellaneous Proceeding 22-303, and work off of that and if that will enable you to go back to your prior documents and eyeball what, what has been said, I generally agree with the arguments made there with a couple of exceptions. So let me see if I can, without boring you to death as I read to you through all of, all of this, go back and try to address what we have need of here.

I guess the first thing was about the uncertainty that might be inherent in sampling. I agreed, if you're looking on Page 6 of the debtors' rebuttal part, the Trust Discovery Order did, in fact, authorize a, a number of permitted uses, including estimation and plan purposes for this data. So it's broader than what we've had. On the other hand, where the debtor argues that they only asked for, essentially, 3 percent of the settled claims data, meaning 12,000 out of 400,000, I thought that was a little bit misleading. As we all know, the money in these cases is out of meso claims, not, not, the other diseases and they tend to drive these asbestos cases, particularly for plan purposes and trust distribution purposes.

So I looked at it more in terms of the way that the objecting parties were viewing it, that what we were essentially asking for was half of all the meso claims ever presented and effectively, all of 'em, for whatever it was, the last 15 years. So that, I didn't totally agree with.

As to whether there is sampling error and, and the

magnitude of that, that was a difficult decision to make. Both experts, Mr. Wyner, Mr. Mullin, were eminently qualified, excellent witnesses, obviously experts in some very rare air of, of analysis, and if you want to coarsely analogize a court's role in evaluating expert testimony as judging a beauty contest, you would have to say that both would be finalists. They were both excellent and both know what they're talking about, certainly more than the Court itself, whose last statistics class came in the 1970s. So I'm not, I have every intention of thinking this was helpful and that I was going to have to rely on their viewpoint.

I agreed with the general principle that Dr. Wyner said that he didn't think there'd be a material practical effect by sampling, but that is found in context, as, as pointed out in the debtors' brief on, on Page 7 and beyond, that that makes a bit of an assumption that is effectively generalizing that he's assuming that the primary thrust of this is to assess whether or not there is document suppression, information suppression in the files and I believe, as Dr. Mullin states, that his need is beyond that and the debtors' need is beyond that. I would think if we were just trying to come up with an overall estimate of the, of the numbers without anything further, that you could get by on 10 percent, which is a large sample.

I did agree with Dr. Wyner and didn't agree with

Dr. Mullin that if you have a multi-variant analysis, that the increase in uncertainty would be, I think Dr. Wyner said it would be additive, not multiplicative, and I agreed that that was my understanding of the way statistics work. But that doesn't answer the question.

The bottom line is that even if we can't fully identify how much the magnitude of uncertainty was, I thought Dr. Mullin had a couple of observations that were particularly relevant and gave me pause. Essentially, that there is a need to forecast not just today, but off into the future and the farther out you get, the more uncertainty there is. So the better the information you needed and bleeding into that, the fact that there would be subsets who would have different rates of diminishment, if you will, of the disease over a period of time and it might be that with, if you sampled, you wouldn't have enough data on the subsets to make meaningful analysis and that would greatly increase uncertainty and as --

(Joseph Lemkin exited the videoconference)

THE COURT: Okay. Might be a good time, if you haven't already, to mute your receivers.

But basically, that with sampling we might end up with subgroups that weren't large enough to really have good information. So that's where I, I believe Dr. Mullin has the long end of the stick. Whether that actually comes about or not, I don't know at this point, but it is a rational,

reasonable concern and it may affect the forecast of future claims. I am foursquare with the FCR on this topic, that if we are happy enough to get a confirmed plan and a trust at some day that is agreed to by the parties, that I wanna make sure that trust is funded properly and that the future claimants don't get short shrift because they were late and things happened that we had not foreseen in the, as time passed and we wanna be as accurate as we possibly can. And that's my primary motivation for saying that we need the full data. It might make it, the study of those subgroups inaccurate and I don't really want to do that.

Now I will say that there, the argument goes that the debtors' side needs this to, to support their legal liability method and as you know, I was not in Garlock at the time that Judge Hodges entered the estimation ruling. I didn't hear all that evidence. I have no idea of what theory, whether legal liability or historical settlement, is the proper approach and I will reserve judgment on any of those thoughts. I've intentionally not gone back and read that opinion because I wanted it to be fresh and I wanted everyone to get an independent view.

But the bottom line is that we'll reserve that, but I think, as I said before, I want the two parties to be able to, to present the evidence and the theory for this very difficult topic that they believe is appropriate and I think this, the

full population of 12,000, that data is necessary for the debtors to make that attempt.

Let me see where we go from there. One moment.

(Pause)

THE COURT: I generally agreed, at least in principle, that in the same measure the reliance by the debtor on Page 13 of its reply brief that whether the debtor has the information -- the objecting parties say a lot of this information is already in the claims database that, that the debtors possess -- the debtor makes the pitch that half of the Garlock claims involved misrepresentation and, and then extrapolates from that they're likely not to have the information in their own files. I have no idea. Again, same thing. I didn't hear the evidence in Garlock, but we'll jump that, that hurdle when we get to it. So I really express no opinion on that.

Let's see.

Again, the, on Page 14 of the debtors' reply brief, Dr. Gallardo-García's declaration in Bestwall. I adopted the debtors' view of that, that effectively, that was done after Bestwall, after the District Court in Delaware had declared that only a 10 percent sample would be required and if, if Dr. Gallardo-García was, was taking the position that the sample he, he had formulated was adequate, well, what else would he say under those circumstances that, "By the way, you shouldn't rely on this." He didn't say it was ideal.

As to the cost benefit analysis that is discussed, I did not agree with the debtors on 15 and 16 of their reply brief, that it was not necessary for the Trusts to review that documentation. I think that ignores legal realities. If I were the administrator of the Trusts, I would certainly feel obliged to take a look and make sure I didn't let any PII get out there, particularly since it might not be the claimants' PII, but some coworkers.

So I think they do need to do that. The compensating balance, of course though, is the debtor is reimbursing for the expense and I think that takes care a lot of the problems.

As to the Objectors' complaint that there are opportunity costs, non-quantifiable burdens in producing delays, distraction, staff, etc., that one, I think, is just too ethereal factually to, for me to believe and I do note the arguments that, well, these Trusts were looking to get into this case to review PIQ information. So it appears they've got some time to do this. I don't know what's going on in those Trusts and how much claim administration is underway. There's an argument made by the debtors on that that I don't know one way or the other or whether there's plenty of free time.

But the bottom line is that complying with subpoenas is an unfortunate, but necessary fact of modern life. Lawyers have to do it. Businesses have to do it. In this case, our goals are the same goals as, as to our present and future

claimants that is the goals of the Trusts are with regard to the settled claims. We wanna get these people paid as quickly as possible. So while I fully appreciate that it's a burden and fully appreciate that, that claimants would like to get their money quickly, the same applies here and we need it for this purpose. So -- and as, I generally otherwise agreed with the debtors' arguments in that regard.

As to whether or not there are confidentiality concerns by the, by the full-population production as opposed to the 10 percent sample, I'll just tell you at this juncture I think it's a minimum risk and it's a risk that is borne by all people these days who have their, their data in electronic formats being held by corporations that, with which they do business, but in this case I think it's pretty minimal about the risk. I think the fight really here is that we've got a, and the reality, we've got a fight about who gets the information that they think they need to present their cases and there's a desire on one end by the debtors to make that as expansionistic as possible, even to the point of subpoenaing other debtors, and then on the claimants' side, particularly the, the law firms which are affiliated with the Trusts in some form or measure, to minimize that for obvious reasons and the bottom line is you wanna win and also, you don't wanna be embarrassed in the press. I get all of that, but the bottom line is that at the end of the day, there shouldn't be any PII

to begin with because it wasn't requested. If it comes in the narrative forms, then the data will have been reviewed twice and redacted twice and then it gets subject to the protective order which further ensures it and it would ultimately take a hack of the computers at Bates White to ultimately, for that to get out. Now we're getting into some really remote possibility and I don't think it's strong enough to overcome the force of a subpoena.

The last reason -- and, and there are confidentiality demands in the Trust Discovery Order that limits how this information could be used -- and the last one is that, consistency. I've spoken about this before. The last thing I want you folks to do is feel like you need to start trying to appear in the DBMP case lest something happened there that you're gonna be stuck with. I've told you before that just as you learn and adapt case-to-case, the Court does as well. We're trying to learn by prior experiences and each case stands alone. They are different cases in one major respect as to whether or not the FCR supports the debtors' plan proposal and they are going to have a different life, they have different products, and they were filed at different times. I am not capable of doing the same thing in each one.

At the same time on this particular issue, Bestwall and DBMP have already established a full population as to these items and as the facts and circumstances appear to be all but

identical, I believe consistency will be helpful in this respect. So that's the last reason, even though I, I cannot promise nor would I think it appropriate to have full consistency across the cases.

So that's the ruling. I'd call on the debtor to provide a proposed order. Since I've effectively relied on the debtors' reply brief and noted where I, I differ from it, I think we can keep it relatively short, but, and just make reference to it in the event of an appeal.

Anything? That got it?

MR. HIRST: Your Honor, just one -- this is Morgan Hirst for the debtors.

Just one question, which is can we set some sort of compliance date in the order for compliance with the subpoena? I'm open to, you know, I understand the time that it takes to do this, but we would like to at least have a compliance date so it's not hanging out there.

THE COURT: Let me inquire whether this would be a good time for me to take a ten-minute recess and let you talk amongst yourselves. I'll -- we'll keep the, the equipment on.

Can we keep it on without, and turn the recorder off?

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

THE COURT: Okay.

Do y'all need to discuss compliance time periods?

Anyone?

MS. BENNETT: Your Honor, this is Lynda Bennett on behalf of the Verus Trusts.

My suggestion is let us caucus with our clients and then we're happy to reach out to Mr. Hirst to provide a timetable. I'm not in a position today to say how long it's gonna take. We're gonna have to speak with the Verus Facility before we'll be able to commit.

THE COURT: Anyone else?

MR. GUERKE: Your Honor, Kevin -- your Honor, Kevin Guerke on behalf of Delaware Claim Processing Facility.

We would also like a little bit of time to consult with our client before setting a compliance deadline.

THE COURT: Okay. That seems reasonable enough. I just don't want this to drag out and become another delay on trying to get an answer of what the compliance period is and I don't -- we don't come back until July the 14th in this case.

So my suggestion would be that if y'all can't agree -- if you can agree, put it in the, in the order and send it on down. I'm sure whatever you can agree to will be satisfactory to the Court.

If you can't agree, I've got a chapter 11 calendar on the 27th. I'm pretty well wall-to-wall next week, but we could set this on at 9:00 before I start with my regular calendar and, and just get that one issue ironed out. That work?

And again, you don't need to fly to Charlotte for that. We'll, we'll set it up with the clerk.

MR. HIRST: That works for the -- for the, for the debtors, your Honor, that works. It won't be me, but we got lots of people.

THE COURT: Okay.

MS. BENNETT: We appre -- your Honor, this is Lynda Bennett for the Verus Trusts.

We appreciate the accommodation --

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

MS. BENNETT: -- and we'll, we'll work to iron it out, to not be in your calendar, but if not, that will work for us.

THE COURT: Okay.

It'll be 9:00 Eastern, of course, on the 27th, if we need it. Otherwise, send the order down if you, if you come to terms.

All right. Well, thank you all. I appreciate the quality of it. These are -- it is -- the old expression about the, the blind man describing the elephant sometimes well-describes how the Court is trying to phantom right and wrong and, and proper and efficient ways of dealing with a case of this size not being in on all of your discussions. So we grope around in the dark occasionally, but try to, to get a, a good and accurate ruling for you and I hope this one suffices. I

understand reasonable people can differ on this particular issue, but that's the way I see it.

So if there's nothing else, we'll recess and let you go about your day.

(Counsel thank the Court)

(Proceedings concluded at 11:01 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* June 19, 2023

Janice Russell, Transcriber Date

Exhibit 3

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March 22, 2024

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Re: *In re DBMP LLC*, No. 20-30080 (JCW) (Bankr. W.D.N.C)

Counsel:

I write in connection with the Motion to Strike Subpoenas (the "Motion") filed by the Official Committee of Asbestos Personal Injury Claimants of DBMP LLC (the "DBMP ACC") on Wednesday night.

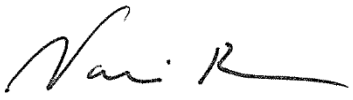
As the Motion acknowledges, Bestwall subpoenaed similar information from DMBP, Aldrich, and Murray two years ago. Those subpoenas were challenged by the Bestwall ACC in *Bestwall*, by the DBMP ACC in *DBMP*, and by the Aldrich/Murray ACC in *Aldrich/Murray*. As you also know, ruling in *Bestwall* first, Judge Beyer largely rejected the ACC's challenges to the Bestwall subpoenas, although she did limit the scope of the Bestwall subpoenas to those claimants who either had pending claims against Bestwall or were in the Bestwall resolved claim samples, and also required that any information produced to Bestwall be subject to a protective order. See 5/18/22 Tr., *In re Bestwall LLC*, Case No. 17-31795-LTB (Bankr. W.D.N.C.), at 20-24. Just over a week later, Judge Whitley agreed with Judge Beyer in denying the DBMP and Aldrich/Murray ACCs' challenges to the Bestwall subpoenas filed in *DBMP* and *Aldrich/Murray*. See 5/26/22 Tr., *In re Aldrich Pump LLC*, Case No. 20-30608-JCW & *In re DBMP LLC*, Case No. 20-30080-JCW (Bankr. W.D.N.C.), at 112-17.

Consistent with Judge Beyer's ruling in *Bestwall*, the DBMP subpoenas only seek information about (1) claimants in the DBMP resolved claims samples and (2) claimants with pending claims against DBMP as of the petition date who submitted but did not withdraw a proof of claim in *DBMP*. See Definition of "DBMP Claimants" in Exhibit A to the subpoenas. Also consistent with Judge Beyer's ruling, and contrary to the suggestion of Part III of the Motion, the DBMP subpoenas expressly provide in Exhibit A that "DBMP will deem the information produced in response to this subpoena 'confidential' pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 251]." That Protective Order, which was negotiated with and agreed to by the ACC, is what also protects the DBMP claimant data that was produced to the ACC at the outset of this case.

In short, the issues presented by DBMP's subpoenas and the Motion have been litigated three times, and have been ruled on by both Judge Beyer and Judge Whitley. There is nothing new presented by the Motion and no reason to litigate these same issues a fourth time.

Accordingly, DBMP requests that the ACC withdraw the Motion in light of Judge Beyer's and Judge Whitley's just-cited rulings on the similar Bestwall subpoenas. If the ACC refuses, DBMP may oppose reimbursement of any fees incurred by the ACC in connection with the Motion's preparation and argument.

Regards,



Valerie E. Ross

Exhibit 4

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VIA ELECTRONIC MAIL

March 27, 2024

Valerie E. Ross, Esq.
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Re: *In re DBMP LLC*, No. 20-30080 (JCW) (Bankr. W.D.N.C)

Dear Valerie:

I write in response to your March 22, 2024, letter concerning the Committee's Motion to Strike Subpoenas [Dkt. No. 2730] (the "Motion"). The Committee declines to withdraw the Motion.

DBMP is a separate case from *Bestwall* and *Aldrich* with its own facts and context. For example, DBMP possesses information that Bestwall did not possess at the time those subpoenas issued—a distinguishing factor for Judge Beyer.[1] Each case must be judged on its own facts and merit, especially when the circumstances presented are factually distinct from other purportedly similar cases. Moreover, the DBMP Committee is a distinct entity with its own duties, and it has not been heard on this issue.

The Committee disagrees that Judge Whitley's and Judge Beyer's previous rulings are somehow "binding" on the Motion.[2] That is simply incorrect. Judge Whitley retains the discretion to articulate a different decision with respect to the subpoenas directed to Aldrich and Murray. Indeed, Judge Whitley's and Judge Beyer's prior rulings regarding the *Bestwall* subpoenas have not been affirmed—or even reviewed, for that matter—on appeal.

As such, the Committee will proceed with the Motion.

[1] *See* May 18, 2022 Hr'g Tr. at 23:22–24:1, *In re Bestwall LLC*, Case No. 17-31795-LTB ("the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the non-compliant claimants").

[2] *See* May 26, 2022 Hr'g Tr. at 112:24-113:6, *In re Aldrich Pump LLC*, Case No. 20-30608-JCW & *In re DBMP LLC*, Case No. 20-30080-JCW (Bankr. W.D.N.C.) ("I think it is somewhat akin to what we're seeing in the other motions where the first shot comes to the bankruptcy court that has the case. The second goes to the compliance court. In this circumstance, Judge Beyer's got her issues and I've got mine and we have to decide them both . . .").

Robinson+Cole

Best regards,

/s/ *Davis Lee Wright*

Davis Lee Wright

cc: Gregory M. Gordon, Esq. (by email)
Jeffrey B. Ellman, Esq. (by email)
Garland S. Cassada, Esq. (by email)
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Sony Rao, Esq. (by email)
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Todd E. Phillips, Esq. (by email)
James P. Wehner, Esq. (by email)

Exhibit 5

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re BESTWALL LLC,[1] Debtor.	Chapter 11 Case No. 17-31795 (LTB)

DECLARATION OF CHARLES E. BATES, PHD

Charles E. Bates, PhD, deposes and states as follows:

1. I am the Chairman of Bates White, LLC ("Bates White"), which maintains offices at 2001 K Street NW, North Building, Suite 500, Washington, DC 20006.

2. I am duly authorized to make this Declaration as a consultant for Bestwall LLC ("Bestwall" or the "Debtor") in this case. I make this Declaration at the request of the Debtor's counsel regarding the need and usefulness of the information requested in *Debtor's Motion for Order Pursuant to Bankruptcy Rule 2004 Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants* (the "PIQ Motion") and in *Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* (the "Trust Discovery Motion"). In particular, I explain the need for the requested information to prepare a reliable estimate of Bestwall's legal liability for mesothelioma claims; assess whether Bestwall's pre-petition settlements and resolutions of mesothelioma claims in the tort system represented its liability for such claims and can be extrapolated to estimate the Debtor's liability for current and future claims; provide support to the Debtor in designing Trust Distribution Procedures ("TDPs") that

[1] The last four digits of the Debtor's taxpayer identification number are 5815. The Debtor's address is 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

will provide payments to claimants that cover Bestwall's share of any liability for current and future mesothelioma claims; and evaluate payments to claimants based on the distribution procedures that accompany the plan of reorganization proposed by the Asbestos Claimants' Committee ("ACC") and the Future Claimants' Representative ("FCR").

3. In my declaration filed on June 19, 2020 regarding Bestwall's estimation motion (Doc. No. 1207-1) (the Estimation Declaration), I discussed the information needed to prepare a reliable estimate of Bestwall's legal liability. Rather than repeating that testimony here, I have attached a copy of the Estimation Declaration (Exhibit A), and incorporate my statements in that declaration into this one.

4. In this Declaration, I first provide some basic background on a legal liability estimate for purposes of providing context with respect to the need for the information. Second, I describe certain additional information regarding the need for the information sought in the PIQ Motion. Finally, I describe certain additional information regarding the need for the information sought in the Trust Discovery Motion.

I. Qualifications

5. A detailed description of Bates White's and my experience and expertise is contained in my Estimation Declaration and November 2, 2017 Declaration, attached as Exhibit A to the Debtor's *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[2] In addition, a complete and updated copy of my *curriculum vitae* is attached to my Estimation Declaration as Exhibit 1.

[2] *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*, Nov. 2, 2017, Doc. 29, pp. 11–26.

6. This Court issued an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[3]

II. Overview

7. In my Estimation Declaration, I included a chart (p. 3) depicting the components of a legal liability estimate, including the factors that bear on the estimate. I then described specific categories of information needed to prepare a reliable estimate (pp. 3-9). I will not repeat that testimony here, but will begin by describing some general principles that support using a legal liability estimate rather than an estimate based on a defendant's settlement history to determine a company's liability for asbestos claims.

8. There are multiple reasons why the amount paid to settle a disputed claim may not reflect or equate to a defendant's actual liability for such claim. A company like Bestwall may spend large amounts of money on settlements when it faces little actual liability. Fundamentally, such settlements are rooted in the economic differences between defending and prosecuting asbestos exposure-related lawsuits. It is a well-established principle in the Law and Economics literature that the amount that a defendant pays and a plaintiff accepts to settle a lawsuit is not a direct measure of the defendant's liability.[4]

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[3] *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*, Nov. 2, 2017, Doc. 40.

[4] *See*, for instance:
Richard A. Posner, "An Economic Approach to Legal Procedure and Judicial Administration," *Journal of Legal Studies* 2, no. 2 (1973): 399–458;
Lucian A. Bebchuk, "Litigation and Settlement Under Imperfect Information," *RAND Journal of Economics* 15, no. 3 (1984): 404–15;
George L. Priest and Benjamin Klein, "The Selection of Disputes for Litigation," *Journal of Legal Studies* 13, no. 1 (1984): 1–55;
David Rosenberg and Steven Shavell, "A Model in which Suits Are Brought for Their Nuisance Value," *International Review of Law and Economics* 5 (1985): 3–13;
Lucian A. Bebchuk, "Suing Solely to Extract a Settlement Offer," *Journal of Legal Studies* 17 no. 2 (1988): 437–50;
Lucian A. Bebchuk, "A New Theory Concerning the Credibility and Success of Threats to Sue," *Journal of Legal Studies* 25, no. 1 (1996): 1–25.

9. Depending on the nature of the litigation, settlements can be lower or higher than liability. Some situations will lead the parties to settle for an amount less than liability (a windfall to the defendant and a loss for the plaintiff), while others will lead the parties to settle for an amount more than the actual liability (a windfall to the plaintiff and a loss for the defendant).

10. Factors that affect the amount that a defendant pays in settlement, other than its potential liability, include the direct costs of litigation, the potential impact on the defendant's reputation, the effect of litigation on the defendant's finances (stock price, ability to borrow, etc.), the time and resources that certain employees would have to spend on the process, and the distraction of management from the main business of the company. The amount that plaintiffs accept for releasing a defendant from the litigation is also affected by factors other than liability alone. Plaintiffs' litigation costs in personal injury claims also matter, though they are structured differently than defendants' costs.

11. In asbestos litigation, there is a large asymmetry in avoidable costs between the defendants and the plaintiffs. Mesothelioma plaintiffs typically name over 50 defendants in their complaints.[5] Plaintiff depositions typically include many defense attorneys, but only one lawyer representing the plaintiff. Because each defendant pays its own costs and defense lawyers typically bill by the hour, a defendant can avoid all of its future costs by settling with the plaintiff and leaving the case. In contrast, a plaintiff can only avoid future costs if he settles with the last defendant standing because whether the case goes to trial against one or multiple defendants has little effect on the cost the plaintiff will incur from continuing to pursue a claim. This characteristic of asbestos cases means that defendants have more to save in costs than plaintiffs

[5] Garlock Report, ¶ 123.

by settlement, which means plaintiffs can routinely extract a portion of the defendant's avoidable cost savings in settlement.

12. Further, there is an additional source of asymmetry between the total expense a defendant expects to incur and the net recovery a claimant expects to receive from that defendant. This is because the amounts that claimants recover are net of the contingency rate that plaintiff law firms charge over the amounts received from defendants. Plaintiff law firms charge a 30% to 40% contingency rate over recoveries. Therefore, for example, if the defendant and the claimant agree on a $100 settlement and the plaintiff law firm charges a 40% contingency rate, the defendant pays $100 for the settlement but the claimant only receives $60. This means that any additional dollar that increases a settlement amount represents a higher cost to the defendant than the benefit for the claimant. Thus, for a net payment to the claimant to reach a certain amount, the defendant has to spend proportionally more. In other words, the claimant is less sensitive to changes in settlement amounts than the defendant due to the asymmetry in the structure of defendant payouts and claimant recoveries.

13. Another reason that settlement payments may not reflect actual liability is the effect of withholding plaintiff exposure information, which Bestwall believes it experienced in cases filed against it starting with the bankruptcy wave of the early 2000s. By withholding relevant alternative exposure information from a defendant in a particular case, a plaintiff can effectively increase the amount of the settlement the plaintiff can receive from the defendant. First, with fewer available co-defendants disclosed, the defendant's liability share appears higher than it would if the plaintiff disclosed all sources of exposure, even in jurisdictions in which several liability apportionment rules. Second, with the most likely contributors to a plaintiff's disease out of the case, the likelihood that a remaining defendant in the case will be found liable

appears higher than it would if all exposure sources were disclosed. Third, if a plaintiff does not willingly disclose all sources of the plaintiff's asbestos exposure, the defendant must spend more money trying to find such exposure information through indirect sources. Bestwall's resolution history is consistent with this effect, with the increase in the number of cases resolved for large payments to plaintiffs and the large increase in defense expenses observed after the bankruptcy wave of the early 2000s.

III. The information sought in the PIQ Motion

14. As explained above, Bestwall's expected liability is distinct from the settlements it paid historically or would have paid in the absence of bankruptcy. Reliable estimation of expected liability requires analysis of the various factors relevant to compensatory award share and likelihood of plaintiff success, as well as the number of claims that could go to trial. For the reliable estimation of Bestwall's liability with respect to current claims and for the valuation of current claims under other contexts such as an extrapolation of settlements or under TDPs, it is necessary to know the identity and characteristics of such pending claims.

15. Based on my experience of working with a large number of asbestos defendants since the 1990s, asbestos defendants generally do not possess complete and up-to-date information for most pending claims for several reasons. Discovery may not have been initiated or completed; information provided by plaintiffs in discovery may not be complete or correct; or defendants in some cases may not collect certain information about claims and claimants until such claims resolve. Moreover, as I explain in more detail below, Bestwall has no information at all for a number of claims that may exist but were not filed against Bestwall before it filed for bankruptcy protection.

16. In my Estimation Declaration, I described the importance of the PIQ information in determining the number of mesothelioma claims actually pending against Bestwall. The importance of this information is illustrated by *Garlock*. As of its petition date, Garlock's claims database showed 5,813 "pending" mesothelioma claim records. The PIQ process in that case revealed that about 2,000 of those 5,813 claim records in fact did not represent pending mesothelioma claims against Garlock.[6] The PIQs established that many claimants had already resolved their claims through dismissal or settlement; many did not have mesothelioma; many did not have Garlock exposure; and many had withdrawn or were no longer pursuing claims against Garlock. Further, of the approximately 3,800 PIQ claimants who still asserted a pending claim against Garlock, only about 54% described any direct, bystander, or secondary exposure to Garlock's asbestos-containing products.[7] Similarly, the PIQ process in the Bondex bankruptcy case revealed that about 1,500 of the 3,500 claims reflected as pending mesothelioma claims in the Bondex database in fact did not represent pending claims.[8]

17. Based on my experience and analysis of Bestwall's claims and costs, Bestwall has incomplete information regarding most unresolved claims in its database. In particular, among the 5,700 unresolved mesothelioma records in the Bestwall claims database there are about 3,000 records associated with law firms with which Bestwall had agreements, under which Bestwall paid settlement amounts based on an agreed-upon matrix or resolved groups of claims for negotiated lump sums without examining individual claims. Historically, approximately 70% of

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6 *See* Expert Report of Jorge Gallardo-García, PhD, *In re Garlock Sealing Technologies LLC*, *et al.,* No. 10-31607 (Bankr. W.D.N.C. Feb. 15, 2013) (Trial exhibit GST-8004) [hereinafter "Gallardo-García Garlock Report"], Exhibit 1 and ¶ 33.

7 Expert Report of Charles E. Bates, PhD, *In re Garlock Sealing Technologies LLC, et al*., No. 10-31607 (Bankr. W.D.N.C. Feb. 15, 2013) (Trial exhibit GST-0996) [hereinafter "Garlock Report"], Exhibit 46.

8 Expert Report of Charles H. Mullin, PhD, *In re Specialty Products Holding Corp. et al.*, No. 10-11780 (Bankr. D. Del. Aug. 15, 2012), Doc 3473-5, pp. 22–23.

the mesothelioma claims Bestwall paid to settle after 2010 were resolved through these kinds of agreements. Bestwall entered into these arrangements to avoid the cost of going through discovery and gathering information to resolve the claims on a piecemeal basis. Instead, Bestwall incurred on average less than $3,000 in defense costs in connection with mesothelioma claims brought against it by these firms before resolving them as part of such agreements. As a result, Bestwall likely has little information about those 3,000 claims. Further, there are more than 600 mesothelioma unresolved records in Bestwall's claims database filed within the six months prior to Bestwall's Petition Date. Bestwall likely has little information about those claims, as the litigation process for such claims had just begun when Bestwall filed for bankruptcy protection.

18. The second group of potentially pending mesothelioma claims are those not identified as such in Bestwall's claims database due to the lack of disease information. Bestwall currently has no practical way to identify whether these claims involve mesothelioma or some other disease. Because Bestwall did not participate in any additional tort discovery on these claims that continued after Bestwall's petition date (due to the automatic stay), and some of these claims may be dormant, Bestwall has no information on whether there are any unresolved mesothelioma claims within "unknown disease" records.[9] There are more than 21,300 of such records in Bestwall's claims database that appear as unresolved, of which about 5,400 appear as "open." In my experience, the vast majority of these records either represent old claims alleging non-malignant conditions or are abandoned claims with no prospects against the defendant. This is likely the case with most of the 21,300 unresolved records with unknown disease information,

[9] Further, although some unresolved records show a non-mesothelioma disease, the claimant may indeed have mesothelioma. This type of error is possible in databases with hundreds of thousands of records.

as about 21,000 of them were filed more than four years before Bestwall's Petition Date. However, there may be some active pending mesothelioma claims in this group of records, as almost 300 were filed within four years of the Petition Date, including about 150 filed within a year and about 70 filed in the six months prior to the Petition Date.

19. The Bestwall claims database also contains no information on mesothelioma claimants who may exist but have not filed a claim. Bestwall therefore has no information on these claims. This lack of information is particularly acute with respect to claimants with exposure profiles that Bestwall did not see in the tort system before its Petition Date. For instance, it is my understanding that the ACC and the FCR have argued that claimants alleging exposures to Bestwall products beyond Old GP's Gypsum Division based on alleged asbestos contamination may exist**.** The Debtor has stated that it has no history of receiving such claims in the tort system. Therefore, because those claims are not in Bestwall's claims database, there is no basis to estimate their number and evaluate any Bestwall liability with respect to them. If such claimants exist, information about them is needed to assess the extent of any liability Bestwall may have for them.

20. Based on my preliminary analysis of Bestwall's claims and resolutions history, I expect that discovery in this matter will show that the number of entities sharing liability with Bestwall in pending and future mesothelioma claims will be substantial. As part of that preliminary analysis, I have joined the publicly available Garlock Analytical Database[10] and Bestwall's claims database to determine the overlap between the two claiming populations. The overlap is substantial: three out of four Bestwall/Old GP mesothelioma claims filed from 2002 to

[10] This database is part of the Garlock Estimation Trial record that the *Garlock* Court made public. For a description of the Garlock Analytical Database, see Gallardo-García Garlock Report.

Garlock's petition date on June 5, 2010 were also claims filed against Garlock, and three-fourths of Bestwall's/Old GP's payments to mesothelioma claimants during this time period were to claimants who also pursued claims against Garlock. These data, however, do not provide sufficient information about Bestwall's and Old GP's historical claims, because about one-quarter of Bestwall's mesothelioma claims that were filed before Garlock's petition date were not asserted against Garlock (including many of Bestwall's highest-value claims) and because the Garlock data do not include claims filed after June 5, 2010 (Garlock's petition date and more than seven years before Bestwall commenced this case).

21. Finally, the information requested in the PIQ Motion will be essential for calculating and estimating the potential settlement offers that Bestwall claimants would receive from an eventual section 524(g) trust established in this case. For example, the PIQ information in *Garlock* was fundamental for this task. After the Garlock Estimation Trial, once Garlock, the asbestos committee in that case, and the future claimants' representative in that case reached a settlement regarding total trust funding, the data gathered through the Garlock PIQ was a key input in calculating the settlement offers that different types of claimants would receive from the Garlock trust's Claims Resolution Procedures (the "CRP"). Based on Bates White's analysis using the Garlock Analytical Database, of which the PIQ data was a principal component, the parties were able to determine the level of baseline settlement offer values for the Garlock trust. As these data were an important input for determining trust settlement offers, the PIQ data in *Garlock* also enabled my team at Bates White and me to evaluate whether the trust funding under the Garlock Plan would allow the Garlock Trust to provide substantially equivalent treatment to pending and future claimants. The PIQ data requested here in the PIQ Motion will play a similar role in allowing me to evaluate any proposed plan of reorganization, the design and evaluation of

TDPs and payments to claimants at levels that are substantially equivalent for present and future claimants.

IV. The information sought in the Trust Motion

22. The information Bestwall requests from asbestos trusts is fundamental for estimating Bestwall's legal liability. It is also critical to test whether claimants withheld exposure information from Bestwall while in the tort system and how its payments to claimants were impacted by such practices. This data is needed to assess contentions from the ACC and FCR that Bestwall's historical settlements reflect its liability and their contentions that Bestwall's historical settlements reveal amounts necessary to induce claimants to accept a plan of reorganization in this case. The proposed trust discovery will permit us to compare data from asbestos trusts that document claimants' exposures to the products of the reorganized entities with what those same claimants revealed about their asbestos exposures in their tort litigation against Bestwall and Old GP.

23. Having trust claims information on Bestwall claims resolved with payments within a wide range of values will permit me to evaluate the impact on historical settlement amounts caused by claimants delaying the filing of trust claims and failing to disclose to Old GP the exposure evidence supporting them. In addition, analysis of the settlements under the Law and Economics model will permit me to test how the non-disclosure of trust exposure evidence may have affected the likelihood of success factor under the model in historical cases.

24. The trusts and the trust processing facilities possess the requested information in readily available electronic form. The trusts' search can be performed electronically with simple computer code. Bestwall has Social Security Numbers ("SSNs") for most mesothelioma claims it resolved by settlement or verdict. Using SSNs to match Bestwall's settled and tried cases to

the trusts' databases will yield a reliable identification of claimants and will minimize the risk of false positives. In particular, the computer code required for identifying claims in the trusts' databases will be very simple, as it will only have to focus on SSN matches or matches of the last four digits of the SSN plus last name.

V. Data security.

25. In the ordinary course of business, Bates White routinely receives privileged and confidential information, often highly sensitive in nature. Bates White has data security protocols that implement industry best practices for data confidentiality and protection. Such protocols include, but are not limited to, the following safeguards: (a) each staff member has unique log-in credentials to access Bates White's systems; (b) data access in each matter is limited to staff based on "need to know" and "least privilege" principles, which includes time restrictions and other controls as necessary; (c) transmission of confidential or privileged information is done through encrypted file sharing systems that are password-protected (all media that leave Bates White are encrypted and password-protected); (d) physical external media with confidential information are secured in a locked safe or cabinet; (e) to comply with data destruction requirements, external media are destroyed, and external hard drives and laptops are wiped to ensure all data are removed; and (f) Bates White's network is protected by next-generation firewalls, web filtering, intrusion detection and prevention capabilities, and 24/7 monitoring by a third party. Bates White also deploys next-generation antivirus to all endpoints, two-factor authentication for external connections, and data loss protection designed to monitor and prevent theft and unauthorized uses of data. All Bates White employees must complete a cybersecurity training program.

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

Dated: July 30, 2020

Charles E. Bates, Ph.D.
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Facsimile: (202) 408-7838

Exhibit A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re BESTWALL LLC, Debtor.	Chapter 11 Case No. 17-31795 (LTB)

DECLARATION OF CHARLES E. BATES, PHD

Charles E. Bates, PhD, deposes and states as follows:

1. I am the Chairman of Bates White, LLC ("Bates White"), which maintains offices at 2001 K Street NW, North Building, Suite 500, Washington, DC 20006.

2. I am duly authorized to make this Declaration as a consultant for Bestwall LLC ("Bestwall" or the "Debtor") in this case. I make this Declaration at the request of the Debtor's counsel regarding (1) the data and claims-related information Bates White needs to (a) render a reliable estimate of Bestwall's liability for present and future mesothelioma claims and (b) properly evaluate any estimation opinions or other opinions or positions related to the value of asbestos claims offered by the Asbestos Claimants Committee ("ACC"), the Future Claimants' Representative ("FCR"), or their experts, and (2) the work Bates White has performed for the Debtor and its counsel to date in this chapter 11 case.

3. In this Declaration, I first describe the information necessary to perform a reliable estimation of Bestwall's legal liability with respect to mesothelioma claims and to evaluate the settlement extrapolation analyses that, I understand, the ACC and FCR experts will render in this matter. Much of this information is unavailable to the Debtor, either in whole or in significant

part. Next, I provide a summary overview of the work Bates White has performed for the Debtor and its counsel since the start of this bankruptcy case.

I. Qualifications

4. I specialize in the application of statistics and computer modeling to economic and financial issues. I have more than 25 years of experience in a wide range of litigation and commercial consulting areas, including extensive experience working on asbestos-related claims and liability valuation issues. A detailed description of Bates White's and my expertise is contained in my November 2, 2017 Declaration, attached as Exhibit A to the Debtor's *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[1] In addition, a complete and updated copy of my curriculum vitae is attached to this Declaration as Exhibit 1.

5. This Court issued an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[2]

II. Data and claims-related information necessary to render a reliable estimate of Bestwall's liability for present and future mesothelioma claims.

6. Bestwall's counsel has requested that I estimate Bestwall's legal liability for mesothelioma claims, i.e., Bestwall's share of final judgments that would be obtained by current and future Bestwall mesothelioma claimants.

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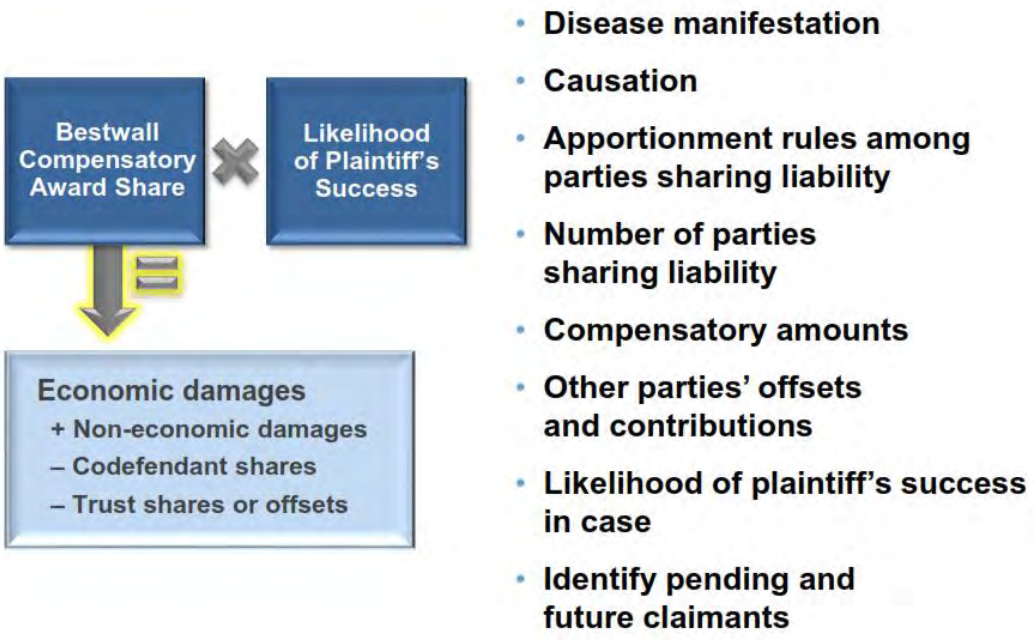
1 Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, Nov. 2, 2017, Doc. 29, pp. 11–26.

2 Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, Nov. 2, 2017, Doc. 40.

Figure 1. Components of the estimate of Bestwall's Expected Legal Liability for current and future mesothelioma claims



7. As demonstrated in Figure 1, Bestwall's Expected Legal Liability with respect to a given present or future claimant has two principal components: (1) the expected Bestwall Compensatory Award Share with respect to such claimant and (2) the expected likelihood of such claimant's success at trial (the Likelihood of Plaintiff's Success). As further demonstrated in Figure 1, the extent of Bestwall's Expected Legal Liability is determined by consideration of the factors listed on the right.

8. Below, I explain the data and claims-related information the methodology requires to render an estimate of Bestwall's liability for present and future mesothelioma claims.

9. **Status of Bestwall claims.** It is first necessary to identify the number and characteristics of the mesothelioma claims that would currently be asserted against Bestwall. As of today, there are at least three groups of potential current mesothelioma claimants: (1) claimants who filed pre-petition mesothelioma claims against Bestwall or the former

Georgia-Pacific LLC ("Old GP")[3] and are reflected in Bestwall's claims database as having an unresolved mesothelioma claim; (2) claimants who filed pre-petition mesothelioma claims but are not listed in the database as having an unresolved mesothelioma claim (e.g., because the database does not have information about the claimant's alleged disease); and (3) claimants who developed mesothelioma and allege contact with Bestwall's asbestos-containing products but did not file a pre-petition claim against Bestwall.

10. The Bestwall claims database contains more than 5,600 records identified as unresolved mesothelioma claims. However, the number of records that actually represent a pending mesothelioma claim against Bestwall is unknown, and information is necessary to determine which of the records that actually do represent pending mesothelioma claims. This is the case for several reasons. First, about 2,000 of those records appear to have been resolved before Bestwall's petition date but were in different states of documentation.[4] Of those, 1,800 are described as resolved without payment; thus, most, if not all, of those records likely represent dismissed claims. The remaining 200 of the 2,000 records appear as "settled but not documented," which may or may not indicate that a settlement was reached. The remaining 3,600 of the 5,600 unresolved pending mesothelioma records are described as "open," which appears to indicate they represent pending claims as of the petition date. But more than 800 had been filed more than four years before Bestwall's petition date. It is necessary to determine which of these 800 records represent active claims against the Debtor.

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3 When discussing historical matters preceding a 2017 corporate restructuring by Old GP, the term "Debtor" and "Bestwall" refer to the Debtor and the historical businesses that manufactured or marketed asbestos-containing products when they were part of Old GP or Bestwall Gypsum.

4 These claim records in the Bestwall claims database include those with the following statuses: "dismissed but not documented," "inactive," "resolved but not finalized," and "settled but not documented."

11. The fact that a substantial number of mesothelioma records shown as unresolved or pending in the Bestwall claims database are neither unresolved nor pending claims is typical. In my experience, asbestos claims databases consistently do not contain up-to-date information on abandoned or dismissed claims because keeping track of that information is costly and provides no benefit to the defendants in the tort system.

12. The Bestwall claims database includes unresolved records with no alleged disease information. Because no additional tort discovery on these claims continued after Bestwall's petition date (and any discovery relating to other defendants proceeded without Bestwall's participation due to the automatic stay), Bestwall has no information on whether there are any unresolved mesothelioma claims within "unknown disease" records.[5]

13. The Bestwall claims database also contains no information on mesothelioma claimants who may exist but have not filed a claim. Therefore, although claimants who have not filed claims may currently exist, Bestwall has no information on them.

14. Determining the actual number of pending mesothelioma claims against Bestwall is a critical starting point for any evaluation of Bestwall's liability. It is necessary to determine the extent of Bestwall's liability for the current claims and is also essential for estimating the number of future mesothelioma claims that could proceed to trial against Bestwall. To estimate Bestwall's liability for future mesothelioma claims, I will project the number of future claims that will be filed and the trial risk associated with each claim. This estimate will take into account differences in demographic characteristics and exposure profiles. However, I am currently unable to perform this estimate because of the lack of information on the number and

[5] Further, although some unresolved records show a non-mesothelioma disease, the claimant may indeed have mesothelioma. This type of error is possible in databases with hundreds of thousands of records.

type of current claims alleging Bestwall exposure, and on other exposure allegations made by holders of Bestwall resolved and current claims in their claims submitted to asbestos trusts.

15. **Identifying information for the individual with mesothelioma and the individual pursuing the claim.** For the individual with mesothelioma, we need 9-digit Social Security Number ("SSN"), gender, birth date, life status, death date (if applicable), and state of residency. For the individual pursuing the claim, we need name and SSN. This information is essential for identifying claimants across the multiple sources of asbestos claims information available in this matter. In addition, this information is necessary to identify multiple claims that may have been generated by a single mesothelioma diagnosis, such as personal injury and wrongful death claims for the same person. This is important for valuation purposes, because these claims may appear twice in the claims database but represent a single mesothelioma diagnosis.

16. **Diagnosis information.** This information includes the date of diagnosis and the mesothelioma body site (e.g., pleural versus peritoneal). This information is necessary to assess the viability of the claim and to understand the potential economic loss for the claimant and, accordingly, the possible damage amount. Although Bestwall's database includes general disease information for many claim records, as discussed above, there may be unidentified mesotheliomas in the database. Similarly, the database includes diagnosis dates for a number of records, but it lacks this information for a large number of unresolved records. The diagnosis date provides information about when the alleged disease manifested, so that it can be determined what portion of total diagnoses in a given year were pursued against Bestwall. Also, as described above, the database contains no information on claims that were not filed pre-

petition. Further, Bestwall's claims database does not include information on the mesothelioma body site.

17. **The injured party's alleged exposure to asbestos-containing products for which Bestwall is responsible.** The methodology requires information concerning the injured party's alleged exposure to Bestwall asbestos-containing products. We currently have little exposure information for current claims, including how many claimants will actually assert contact with a Bestwall asbestos-containing product.

18. If the claimant alleges Bestwall exposure, the methodology requires, for each alleged exposure, information regarding type of exposure (occupational, non-occupational, secondary), location where the exposure allegedly occurred, dates of alleged exposure, occupation/job type of individual while the alleged exposure occurred, and specific Bestwall products to which the individual alleges exposure. This information regarding the nature and extent of the plaintiff's exposure is fundamental for assessing the share of liability (if any) that Bestwall should cover for that claim.

19. **The injured party's alleged exposure to asbestos-containing products manufactured by or associated with other entities.** The methodology also requires information concerning allegations of exposure to non-Bestwall asbestos-containing products and, for each alleged exposure, basic exposure-related information, including type of such exposure (occupational, non-occupational, secondary), location where the exposure allegedly occurred, dates of alleged exposure, occupation/job type of the individual while the alleged exposure occurred, and specific products to which the individual alleges exposure.

20. In apportioning damages, it is first necessary to identify and quantify the number of entities and codefendants that would share in the liability with Bestwall, should Bestwall be

found liable. This determination requires sufficient information on claimants' work and alleged exposure histories so that the sources of asbestos exposure for claimants can be identified and accounted for.

21. Information on current and past claimants' job histories and exposure to other companies' asbestos-containing products is essential to identify alternative sources of exposure and assess the relative contribution of Bestwall asbestos-containing products (if any) to a claimant's alleged asbestos exposure. The exposure-related information will be supplemented and compared to the information we would obtain on the claimant's asbestos trusts filings and tort claims, to construct a full description of the exposure profiles of claimants with a pending mesothelioma claim against Bestwall. This information is central to liability apportionment and for the estimation of the likelihood of plaintiff's success against Bestwall, but it is unavailable in the Debtor's database.

22. **Injured party's economic loss.** Economic loss is another fundamental component of a liability estimate because it enables us to ascertain the expected award that a claimant may receive should he or she proceed to trial and prevail. Economic loss estimates are based on the claimant's demographic information, as well as on information related to lost income and expenses caused by the alleged disease. They require information about key claimant characteristics, including work/retirement status, current or last occupation, current or last annual income, medical expenses, dependent information, and funerary expenses (if applicable).

23. **Information about the claimants' lawsuits and claims against other entities.** Information about other parties' payments to claimants and the status of claims against other

entities is important for producing a reliable estimation of Bestwall's share of liability for a given claim.

24. To apply the liability apportionment rules described above, it is necessary to obtain information regarding claimants' settlements and recoveries from tort defendants and asbestos trusts. This information permits us to take into account offsets when estimating Bestwall's share of the liability, if any. Bestwall does not possess sufficient information that would enable it to evaluate amounts that claimants have recovered or will recover from other sources.

25. Basic information regarding the plaintiffs' claims against other entities, their status, and the amounts the claimants have recovered from those entities is not included in the Bestwall claims database. This is particularly the case for plaintiffs' trust claims for claims resolved by Bestwall in the tort system and for unresolved current claims.

III. Data and claims-related information necessary to evaluate opinions offered by the experts for the Asbestos Claimants Committee and the Future Claimants' Representative

26. I understand that the ACC and the FCR contend that Bestwall's settlement history reflects Bestwall's legal liability for settled claims and that Bestwall settlement payments should be used as proxies for Bestwall's liability for current and future claims. Additional data are needed to demonstrate and quantify to what extent this is the case.

27. Much of the information needed to quantify the impact of avoidable costs and the actual exposure profile of Bestwall claimants on Bestwall's settlements is not currently available to Bestwall.

28. I understand that Bestwall has little information on the exposure profile of claims dismissed without payment and what distinguishes them from other claims.

29. Bestwall has little or no information on the exposure profile or the other characteristics of group settlement claims that distinguish them from each other or from claims that the plaintiffs abandoned without payment, or explains why some claims were paid and not others.

30. The data I described in detail above are needed to quantify Bestwall's legal liability for claims individually litigated but not prepared for trial and claims prepared for trial but settled before trial started.

31. Although Bestwall has more robust information on claims settled during trial, information is still needed to assess the extent of alternative exposures.

32. Bestwall has substantial information on claims that proceeded to verdict. But, even for these cases, information on alternative exposures is necessary.

33. Information on trust claims filings will be essential. By comparing exposure allegations in the tort system to allegations in the plaintiffs' trust claims, I can determine whether settlement (and verdict) amounts can be properly extrapolated into the future.

34. Further, the information on current claims against Bestwall that I discussed above is also necessary for the opposing experts' settlement approach.

IV. Bates White's work to date in this case

35. In this section, I provide a summary of the work that Bates White has performed since the commencement of Bestwall's chapter 11 case.

36. The principal tasks that Bates White has undertaken are the following:

a. Construction of the preliminary Bestwall Analytical Database

b. Update of the model to estimate and forecast mesothelioma incidence

c. Analysis of Bestwall's claims history and defense costs data for estimation of Bestwall's legal liability

37. Below I provide more detail on each of these tasks. At the direction of counsel, I am providing only a high-level overview to protect attorney-client-privileged and work product–protected information.

a. Construction of the preliminary Bestwall Analytical Database

38. The Bestwall Analytical Database is and will be the foundation for most of the analyses Bates White will perform in this case. In particular, this database will be the foundation for my estimate of Bestwall's legal liability.

39. Part of the work that Bates White has performed to date relates to the development of an updated analytical database using other sources of information available to us (such as the publicly available Garlock Analytical Database, limited data from the Social Security Administration, and a copy of the Manville Trust database as of 2002 purchased by Bates White, among others).

40. Although we have been able to add information to update the existing claims database, as described above, other fundamental information is necessary to construct a database of reliable information for Bestwall asbestos claims, as described in detail in Sections II and III above. None of the other sources of data we have been able to use has information collected specifically with respect to Bestwall mesothelioma claims. In the present matter, the work on the construction of the preliminary Bestwall Analytical Database has taken approximately 35% of Bates White's fees so far.

b. Update of model to estimate and forecast mesothelioma incidence

41. As I explained above, a central element of the estimate of Bestwall's legal liability is a forecast of the number of mesothelioma diagnoses that will arise in the future. For this purpose, Bates White has been developing an updated version of an incidence model.

42. This task involves a number of components. Those include researching the applicable literature and publicly available data and incorporating that research into the model by developing complex computer code to model and estimate incidence. This project has constituted approximately 30% of Bates White's fees in this matter so far.

c. Analysis of Bestwall's claims history and defense costs data for estimation of Bestwall's legal liability

43. Settlement payments, together with defense costs data, provide useful information to assess the extent to which claims are settled for trial risk or to avoid defense costs. Bates White has been engaged in a detailed and iterative analysis of the available data. Some of this analysis is reflected in Section III above and informs my opinions about the information necessary to assess the ACC's and FCR's proposed valuation approaches in this matter. In addition, this analysis was the basis for providing support to the Debtor and its counsel during the mediation proceedings the Court ordered early in 2020. This analysis has constituted approximately 25% of Bates White's fees in this matter so far.

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

Dated: June 19, 2020

Charles E. Bates, Ph.D.
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Exhibit 1

Curriculum Vitae

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CHARLES E. BATES, PHD

Chairman

AREA OF EXPERTISE

- Asbestos liabilities and expenditures estimation
- Economic analysis
- Statistical analysis
- Microsimulation modeling
- Econometrics

SUMMARY OF EXPERIENCE

Charles E. Bates has extensive experience in statistics, econometric modeling, and economic analysis. He specializes in the application of statistics and computer modeling to economic and financial issues. Dr. Bates has more than 25 years of experience and provides clients with a wide range of litigation and commercial consulting services, including expert testimony and guidance on economic and statistical issues.

Dr. Bates is a recognized expert in asbestos-related matters. He speaks in national and international forums on the asbestos litigation environment and estimation issues. Dr. Bates is frequently retained to serve as an expert on such matters in large litigations and has testified before the US Senate Judiciary Committee and Federal Bankruptcy Court.

EDUCATION

- Advanced Seminar in Pharmacoeconomics, Harvard School of Public Health
- PhD, Economics, University of Rochester
- MA, Economics, University of Rochester
- BA, Economics and Mathematics (high honors), University of California, San Diego

PROFESSIONAL EXPERIENCE

Prior to founding Bates White, Dr. Bates served as a Vice President of A.T. Kearney. Previously, he was the Partner in Charge of the Economic Analysis group at KPMG. Dr. Bates began his career on the faculty of Johns Hopkins University's Department of Economics, where he taught courses in advanced statistical economic analysis and trade theory.

SELECTED ASBESTOS AND PRODUCT LIABILITY EXPERIENCE

- Retained as an asbestos liability valuation 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 as an asbestos liability valuation 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 as an asbestos liability valuation 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.
- Served as an asbestos liability valuation expert on behalf of Garlock Sealing Technologies in its bankruptcy proceedings. Testified before the US Bankruptcy Court for the Western District of North Carolina both in preliminary case hearings and at trial.
- Served as an expert in asbestos claims valuation for financial reporting purposes in *Erica P. John Fund Inc. et al. v. Halliburton Company et al.* on behalf of certain Halliburton stockholders regarding Halliburton's financial disclosures of its asbestos liabilities after its acquisition of Dresser in 1998.
- Served as the Individual Claimant Representative on behalf of potential future No Notice Individual Creditors as part of the Amending Scheme of Arrangement for OIC Run-Off Limited (formerly the Orion Insurance Company plc).
- Authored expert reports and provided testimony in *United States Fid. & Guar. Co. v. American Re-Insurance Company* in asbestos claims valuation, estimation methodology, and asbestos reinsurance billing regarding the proper reinsurance bill associated with USF&G's reinsurance bill of its asbestos-related payments to Western MacArthur.
- Served as an asbestos liability valuation expert on behalf of Specialty Products Holding Corp./Bondex International in its bankruptcy proceedings.
- Retained as an asbestos liability valuation expert on behalf of the Official Committee of Unsecured Creditors of Motors Liquidation Company (f/k/a General Motors Corporation) in its bankruptcy proceedings.
- Authored expert report and provided deposition testimony regarding the value of diacetyl claims on behalf of the Official Committee of Equity Security Holders in the Chemtura Corporation bankruptcy proceedings.
- Testified in deposition on behalf of the ASARCO Unsecured Creditors Committee in the ASARCO bankruptcy proceedings regarding the valuation of past and future asbestos-related personal injury claims.
- Authored expert report and provided deposition testimony on behalf of the policyholder in the matter of *Imo Industries, Inc. v. Transamerica Corp.*
- Currently retained as an expert by Fortune 500 companies to produce asbestos expenditure estimates for annual and quarterly financial statements. Estimations aid clients with Sarbanes-Oxley compliance.
- Currently retained as an expert in asbestos estimation and insurance valuation, for numerous asbestos litigation matters, on behalf of insurance companies, corporations, and financial creditors' committees of federal bankruptcy proceedings.
- Testified before the Senate Judiciary Committee on the economic viability of the Trust Fund proposed under S.852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005. Testimony clarified Bates White's independent analysis on the estimate of potential entitlements created by the administrative no-fault trust fund that uses medical criteria for claims-filing eligibility.

- Testified in deposition on behalf of Liberty Mutual Insurance Company in the Plibrico bankruptcy proceedings regarding the valuation of past and future asbestos personal injury claims and exposure criteria in plan proponents proposed trust distribution procedures.
- Testified at deposition on behalf of the joint insurers defense committee to address the fraction of expenditures associated with the company's asbestos installation operations in *Owens Corning v. Birmingham Fire Insurance Company of Pennsylvania.*
- Testified in the Babcock & Wilcox bankruptcy confirmation hearing on behalf of the Insurers Joint Defense Group to address asbestos liability. Developed claims criteria evaluation framework to assess asbestos liability forecasts and trust distribution procedures.
- Testified at deposition on behalf of Sealed Air in the fraudulent conveyance matter regarding the 1998 acquisition of Cryovac from W.R. Grace. Directed estimation of foreseeable asbestos liability for fraudulent conveyance matter to advise the debtor in the bankruptcy of a defendant with over $200 million in annual asbestos payments. Developed asbestos liability forecasting model and software. Directed industry research and interviewed industry experts.
- Testified at deposition on behalf of Hartford Financial Services Group to address the asbestos liability of MacArthur Company and Western MacArthur Company. Estimated asbestos liability in the context of bankruptcy proceedings.
- Testified at deposition on behalf of the Center for Claims Resolution in arbitration proceedings of *GAF v. Center for Claims Resolution*.
- Served as testifying expert on behalf of CSX Transportation on the suitability of asbestos claim settlements for arbitration proceedings of *CSX Transportation, Inc. v. Lloyd's, London.*
- Developed an econometric model of property damage lawsuits for estimating the future liability of a former asbestos manufacturer arising from the presence of its asbestos products in buildings.

SELECTED LITIGATION AND CONSULTING EXPERIENCE

- Testified in US Tax Court on behalf of the taxpayers on the statistical basis and accuracy of shrinkage accruals in *Kroger v. Commissioner*.
- Served as consulting expert and performed statistical and quantitative analyses to assess the merits of a class action alleging payment of fees to mortgage brokers for referral of federally related mortgage loans.
- Testified in US Tax Court on behalf of the taxpayer analyzing the statistical prediction of bond ratings using company financial data in *Nestlé Holdings Inc. v. Commissioner*.
- Submitted written expert testimony on the statistical and financial analysis of option transactions and an analysis of alternative stock option hedges in *McMahon, Brafman, and Morgan v. Commissioner*.
- Testified in US Tax Court on behalf of the taxpayers of IRS experts on the statistical basis and accuracy of shrinkage accruals in *Wal-Mart v. Commissioner*.
- Served as consulting expert and analyzed the racial composition for a large manufacturing corporation using EEO data and employed sophisticated statistical analysis and modeling to determine the validity and strength of an employment discrimination claim.
- Testified on behalf of VNC in the arbitration hearing of *VNC v. MedPartners*.

- Provided expert testimony in California Superior Court on the validity of economic comparability adjustments for pipeline easement rents in *Southern Pacific Transportation Corp. v. Santa Fe Pacific Corp.*
- Served as statistical expert and developed detailed statistical analysis of customs trade data for use in criminal transfer-pricing litigation.
- Submitted written testimony in US Tax Court on the beneficial life of company credit card in a tax matter for a large retailer drawing on the company's point-of-sale data, credit card data, and customer demographic information.
- Developed state-of-the-art models to account for default correlation for underwriting credit insurance; models became the standard tools for the country's largest credit insurance firm.
- Led a team of economists that provided litigation-consulting services in one of the largest US price-fixing cases. Case involved the development of state-of-the-art economic models, damages' analyses, client presentations, pretrial discovery, industry research, preparation of evidence and testimony, depositions, and a critique of opposing expert analyses and reports.
- For a start-up global telecommunications enterprise, provided consulting services and developed a comprehensive computer model to evaluate the firm's financial plan. Model incorporated marketing, pricing, and communications traffic in a single modeling framework to facilitate sensitivity analysis by creditors and to evaluate the risk associated with the strategic business plan.
- Served as senior economic advisor on issues of analytical methodology for numerous pharmacoeconometric and health outcomes research projects. Provided expertise in the development of decision tools and the creative use of modeling applications for pharmacoeconomics and outcomes research.

PUBLICATIONS

- Bates, Charles E., Charles H. Mullin, and Marc C. Scarcella. "The Claiming Game." *Mealey's Litigation Report: Asbestos* 25, no. 1 (February 3, 2010).
- Bates, Charles E., Charles H. Mullin, and A. Rachel Marquardt. "The Naming Game." *Mealey's Litigation Report: Asbestos* 24, no. 15 (September 2, 2009).
- Bates, Charles E., and Charles H. Mullin. "State of the Asbestos Litigation Environment—October 2008." Mealey's Litigation Report: Asbestos 23, no. 19 (November 3, 2008).
- Bates, Charles E., and Charles H. Mullin. "Show Me The Money." *Mealey's Litigation Report: Asbestos* 22, no. 21 (December 3, 2007).
- Bates, Charles E., and Charles H. Mullin. "The Bankruptcy Wave of 2000—Companies Sunk By An Ocean Of Recruited Asbestos Claims." *Mealey's Litigation Report: Asbestos* 21, no. 24 (January 24, 2007).
- Bates, Charles E., and Charles H. Mullin. "Having Your Tort and Eating It Too?" *Mealey's Asbestos Bankruptcy Report* 6, no. 4 (November 2006).
- Bates, Charles E., and Halbert White. "Determination of Estimator with Minimum Asymptotic Covariance Matrices." *Econometric Theory* 9 (1993).
- Bates, Charles E., and Halbert White. "Efficient Instrumental Variables Estimation of Systems of Implicit Heterogeneous Nonlinear Dynamic Models with Nonspherical Errors." In *International Symposia in Economic Theory and Econometrics,* vol. 3, edited by W.A. Barnett, E.R. Berndt and H. White. New York: Cambridge University Press, 1988.

- Bates, Charles E. “Instrumental Variables.” In *The New Palgrave: A Dictionary of Economics,* edited by John Eatwell, Murray Milgate, and Peter Newman. London: Macmillan, 1987.
- Bates, Charles E., and Halbert White. “An Asymptotic Theory of Consistent Estimation for Parametric Models.” *Econometric Theory* 1 (1985).

SELECTED SPEAKING ENGAGEMENTS

- “The Top Emerging Trends in 2015 Asbestos Litigation.” Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference, March 15–17, 2015.
- “Asbestos Bankruptcy: A Discussion of the Top Trends in Today’s Chapter 11 Cases.” Perrin Conferences Asbestos Litigation Conference: A National Overview & Outlook, Sept. 8–10, 2014.
- “An Asbestos Defendant's Legal Liability—The Experience in Garlock's Bankruptcy Asbestos Estimation Trial.” Bates White webinar, July 29, 2014.
- “Concussion Suits against the NFL, NCAA, and Uniform Equipment Manufacturers.” Perrin Conferences’ Legal Webinar Series, May 24, 2012.
- “An Update on US Mass Tort Claims.” Perrin Conferences’ Emerging Risks on Dual Frontiers: Perspectives on Potential Liabilities in the New Decade, April 12–13, 2012, London, United Kingdom.
- “The Next Chapter of Asbestos Bankruptcy: New Filings, Confirmations, & Estimations.” Perrin Conferences’ Asbestos Litigation Conference: A National Overview & Outlook, September 13–15, 2010, San Francisco, CA.
- “Trust Online: The Impact of Asbestos Bankruptcies on the Tort System.” Perrin Conferences’ Asbestos Bankruptcy Conference: Featuring a Judicial Roundtable on Asbestos Compensation, June 21, 2010, Chicago, IL.
- “Current Litigation Trends that are Impacting Asbestos Plaintiffs, Defendants, & Insurers.” Perrin Conferences’ Asbestos Litigation Mega Conference, September 14–16, 2009, San Francisco, CA.
- “Verdicts, Settlements, and the Future of Values: Where Are We Heading? A Roundtable Discussion.” HB Litigation Conferences’ Emerging Trends in Asbestos Litigation, March 9–11, 2009, Los Angeles, CA.
- “Role of Bankruptcy Trusts in Civil Asbestos.” Mealey’s Emerging Trends in Asbestos Litigation Conference, March 3–5, 2008, Los Angeles, CA.
- “The Intersection between Traditional Litigation & the New Bankruptcy Trusts.” Mealey’s Asbestos Bankruptcy Conference, June 7–8, 2007, Chicago, IL.
- ABA’s Insurance Coverage Litigation Committee Conference, March 1–4, 2007, Tucson, AZ.
- Mealey’s Asbestos Conference: The New Face of Asbestos Litigation, February 8–9, 2007, Washington, DC.
- Mealey’s Asbestos Bankruptcy Conference, December 4–5, 2006, Philadelphia, PA.
- “Seeking Solutions to European Asbestos Claiming: Will it be FAIR?” Keynote address, Mealey’s International Asbestos Conference, November 1–2, 2006, London, United Kingdom.
- Mealey’s Asbestos Bankruptcy Conference, June 9, 2006, Chicago, IL.
- Harris Martin Publishing Asbestos Litigation Conference, March 2, 2006, Washington, DC.
- Mealey’s Wall Street Forum: Asbestos Conference, February 8, 2006, New York, NY.
- Mealey’s Asbestos Legislation Teleconference, February 7, 2006.

PROFESSIONAL ASSOCIATIONS

- National Association of Business Economists
- American Economic Association
- Econometric Society

Exhibit 6

From: Ross, Valerie
To: C. Michael Evert, Jr.
Cc: Geise, Elizabeth; Rao, Sony
Subject: RE: DBMP - Subpoenas to Aldrich and Murray Boiler
Date: Thursday, March 21, 2024 10:41:35 AM
Attachments: image001.jpg
Docket 2730.pdf

Mike,

As I suspect you already know, last night the DBMP ACC filed the attached motion to strike DBMP's subpoenas to Aldrich/Murray (as well as its subpoena to Bestwall), which motion is set for hearing on 4/17/24. As we've previously discussed, DBMP agrees that no production pursuant to the DBMP subpoenas are necessary until after the attached motion is resolved.

Let me know if you wish to discuss.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453

From: Ross, Valerie
Sent: Thursday, February 29, 2024 10:42 AM
To: C. Michael Evert, Jr. <CMEvert@ewhlaw.com>
Cc: Geise, Elizabeth <elizabeth.geise@afslaw.com>; Rao, Sony <sonul.rao@afslaw.com>
Subject: DBMP - Subpoenas to Aldrich and Murray Boiler

Mike,

See attached. As you may have seen, DBMP filed a notice of service of these subpoenas yesterday. I will let you know when/if we hear anything from the DBMP Claimant Representatives about these.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453
My Bio | LinkedIn | Subscribe
1717 K Street NW, Washington, DC 20006

From:	Ross, Valerie
To:	Doc Schneider
Cc:	Mercer Jr, Joel J; Baugher, Melissa Halstead; Greg M. Gordon (gmgordon@jonesday.com); Jeff B. Ellman (jbellman@jonesday.com); Cassada, Garland; Worf, Richard; John Tucker; Geise, Elizabeth; Rao, Sony
Subject:	RE: Letter on DBMP Subpoena
Date:	Thursday, March 21, 2024 10:39:14 AM
Attachments:	image001.png Docket 2730.pdf

Doc:

As I suspect you already know, last night the DBMP ACC filed the attached motion to strike DBMP's subpoena to Bestwall (as well as its subpoenas to Aldrich/Murray), which motion is set for hearing on 4/17/24. As we've previously discussed, DBMP agrees that no production pursuant to the DBMP subpoena is necessary until after the attached motion is resolved.

Let me know if you wish to discuss.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453

From: Doc Schneider <DSchneider@KSLAW.com>
Sent: Tuesday, March 12, 2024 12:07 PM
To: Ross, Valerie <valerie.ross@afslaw.com>
Cc: Mercer Jr, Joel J <joel.mercerjr@kochcc.com>; Baugher, Melissa Halstead <melissa.baugher@kochcc.com>; Greg M. Gordon (gmgordon@jonesday.com) <gmgordon@jonesday.com>; Jeff B. Ellman (jbellman@jonesday.com) <jbellman@jonesday.com>; Cassada, Garland <GCassada@robinsonbradshaw.com>; Worf, Richard <RWorf@robinsonbradshaw.com>; John Tucker <JTucker@KSLAW.com>
Subject: Letter on DBMP Subpoena

Valerie:

I hope this finds you well.

Please see the attached letter that updates the current status of DBMP's subpoena to Bestwall and serves a formal alert under Rule 45 that we plan to file the same production process that DBMP followed with respect to the similar subpoena Bestwall served on DBMP last year.

With best regards,

Doc

Richard A. Schneider (Doc)
Partner

Cell 404 428 6135 Office 404 572 4889 | E: dschneider@kslaw.com | Bio | vCard

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
King & Spalding

kslaw.com

EXHIBIT C-2

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC and MURRAY BOILER LLC,[1] Debtors.	Chapter 11 Case No. 20-30608

DBMP'S OBJECTION TO THE MOTION BY OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS TO QUASH SUBPOENAS SENT TO DEBTORS

DBMP LLC ("**DBMP**") objects to the *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 2157) (the "**Motion**"), by which the Official Committee of Asbestos Personal Injury Claimants in this chapter 11 case (the "**Aldrich/Murray Committee**") seeks an order striking document subpoenas (the "**Subpoenas**") served by DBMP on non-parties Aldrich Pump LLC ("**Aldrich**"), and Murray Boiler LLC ("**Murray**," and together with Aldrich, "**Aldrich/Murray**" or the "**Debtors**").[2]

[1] The last four digits of the Debtors' taxpayer identification are 2990 (Aldrich) and 0679 (Murray). The Debtors' address is 800-E. Beaty Street, Davidson, North Carolina 28036.

[2] DBMP also served a subpoena on Bestwall in Bestwall's chapter 11 case. Separate objections and motions to strike or quash also were filed in DBMP's chapter 11 case by the Official Committee of Asbestos Personal Injury Claimants in the DBMP proceeding (the "**DBMP Committee**") and in Bestwall's chapter 11 case by the Official Committee of Asbestos Claimants in the Bestwall proceeding (the "**Bestwall Committee**"). *See Official Committee of Asbestos Personal Injury Claimants of DBMP LLC's Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC*, *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 20, 2024) (Dkt. 2730); *Motion by the Official Committee of Asbestos Claimants to Quash Subpoena Sent to Debtor*, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 22, 2024) (Dkt. 3327). The motion in *DBMP* is scheduled to be heard on April 17, 2024, together with the Motion in this case, and the motion in *Bestwall* is scheduled to be heard on April 18, 2024.

INTRODUCTION

The Subpoenas, which were served on February 29, 2024, seek production of limited, non-privileged, non-confidential information from Aldrich/Murray's pre-petition claimant database regarding a small subset of DBMP mesothelioma claimants who also asserted asbestos-related mesothelioma claims against Aldrich or Murray.[3] Two years ago, similar subpoenas seeking identical categories of information from DBMP and Aldrich/Murray were served by Bestwall, and largely approved by Judge Beyer and this Court following motions to strike or quash by the Bestwall Committee, the DBMP Committee, and the Aldrich/Murray Committee. Specifically, during a May 26, 2022, combined hearing in this case and *DBMP*, this Court overruled the objections of the DBMP and Aldrich/Murray Committees and approved Bestwall's subpoenas. Among other things, this Court held that the discovery sought by Bestwall was appropriate and did not implicate personal identifying information. See 5/26/22 Hr'g Tr. at 112-16. In her May 18, 2022 ruling in *Bestwall*, Judge Beyer similarly overruled the objections of the Bestwall Committee, finding that the Bestwall subpoenas sought relevant information and did not seek privileged or otherwise protected data.[4] *See* 5/18/22 Hr'g Tr. in *In re Bestwall*, Case No. 17-31795 (Bankr. W.D.N.C.), at 20-25 (attached as Ex. 1) ("**Bestwall 5/18/22 Hr'g Tr.**"). This Court and Judge Beyer subsequently issued written orders incorporating these rulings.[5]

[3] Copies of the Subpoenas are attached as Ex. A to the Motion.

[4] Judge Beyer did limit the universe of claimants about whom Bestwall could obtain information from DBMP and Aldrich/Murray (based on the agreed claims sample in use in the *Bestwall* case) and also ruled that the information produced to Bestwall should be subject to a protective order. As explained below, DBMP's Subpoenas abide by these limitations.

[5] *See Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 1204); *Order Denying the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor*, *In re DBMP LLC, et al.*, Case No. 20-30080 (Bankr. W.D.N.C. June 14, 2022) (Dkt. 1465); *Order Granting in Part and Denying in Part the Official Committee of Asbestos Claimants' (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor has Waived*

Barely acknowledging these directly on-point decisions, the Motion repeats the same objections that this Court and Judge Beyer rejected two years ago. The Aldrich/Murray Committee argues that (1) the Subpoenas seek personal, sensitive, and/or confidential information (Motion at ¶¶ 12-26); (2) the information sought exceeds the permissible scope of discovery under Fed. R. Civ. P. 26 (Motion at ¶¶ 27-29); (3) the Subpoenas cannot be issued without leave of Court under the *Barton* doctrine (Motion at ¶¶ 30-32); and (4) the asbestos claimants identified in the Subpoenas should have received notice and an opportunity to challenge the Subpoenas (Motion at ¶¶ 33-35). Alternatively, the Aldrich/Murray Committee argues that if the Court denies the Motion, the confidentiality provisions in the order governing Aldrich/Murray's discovery of information from various asbestos trusts should govern any production.[6] (Motion at ¶¶ 36-37.) These arguments were all included in the motions challenging Bestwall's subpoenas and were addressed and expressly or implicitly rejected by this Court's and Judge Beyer's 2022 rulings.[7]

As this Court has commented in the related context of discovery sought from asbestos trusts, while the *Bestwall*, *DBMP*, and *Aldrich* cases present different issues that may lead to

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Privilege to the Case Files of any Matched Claimant, *In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. June 13, 2022) (Dkt. 2608).

[6] The Aldrich/Murray Committee also argues that it has standing to object to the Subpoenas. (Motion at ¶¶ 12-18.) DBMP disagrees, because the standing arguments are all premised on the faulty notion that the Subpoenas seek confidential information, among other reasons. But since this Court previously found that the DBMP and Aldrich/Murray Committees had standing to challenge the Bestwall subpoenas, 5/26/22 Hr'g Tr. at 115:1-17, DBMP will concede the issue for purposes of this objection rather than wasting the Court's time by asking it to revisit the standing question.

[7] *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (Dkt. 1056), at ¶¶ 17-20, 23-25, 27, 33-36 (the "**Aldrich/Murray Committee Motion to Quash**"); *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor*, *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C. March 19, 2022) (Dkt. 1373), at ¶¶ 16-19, 22-24, 26, 30-33; *Official Committee of Asbestos Claimants' Motion (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) In the Alternative, to Determine that the Debtor Has Waived Privilege to the Case Files of any Matched Claimant, In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C. March 21, 2022) (Dkt. 2470), at ¶¶ 4-21, 34-36.

different results, where "the facts and circumstances appear to be all but identical, I believe consistency will be helpful," 6/15/23 Hr'g Tr. at 18:25-19:2. The Aldrich/Murray Committee offers no legitimate reason why this Court should revisit or reconsider its prior ruling and thereby deny DBMP the same discovery Bestwall was allowed to pursue. Instead, as it did in 2022, it argues that the Subpoenas should be rejected because they seek "sensitive," "confidential," and "personal" information. (Motion at ¶¶ 2, 12-26.) In so arguing, the Motion completely ignores Judge Beyer's ruling that the Bestwall subpoenas "don't seek highly personal, sensitive, confidential, or privileged data," Bestwall 5/18/22 Hr'g Tr. at 21, and this Court's ruling that "I don't see the discovery requested here being, having PII. I don't think that we have a real threat of identity theft under the circumstances." 5/26/22 Hr'g Tr. at 115. The Aldrich/Murray Committee contends—without support or example—that "highly personal or confidential" information would be produced in response to the Subpoenas. (Motion at ¶ 20.) The only supposedly private topic it identifies, however, is settlement information. (*Id.* at ¶ 21.) But, with respect to settlement, the Subpoenas ask merely whether a claimant settled with Aldrich/Murray (a yes or no proposition) and, if so, the date of such settlement and the date of any settlement payment. (Motion, Ex. A.) There is nothing confidential, privileged, or sensitive about these matters, as this Court and Judge Beyer already have found.

Second, the Aldrich/Murray Committee suggests that because DBMP has subpoenaed information about resolved mesothelioma claims from various asbestos bankruptcy trusts and has received PIQs from pending claimants, this discovery is unnecessary. (Motion at ¶¶ 5, 27-29.) But the fact that DBMP has received some discovery about these claimants from other sources is not grounds to quash the Subpoenas. To the contrary, the scope of discovery is broad, and

extends to all information "relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026, 9014(c).

Notably, neither Aldrich nor Murray object or otherwise argue that responding will impose upon them an undue burden or expense. Further, the fact that DBMP already has some claimant information does not obviate the need for it to obtain additional information, given the central relevance of such information to estimation. As it has previously explained to the Court, DBMP at estimation will present a legal liability methodology that depends, in significant part, on assessing DBMP claimants' claims against other parties and exposure to their products. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 73, 96 (Bankr. W.D.N.C. 2014). The information sought by DBMP's Subpoenas—whether and when Aldrich and Murray settled DBMP claimants' claims, and the exposures claimed against those companies—is directly relevant to this issue.

The information sought by the Subpoenas also bears on DBMP's rebuttal of the DBMP Committee's and FCR's anticipated plan to rely on DBMP's historical settlements to value the company's current and future liability. DBMP contends that these settlements overstate its liability; the extent to which DBMP claimants asserted claims against co-defendants, identified exposures to their products, and settled those claims, will be relevant to DBMP's expert's response to the DBMP Committee's and the DBMP FCR's settlement methodology. *See* Bates Decl., ¶¶ 32-35, 38-40 (attached as Ex. 2).

The Aldrich/Murray Committee's remaining arguments for quashing the Subpoenas are likewise unavailing. As this Court and Judge Beyer have previously found, the *Barton* doctrine does not preclude issuance of the Subpoenas, and there are no grounds to require DBMP to provide the claimants with notice of the Subpoenas.

Implicitly acknowledging the weakness of their arguments, the Aldrich/Murray Committee alternatively suggests that any information gathered pursuant to the Subpoenas should be subject to the strict confidentiality and use restrictions imposed by this Court in its *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (Dkt. 1240). This request too ignores that the Subpoenas do not seek the sort of personal or confidential information warranting such heightened and unusual protections. Moreover, when Aldrich/Murray produced a much larger data set, including confidential settlement amounts, from its pre-petition claimant database to experts for the Aldrich/Murray Committee and FCR, the Court ordered that any information produced from such database would be protected by the *Agreed Protective Order Governing Confidential Information*, *In re Aldrich Pump LLC*, Case No. 20-30608 (Dkt. 345) (the "**Aldrich/Murray Protective Order**").

DBMP's Subpoenas likewise provide that DBMP will treat any information produced in response as confidential in accordance with the *Agreed Protective Order Governing Confidential Information*, *In re DBMP LLC*, Case No. 20-30080 (Dkt. 251) (the "**DBMP Protective Order**"), which has the same database protections contained in the Aldrich/Murray Protective Order. *See* Subpoena to Aldrich, Ex. A at ¶ 14; Subpoena to Murray, Ex. A at ¶ 13. This is consistent with the protections this Court and Judge Beyer ordered for the information produced in response to Bestwall's subpoenas. There is, accordingly, no reason for imposition of the more stringent restrictions imposed in connection with the data produced by the asbestos bankruptcy trusts.

STATEMENT OF RELEVANT FACTS

DBMP served the Subpoenas on Aldrich/Murray on February 29, 2024, seeking limited information about: (1) each mesothelioma claimant who had resolved a mesothelioma claim

asserted against DBMP or its predecessor, the former CertainTeed Corporation, prior to the Petition Date and who is identified in the agreed sample used in *DBMP* for estimation purposes as identified on Exhibit A to the *Agreed Order with Respect to Resolved Claims Sampling for Purposes of Estimation Discovery*, *In re DBMP LLC,* Case No. 20-30080 (Dkt. 2506) (such claims on Exhibit A, the "**DBMP Agreed Claims**"); and (2) mesothelioma claimants who timely filed and did not withdraw a Proof of Claim in *DBMP* pursuant to the *Order (I) Establishing Bar Date for Pending Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants, In re DBMP LLC*, Case No. 20-30080 (Dkt. 1461) (the "**Pending Claims**"). (Motion, Ex. A at ¶¶ 1, 4.) Collectively, there are just over 4,000 claimants whose information is potentially the subject of the Subpoenas. The Subpoenas, however, seek information about these claimants only to the extent they also filed pre-petition mesothelioma claims against Bestwall or Aldrich/Murray, and so it is anticipated that the actual number of claimants whose information will be produced in response to the Subpoenas will be smaller.

The Subpoenas seek information identical to the information sought by the Bestwall subpoenas approved by this Court and Judge Beyer in 2022. The information sought is a small subset of that contained within Aldrich/Murray's pre-petition claims database, namely only fields that record: (1) the name of the law firm or firms who represented the claimant; (2) the jurisdiction and state in which the claimant filed his or her claim against Aldrich/Murray; (3) the status of the claim against Aldrich/Murray (*e.g.*, settled, dismissed, etc.); (4) if resolved, the date the claim was resolved; (5) if a settlement or judgment were paid, the date of payment; and (6) the claimant's exposure allegations, including dates, manner, and location of exposure. (*See* Motion, Ex. A.)

Neither Aldrich nor Murray objected to the Subpoenas. Each is prepared to produce the requested information.[8]

ARGUMENT

I. The Subpoenas Do Not Seek Privileged or Otherwise Protected Data.

As a non-target of the Subpoena, the Aldrich/Murray Committee must show that the data sought requires disclosure of their "potentially privileged and otherwise protected matter." *CineTel Films, Inc. v. Does 1-1,052*, 853 F. Supp. 2d 545, 554 (D. Md. 2012) (citations omitted); *accord United States v. Idema*, 118 Fed. Appx. 740, 744 (4th Cir. 2005) ("[A] party does not have standing to challenge a subpoena issued to a nonparty unless the party claims some personal right or privilege in the information sought by the subpoena.") (citations omitted); 9A Wright & Miller § 2459 (party has no standing to quash a subpoena issued to nonparty "unless the objecting party claims some personal right or privilege with regard to the documents sought"); Fed. R. Civ. P. 45(d)(3).

In an effort to satisfy this requirement, the Aldrich/Murray Committee argues that the Subpoenas seek "highly personal and confidential information" and that there is "clearly potential harm to the Aldrich/Murray asbestos claimants" in allowing such personal and confidential information to be shared with DBMP. (Motion at ¶ 24.) Putting aside whether concerns about confidentiality are sufficient grounds under Rule 45 for a non-target to challenge a third-party subpoena, the Aldrich/Murray Committee is flat wrong in its characterization of the information sought by DBMP. As this Court and Judge Beyer previously ruled when considering the identical requests of Bestwall, most of the data sought such as the claimants' law firm, the

[8] DBMP informed Aldrich/Murray that they need not produce responsive documents until the Motion and the motion to strike filed in *DBMP* are resolved. *See* March 21, 2024, e-mail from Valerie Ross to C. Michael Evert, Jr. (attached as Ex. 3).

court where the claim was filed, and certain basic exposure information, are derived from the claimants' public court filings, and hence is neither personal nor confidential. *E.g.*, Bestwall 5/18/22 Hr'g Tr. at 21:25-22:2 ("Most of the information sought pursuant to the *subpoenas* could be found in complaints and other public court filings.") (emphasis in original).[9]

The Motion fails to explain what part of DBMP's requests seek sensitive or personal or confidential information. It talks generally about "settlement negotiations" and "settlement agreements" (Motion at ¶¶ 21-22), but does not correlate such matters with the information requested in the Subpoenas. In reality, the Subpoenas do not ask about the substance of any settlement negotiations or agreements. Rather, the only settlement data DBMP seeks are the claim status, *i.e.*, whether the claimant settled with Aldrich or Murray, and, if so, the date of settlement and the date of payment. None of this information is confidential. *E.g.*, *McCauley v. Trans Union, L.L.C.*, 402 F.3d 340, 342 (2d Cir. 2005) (plaintiff not obliged to accept Rule 68 offer of judgment conditioned on fact of settlement being confidential because "party engaged in litigation is not entitled to insist on confidentiality"); *Arbour v. Alterra Wynwood of Meridian*,

[9] In addition, the Aldrich/Murray Committee is precluded from relitigating whether the Subpoenas seek "highly personal and confidential information." (Motion at ¶ 24.) Issue preclusion applies where: "(1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding." *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004). In determining the relevant issue for issue preclusion, it is enough if there is "substantial overlap" between the "argument to be advanced in the second proceeding and that advanced in the first," particularly if the claims in the two proceedings are "closely related." Restatement (Second) of Judgments § 27 cmt. c (1982). Here, after the Aldrich/Murray Committee raised its argument that the subpoenas served by Bestwall requested "highly personal and confidential" information, *see* Aldrich/Murray Committee Motion to Quash at 6-8, the Court found that those subpoenas did not implicate personal identifying information. *See* 5/26/22 Hr'g Tr. at 112-16. Importantly, the Subpoenas here and the subpoenas served by Bestwall are closely related because the subpoenas all seek the same type of non-confidential information. As a result, the parties have already litigated, and this Court already resolved, the issue of whether the information sought here is highly personal in nature. Further, the Court's order denying the Aldrich/Murray Committee Motion to Quash was not appealed, and the Aldrich/Murray Committee had a full and fair opportunity to litigate the issue of the nature of the information sought. The Court should not countenance the Aldrich/Murray Committee's efforts to relitigate previously decided issues.

No. 1:09-CV-246, 2010 WL 11688550, at *2 (W.D. Mich. Mar. 9, 2010) (court agrees to redaction of settlement amounts in settlement agreement filed on public court docket but "fact of settlement itself need not and should not be redacted"); *Church v. Dana Kepner Co., Inc*, No. 11-cv-02632-CMA-MEH, 2013 WL 24437 at *7 (D. Colo. Jan. 2, 2013) (denying plaintiffs' motion for a protective order against information sought by defendant on settlements of mesothelioma claims and requiring the plaintiffs "to provide information concerning **the fact of the settlements** in the California litigation, including the identities of each defendant with whom the Plaintiffs [] settled and **the date of each settlement**.") (emphasis added); *see also* D.C. Bar Ethics Op. 355 (2006) (settlement agreement that seeks to compel counsel to keep confidential "fact that the case has settled" violates D.C. Rule of Prof. Conduct 5.6(b)).

In short, the Subpoenas do not seek confidential, sensitive, or personal information, and so should not be quashed on those grounds.

II. The DBMP Subpoenas Are Limited in Scope and Proportional to the Needs of the Case.

Parties are broadly entitled to obtain discovery on "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026, 9014(c). This standard for discovery is "accorded broad and liberal construction." *Greene v. Shapiro & Ingle, LLP*, No. 3:17-CV-263-RJC-DCK, 2018 WL 1566336, at *1 (W.D.N.C. Mar. 30, 2018). As the party objecting to the Subpoenas, the Aldrich/Murray Committee has the burden of showing that they are not appropriate under this broad standard. *Ultra-Mek, Inc. v. Man Wah (USA), Inc*., 318

F.R.D. 309, 316 (M.D.N.C. 2016) ("District courts within the Fourth Circuit have long held that the burden of persuasion rests with the party opposing discovery.").

The Aldrich/Murray Committee does not come close to meeting its burden. It objects that the Subpoenas are the "epitome of cumulative discovery that not only can be obtained from alternative sources, but in large part likely has been obtained from alternative sources." (Motion at ¶ 29.) As Bestwall explained in opposing the Bestwall Committee's motion, however, that argument is incorrect for several reasons, including that: (i) some claims were resolved through a private administrative procedure not visible to DBMP; (ii) DBMP may not have been apprised when another entity resolved a claim; (iii) DBPM may have resolved cases before claimants settled with Aldrich and/or Murray, and thus would not have any records of what happened later in the case; (iv) certain claimants may have asserted claims in lawsuits DBMP never knew about, and (v) one of the primary purposes of the discovery is to test whether or not the exposure and claims resolution information DBMP received from claimants in the tort system was accurate and complete. Although claimants are aware of which entities they filed and resolved claims against, DBMP does not have the full picture of settlements claimants may have received from other parties. The information sought by the Subpoenas is hence vital to estimating the share of liability that could be attributed to DBMP for a particular claimant.

More generally, the Subpoenas target a limited population of claimants and are narrowly tailored. Thus, consistent with Judge Beyer's ruling that Bestwall could only subpoena information about claimants with pending Bestwall claims or who were in the Bestwall resolved claim sample, Bestwall 5/18/22 Hr'g Tr. at 24, the DBMP subpoenas seek information only about the subset of the just over 4,000 DBMP Agreed Claims and Pending Claims of claimants who also filed pre-petition claims against Aldrich or Murray. The data sought about each

overlapping claimant consists of a limited number of data fields from the pre-petition claims database of Aldrich and Murray.[10] Aldrich/Murray do not argue or object that it would be burdensome for them to produce this limited information, and the Aldrich/Murray Committee does not contend otherwise.

In *Bestwall*, Judge Beyer credited similar arguments about the need for this sort of information, finding that "the discovery the debtor seeks is consistent with discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case." Bestwall 5/18/22 Hr'g Tr. at 23:11-15. And this Court likewise found that "the discovery is appropriate under the circumstances." 5/26/22 Hr'g Tr. at 114:24-25.

The Aldrich/Murray Committee tries to distinguish Judge Beyer's ruling in *Bestwall* on the grounds that DBMP already has obtained information from various bankruptcy trusts, as well as through the PIQ process. They point to Judge Beyer's observation at the May 2022 hearing that Bestwall had not yet been able to acquire claims data from the asbestos trusts and that multiple Bestwall claimants had refused to submit PIQs. (Motion at ¶ 28 (citing Bestwall 5/18/22 Hr'g Tr. at 23:22-24:1)). This ignores, however, that Judge Beyer described Bestwall's difficulties in obtaining discovery from the asbestos trusts and from certain pending claimants to explain why she was allowing the Bestwall subpoenas despite a concern that the then scheduled

[10] When DBMP responded to the similar subpoena from Bestwall, in addition to three numeric or alpha-numeric fields used to identify claimants and lawsuits, DBMP's production consisted of 14 (out of 125) substantive data fields from its pre-petition database: State, Jurisdiction, Injured_Party_Lawsuit_Status_Description [e.g., "Settled", "Open", "Dismissed With Prejudice"], Injured_Party_Lawsuit_Status_Category [e.g., "Sett", "Open", "Zero"], Resolution_Date, First_Paid_Date, Jobsite, Occupation, Start_Date, End_Date, Is_Secondary [a check box], Counsel, Primary [a check box], and Type [either "Local Plaintiff Counsel" or "National Plaintiff Counsel"]. Note that the same company that maintained DBMP's pre-petition database also maintained the pre-petition databases of Bestwall, Aldrich, and Murray, and so DBMP anticipates that their productions would contain similar if not the identical data fields.

October 2023 estimation hearing was fast approaching and might be jeopardized if the parties were allowed to pursue significant new discovery. In other words, the fact that the estimation hearing had already been scheduled led Judge Beyer to question whether the discovery sought by the Bestwall subpoenas was proportional to the needs of that case. Bestwall 5/18/22 Hr'g Tr. at 22:11-15 ("I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with our estimation hearing date of October 2023.").[11] Judge Beyer ultimately decided proportionality was satisfied because of the issues Bestwall had with obtaining information from the trusts and through the PIQ process.

DBMP does not have those same issues obtaining other discovery, but also no scheduled date for DBMP's estimation hearing will potentially be jeopardized by allowing DBMP to pursue this discovery. To the contrary, this Court recently suspended the previously set deadlines in the Estimation Case Management Order. *In re DBMP LLC*, Case No. 20-30080 (Dkt. 2718.) The parties in *DBMP* are in the midst of document discovery, and deadlines for discovery after the completion of written discovery (such as for expert reports and depositions) have not even been set. Accordingly, Judge Beyer's concerns about proportionality and expediency of discovery, and her related overcoming of those concerns based on the difficulties Bestwall was then having in obtaining information from other sources, simply do not apply in this case.[12]

[11] Ultimately, the October 2023 trial date was not maintained for other reasons. Currently, no estimation hearing is scheduled in *Bestwall*.

[12] The Motion similarly references in its Introduction this Court's comment, in connection with its initial ruling that Aldrich/Murray could seek trust discovery only on a sample of claimants, that it was concerned about discovery "ballooning up and we're getting more and more demands for a great deal of data." (Motion at ¶ 5 (citing 11/30/22 Hr'g Tr. at 77:14-18)). The Aldrich/Murray Committee ignores, however, that after a rehearing this Court overcame that concern and ultimately did not limit Aldrich/Murray's trust discovery to a sample. And one of the reasons given by the Court for its ruling following rehearing was that neither DBMP nor Bestwall had been limited to a sample in their pursuit of trust discovery, and where the issues across the cases are identical, consistency makes sense. 6/15/23

As this Court recognized several times in the related context of DBMP's efforts to subpoena information from various asbestos trusts, estimation involves "a difficult chore of trying to get our arms around how much is really owed for, for these claims by this particular debtor." *In re DBMP LLC*, Case No. 20-30080, 10/31/22 Hr'g Tr. at 73:15-16. And, because that is "an inexact science," "it requires a great deal of data and we have to find it where we can." *Id.* at 73:17-18. The Aldrich/Murray Committee has not shown any valid reason for denying DBMP access to this relevant data. To the contrary, it is not "a misuse of the bankruptcy to, to allow this type of information. It's certainly unique, but like Judge Beyer, I don't see a reason there not to do it." 5/26/22 Hr'g Tr. at 116:10-13.

III. The *Barton* Doctrine Does Not Apply.

In another effort to block or delay valid discovery, the Aldrich/Murray Committee contends that the *Barton* doctrine requires DBMP to seek leave of court to issue the Subpoenas. (Motion at ¶¶ 30-32.) In 2022, acknowledging that applying *Barton* to preclude a hearing on the merits of the Bestwall subpoenas would serve no purpose, this Court rejected the Aldrich/Murray and DBMP Committees' similar argument in connection with their challenges to the Bestwall subpoenas. 5/26/22 Hr'g Tr. at 114. The Motion does not even acknowledge that prior ruling, much less try to distinguish it or identify any new law on the topic.

That ruling was correct. As in *Bestwall*, DBMP is already before this Court defending the Aldrich/Murray Subpoenas, and Aldrich/Murray has committed not to respond to the Subpoenas until this Motion is resolved. Requiring DBMP to file a separate motion for leave, as the

Hr'g Tr. at 18-19. The importance of such consistency applies equally to the issues presented by the Motion, given that Bestwall has already been permitted to pursue identical discovery.

Aldrich/Murray Committee urges, would result only in needless delay and expense, which is precisely what the *Barton* doctrine is designed to avoid.

In any event, the *Barton* doctrine does not apply to the Subpoenas. As the Fourth Circuit explained in *McDaniel v. Blust,* the purpose of the *Barton* doctrine is to prevent claims against court-appointed trustees because a trustee is an appointee of the court and claims against trustees increase the cost of being a trustee. 668 F.3d 153, 157 (4th Cir. 2012) (the doctrine "serves the principle that a bankruptcy trustee is an officer of the court that appoints him, and therefore that court has a strong interest in protecting him from unjustified personal liability for acts taken within the scope of his official duties.") (citations omitted). Courts have disagreed about whether the *Barton* doctrine applies to subpoenas at all, *e.g.*, *In re Media Grp., Inc.*, No. BAP NC-05-1432-SA1MA, 2006 WL 6810963, at *6 (B.A.P. 9th Cir. Nov. 15, 2006), but even if it does, it is not applicable to these Subpoenas.

The cases the Aldrich/Murray Committee cites in support of its attempt to argue otherwise are inapposite. Unlike the situation here, they involve subpoenas that threatened to impede the proper distribution of assets in bankruptcy or otherwise interfere with the administration of the estate. For example, *In re Eagan Avenatti*, *LLP*, 637 B.R. 502, 506 (Bankr. C.D. Cal. 2022) (Motion at ¶ 30), involved a subpoena to the trustee to testify in a criminal case proceeding against the bankrupt firm. Since the trustee would have been required "to expend estate funds to comply with a subpoena or to turn over estate property," the subpoena threatened the *in rem* jurisdiction of the bankruptcy court over the property of the estate and implicated the *Barton* doctrine's purpose of allowing the bankruptcy court "unimpeded supervision of the administration of estates." *Id.* at 508. Similarly, *In re Circuit City Stores, Inc.*, 557 B.R. 443, 449 (Bank. E.D. Va. 2016) (Motion at ¶ 31), involved a subpoena served on a liquidating trust in

connection with litigation in which the liquidating trust was no longer a party. The liquidating trustee filed a motion for protection from the subpoena in the bankruptcy court that had created the trust and the bankruptcy court determined that leave of court was required before the subpoena could be issued because the liquidating trustee was no longer a party to the case and the subpoena would have required "inappropriate expenditure of trust resources and would interfere with the Liquidating Trustee's administration of the estate." *Id.* at 451.

The *Avenatti* and *Circuit City* cases permit a trustee to seek to restrain discovery efforts that threaten to impede the administration of the case or threaten to dissipate property of the estate without just cause. These cases do not stand for the proposition that parties who do not have to incur costs or face the burdens of complying with a subpoena can object that a subpoena was issued without leave of court. This Court should pay no heed to the Aldrich/Murray Committee's red herring argument misapplying the *Barton* doctrine.

IV. The Claimants Are Not Entitled to Notice of the Subpoenas.

The Aldrich/Murray Committee contends that DBMP should be required to give claimants whose data is sought notice and an opportunity to challenge the Subpoenas. (Motion at ¶¶ 33-35.) This argument, like much of the Motion, rests on the false assertion that the Subpoenas seek "personal information," and should be rejected for this reason alone.

Putting that impediment aside, there are no legal grounds for imposing this sort of a notice obligation. To the contrary, when the Aldrich/Murray Committee demanded, and Aldrich/Murray produced to the Aldrich/Murray Committee, all of the non-privileged fields in its database (including the limited data fields sought by the Subpoenas) for hundreds of thousands of individual claimants, the Aldrich/Murray Committee never suggested that notice and opportunity to object should first be provided to the claimants.

The Motion cites only the advisory committee's note to the 1991 amendments to Fed. R. Civ. P. 45. That note, however, concerns what was then paragraph (b)(1) and is now paragraph (a)(4) of the rule, which in turn concerns notice to **other parties to the action in which the subpoena was served**. *See* Fed. R. Civ. P. 45(a)(4) ("Notice to Other Parties Before Service. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served **on each party**") (emphasis added). The reason for such notice is to give such other parties an opportunity to object or to seek additional information by serving their own subpoenas. Fed. R. Civ. P. 45 advisory committee's note to 2013 amendment ("Rule 45(a)(4) is added to highlight and slightly modify a notice requirement first included in the rule in 199. . . . The amendments are intended to achieve the original purpose of enabling **the other parties** to object or serve a subpoena for additional materials.") (emphasis added).

DBMP provided the required notice. *See Notice of Service of Subpoenas to Produce Documents*, *In re DBMP*, Case No. 20-30080 (Bankr. W.D.N.C. Feb. 28, 2024) (Dkt. 2704). And, as this Court is aware, one of the parties to *DBMP* that received such notice—namely the DBMP Committee—has in fact objected. Nothing in Rule 45 or elsewhere required DBMP to give any additional notice. It was for this reason presumably that Judge Beyer found that Bestwall was not obligated to serve the claimants whose information was sought in its subpoenas. Bestwall 5/18/22 Hr'g Tr. at 22:8-9 (notice "was not required to be served on the claimants"). There is no reason for this Court to do otherwise.

V. There Is No Need to Impose the Confidentiality and Use Restrictions Adopted in Connection with Trust Discovery.

The Motion argues alternatively that if the Court allows the Subpoenas, it should impose the same confidentiality and use restrictions imposed in this Court's *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (Dkt. 1240). (Motion at ¶ 36). Once again, this contention is premised on the false assertion that the information requested by the Subpoenas is private or confidential. As shown above, and as previously found, there is nothing confidential or private sought by the Subpoenas.

Nonetheless, consistent with Judge Beyer's and this Court's prior rulings, the DBMP Subpoenas expressly provide in Exhibit A that DBMP will deem the information produced in response confidential pursuant to the DBMP Protective Order. (Motion, Ex. A.) Indeed, the DBMP Protective Order, which was negotiated with and agreed to by the DBMP Committee, is what protects the much more extensive claimant database that was produced by DBMP to the DBMP Committee, the DBMP FCR, and their respective professionals at the outset of that case. A substantially similar protective order protects the Aldrich/Murray claimant database that was produced to the claimant representatives and professionals in this case and that will be the source of any information produced to DBMP in response to the Subpoenas. *See* Aldrich/Murray Protective Order at ¶¶ A(3), J.

In the years since the DBMP and Aldrich/Murray claimant databases were produced to the claimant representatives and their professionals, there has been no indication of any data breach or other improper use of the claimant data. Nor, more generally, is there any evidence that DBMP or Aldrich/Murray experienced any such issues during the decades pre-petition in which they maintained and relied upon their claimant databases in the litigation. There is, accordingly,

no reason to require DBMP to comply with significantly more onerous restrictions with respect to a much more limited data set.

CONCLUSION

The issues presented by the Motion have been litigated three times and have been ruled on by both this Court and Judge Beyer. The Aldrich/Murray Committee's Motion does not present any compelling reasons to litigate these same issues a fourth time, nor any basis for the Court to reach a different result. For these reasons, and those stated above, the Motion should be denied.

Dated: April 3, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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ATTORNEYS FOR DBMP LLC

Exhibit 1

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 17-31795-LTB
BESTWALL LLC,	:	Chapter 11
Debtor.	:	Charlotte, North Carolina Wednesday, May 18, 2022
	:	9:33 a.m.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

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

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

ALSO PRESENT (via telephone):

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: All right. Good morning.

We are here in the Bestwall case, Case No. 17-31795. We've got a few matters on the calendar and admittedly, I'm having to remember how to do this by Teams. But I think, probably, rather than having everybody who is on the camera announce their appearance, what I'm going to ask you to do is to turn on your camera if you anticipate having a speaking role at today's hearing. Otherwise, if everybody would turn your camera off -- and I don't see too -- so that we can announce appearances.

So go ahead and turn your camera on if you anticipate having a speaking role and then I'm going to, I'll call your name and ask you to announce your appearance. I think that might be the best way to go about doing this. All right.

Mr. Waldrep, you were the first one in my screen. So I'll ask you to announce your appearance, please.

MR. WALDREP: Good morning, your Honor. Tom Waldrep on behalf of several claimants.

THE COURT: All right.

Mr. Wolf? It says Richard Wolf, but you are not Richard Wolf. Mr. Worf. Sorry. I just --

MR. WORF: That makes me sound a --

THE COURT: I looked --

MR. WORF: -- a lot more fierce than I am.

Richard Worf, your Honor, Robinson Bradshaw, for the debtor. I'm in the room with Hana Crandall and I believe Mr. Cassada, Preetha Rini, and Kevin Crandall are also on the phone.

THE COURT: Okay, very good.

MR. WORF: Thank you.

THE COURT: My apologies, Mr. Worf. I just read the name. I didn't even look at your face.

Ms. Zieg.

MS. ZIEG: Good morning, your Honor. Sharon Zieg of Young Conaway Stargatt & Taylor on behalf of the Future Claimants' Representative. It's interesting, your Honor. My team asked me how this was going to work this morning and I said, "It's been so long I can't even remember. You introduce yourself or I introduce you."

With that said, the members of Young Conaway that are on the phone today or participating via Teams are Ms. Edwards, Ms. Bradley, and Mr. Harron. North Carolina counsel, Felton Parrish, is on the line and Mr. Esserman is also on the line.

THE COURT: Okay, very good. Thank you.

MS. ZIEG: Thank you.

THE COURT: I think they're laughing at our expense, Mr. Worf.

Ms. Ramsey.

MS. RAMSEY: Good morning, your Honor. Natalie Ramsey on behalf of the Asbestos Claimants' Committee and also on the line is Mr. Wright from my office.

THE COURT: Okay, very good. Thank you.

And Mr. Gordon.

MS. RAMSEY: Thank you.

MR. GORDON: Good morning, your Honor. Greg Gordon, Jones Day, on behalf of the debtor. Also with me are Jeff Ellman and Jim Jones.

THE COURT: Okay, very good.

So in looking, folks, we've got a couple matters on the calendar and I'll start by noting that the hearing on the motion to reconsider the order and debtor's response -- that's the way it's listed on the calendar -- that that has been continued to June 23, 2022.

And so that leaves us with the continued hearing on the motion to strike for which the Court will give its ruling, but in looking at the Notice of Agenda, of course, we also have the status conference regarding the debtor's supplemental motion to enforce the PIQ order and as we tend to do, we, we typically start with that.

And so, Mr. Worf and Mr. Waldrep, is that what you all were anticipating?

MR. WALDREP: Yes, ma'am, I was.

MR. WORF: That is just fine with us, your Honor.

THE COURT: All right. So, Mr. Worf -- and we do have -- and if I call you Mr. Wolf, that is the name on the screen. So bear with me if I do that -- we will start with the status conference regarding the debtor's supplemental motion to enforce PIQ order with respect to non-compliant claimants.

MR. WORF: Thank you, your Honor. Richard Worf for the debtor, Robinson Bradshaw.

So your Honor entered the sanctions order on April 25th which set forth sanctions that were imposed on certain claimants who had failed to comply with one or more of Parts 8, 8A, 10 or Tables A, B, and C in the PIQ and had been found in contempt. The order provided that claimants would incur a daily fine beginning on the 14th day after entry of the order if they had not purged their contempt and that day was May 9th.

Since the sanctions order was entered, there has been additional compliance with your Honor's orders and I'll put up on the screen a, some slides that summarize the current state of compliance.

So as your Honor will recall, as of the April 6th hearing 493 claimants remained noncompliant with one or more of those parts and then there was no additional compliance between the April 6th hearing and the entry of the sanctions order on April 25th, but since the entry of the order on April 25th there has been additional compliance and, in the debtor's view, 111 of the 493 claimants, or about a quarter, have now fully

complied with those PIQ parts and, in the debtor's view, have purged their contempt. Eighty-four of those 111 claimants, in the debtor's view, fully complied before any fine was incurred beginning on May 9th, while 27 of those claimants fully complied after some amount of fine was incurred. And I'll get into the, the details of that in, in a moment. 382 claimants remain noncompliant with one or more of those PIQ parts, but even among those claimants 357 of those claimants have provided partial additional compliance since the Court entered the sanctions order on April 25th. And I'll get into more detail on that as well.

We have provided to the Court and the parties an exhibit that is modeled on the Exhibit A that your Honor has seen on previous occasions and this exhibit lists the 493 claimants who are subject to the sanctions order and lists their law firms and their names. We shared a version of this with counsel for the claimants last Friday and then shared a version of it yesterday when we shared it with the Court with claimants as well as the ACC and the FCR. The exhibit like previous versions of this exhibit indicates the parts that claimants still have not complied with in the columns listed Part 8, 8A, Table A, B, and C, and Part 10. Additional columns that we've now added are the Date Complied column and the Sanctions Owed column. The Date Complied column lists if a claimant is still noncompliant with one or more of those parts

or, alternatively, lists the date the claimant fully complied with those parts. And finally, the Sanctions Owed column calculates the, the sanctions that each claimant owes based on when the claimant complied with the Court's order.

One note about how we calculated the sanctions that are in the Sanctions Owed column. The order said that sanctions would start accruing on May 9th. The debtor adopted a claimant-friendly interpretation of that under which the sanction on a particular day is not accrued until the end of the day so that claimants whose materials were received and, and who became fully compliant on May 9th did not incur any fine, in the debtor's view, and claimants who complied on May 10th incurred a fine of a hundred dollars and so on and so forth.

We provided a slightly updated exhibit, version of this exhibit to the Court this morning. We heard yesterday afternoon that 49 of The Gori Law Firm claimants who are now fully compliant believed their responses had been received by the claims agent on May 9th rather than May 10th. Donlin had told us they were received on May 10th, but we went and checked on that and it turns out that Donlin's mailroom had received those responses on May 9th. They didn't make their way to the relevant personnel at Donlin until May 10th, but, long story short, we did agree with The Gori Law Firm on that and changed the date of compliance for them to May 9th which meant that

those 49 claimants did not incur any fine. And that change has, has been made in the exhibit.

The other change from the version we shared with the Court yesterday is that we learned later yesterday that five of the SWMW law firm claimants are no longer asserting pending claims. And so we've also provided that those claimants are compliant as of yesterday.

So where does this leave us? This is a version of a slide that the Court has seen before which summarizes where compliance stands by part and one of the interesting things is that because of the partial compliance that we've had over the last almost a month there are now relatively few claimants who are not compliant with Part 8 on aggregate settlement amounts and aggregate recoveries from trusts as well as Part 8A on lawsuit information. Notably, the Shrader law firm, which represents 330 of the 382 remaining non-compliant claimants, has now responded to Part 8 for almost all of the claimants they represent and that, that's a striking result because Part 8 has been the most hotly contested PIQ part since the original litigation over the PIQ.

So there are now, of the claimants who submitted PIQs indicating that they assert pending claims, there are now only 56 claimants out of the 1,955 who, who have not answered Part 8, which is 3 percent. The 1,955 has gone down some because additional claimants informed us that they do not have pending

mesothelioma claims.

But the problem is now with sections that historically have been much less controversial, including Tables A, B, and C on tort claims, trust claims, and claims against other entities as well as Part 10 requiring submission of trust claim forms. We do believe we're moving in the right direction and the Court's order is accomplishing what it is intended to do.

On this slide, I've broken it out by law firm and the Court can see the approaches to this still do vary by law firm. Some law firms' claimants have now fully complied or, or almost fully complied, including the Dean Omar firm, the Robins Cloud firm, and, with, with just a few exceptions, The Gori Law Firm. Other law firms have, have claimants who, who have partially complied in, in a uniform way, including the Shrader firm and the Provost Umphrey firm, and we understand that the Provost firm is in the process of fully complying and we, and we hope they will finish that as soon as they possibly can. Other firms' claimants have not provided any additional compliance and your Honor can see those on this list.

But the debtor thinks it, it make sense to continue to play this process out and we hope that by the time of the next omnibus hearing that all or most of these claimants will have fully complied. Only nine claimants appealed the Court's sanctions order to the district court and all but the same nine claimants have now dismissed their appeal of the contempt order

that led to the sanctions order.

So we hope that is a sign that there will be additional compliance and the debtor will, as we have been doing, will continue to diligently monitor additional submissions and determine whether claimants have fully complied with the Court's orders.

In the meantime, the debtor believes that it also makes sense before the next omnibus hearing for the parties to brief the question the Court left open in the sanctions order which is when, to whom, and at what intervals the daily fine will be paid. At the time your Honor entered the order the debtor urged the Court and the Court agreed that those matters should be deferred as the debtor observed at that time claimants had not incurred any sanctions and we hoped that no claimants would. But claimants now have incurred sanctions and the questions the Court deferred do need to be decided and we think it makes sense for the parties to submit simultaneous briefs on that before the next hearing. Also, perhaps the prospect that fines are going to have to start being paid on some regular basis would inspire further compliance and get us to the point where we have all or the vast majority of these claimants fully complying with the Court's orders.

So the debtor would request that the Court entertain that briefing and we think it makes sense to submit simultaneous briefs by June 16th, if your Honor is amenable to

that.

As part of those briefs, the parties could also brief another dispute that has arisen which is how to treat claimants who first told us that they do not have pending mesothelioma claims only after the fine under the Court's sanctions order started accruing? I believe so far this affects seven claimants, including the five claimants that we first heard this for yesterday. The debtor does believe those claimants incurred a fine. All of those claimants had previously told us they did have pending claims and they had checked the, the box so indicating in Part 1 of the PIQ. They could have told us at any time in the many months of litigation before sanctions were ordered that they did not have pending claims and why, but chose not to do so and apparently would not have done so without a fine and the debtor does not think that claimants should have the opportunity to essentially wait and see what the fines are and then unilaterally escape a fine by asserting they are no longer asserting a pending claim and we urge any claimants who are not asserting pending claims to let us know at the earliest opportunity so we can mark them as compliant with the PIQ order.

So unless your Honor has questions, that is the debtor's status update.

THE COURT: I don't. Thank you, Mr. Worf.

MR. WORF: Thank you, your Honor.

THE COURT: Thank you.

We'll hear from Mr. Waldrep.

MR. WALDREP: Thank you, your Honor.

So I'll start with the, the numbers. I don't think that the claimants are in any substantial disagreement about the numbers. There is some disagreement. We have, as before, your Honor, been going back and forth with looking at versions of Exhibit A and, and, and us questioning certain ones. They making changes.

So that process has gone on many times. I won't say it goes on daily, but almost daily quite a bit. There are even some that we challenged as to whether they really are in compliance or not and Bestwall's still looking at that.

So that's an ongoing process, but our numbers are not that different from the numbers. We would have said there are 362 non-compliant claimants which would mean that overall compliance is at 81.5 percent. Now Bestwall's number is a little higher than that, 382, which would be 80.5 percent, but that's not, you know, a 1 percent difference, that's not enough to, to really matter.

Now on the idea of the briefing, your Honor remembers at April, at the April 21st status hearing -- and there the terms of the status order were discussed -- I urged the Court on behalf of the claimants to provide in the sanctions order for further terms, such as to whom the fines were to be paid,

when they were to be paid, and we advocated for a position, a provision, rather, that any fine be set off against any claim against the future trust, that that was -- and so we, we took those positions on that day and Bestwall argued there was no need for any of that.

April 25th, the sanctions order was entered and then on May 3rd we appealed the sanctions order. We stated the issues on appeal and one of them was that the sanctions order was fatally flawed because it failed to provide the terms that we urged the Court to include. Now today, May 18th, Bestwall now realizes their error and advocates what we urged the Court to do and exactly the opposite of what they urged the Court to do on April 21st. Since then the -- since the appeal -- the appeal of the contempt order and the appeal of the sanctions order have been consolidated by the district court, as they should be, with no opposition by Bestwall and we -- and -- and we all understand it's all part of the same process.

So with regard to the position of Bestwall that we should now brief these issues, I want to raise what I think is a threshold issue and that is does the appeal divest the Court of jurisdiction to amend or add to the sanctions order? I think, I think that is a threshold issue that if the Court is inclined now to consider these additional terms, I think that threshold issue also needs to be briefed. Again, it was what we advocated on April 21st.

And the additional issue of, you know, claimants who said they were nonpending only after the fine, yeah, we can brief that as well if the Court wants to, to hear that.

So that's our response, your Honor.

THE COURT: All right. Thank you.

And let me ask you to respond to that last issue that was raised by Mr. Waldrep, Mr. Worf, with respect to did the, does the appeal divest the Court of jurisdiction to basically alter or amend the sanctions order at this point?

MR. WORF: Yes, your Honor.

As to the jurisdictional question, we do not believe it divests the Court of jurisdiction, although we're happy to brief that as part of the, the brief we contemplated. The debtor is, is going to be filing a motion to dismiss the appeals. Your Honor may recall we filed a motion to dismiss the previous contempt appeals with respect to the Illinois lawsuit matter and for many of the same reasons we believe that the sanctions and contempt order, the latest contempt and sanctions orders, are not final, including for the additional reason that the Court did not decide the issue of to whom the fine is paid and when and, and under what terms.

So we think that's another reason why there's not a final order and, and it's not appealable.

But putting that to the side, these issues because they were not addressed by the Court's prior orders, they are

not encompassed by the matters that the nine claimants have appealed. And, and I would emphasize that only nine claimants have appealed. So there are a great many, hundreds of claimants who, who have not appealed and, therefore, do not have a pending appeal before the district court which also affects the jurisdictional analysis.

But these are matters that, that were not encompassed by the Court's previous order and, you know, if this jurisdictional point were taken to, to, to its logical conclusion, it would prevent the Court from deciding when the fines stop, which the Court has the authority to do and, and would have the authority to do, and I'm sure the claimants would, would, would not want the Court to lack that authority while their appeal is pending because appeals can take quite a long time to be resolved.

So we don't think there is a jurisdictional issue. We're, we're happy to brief this as part of the briefs we contemplate.

And I also don't believe that Bestwall is admitting any error because our, our position is entirely consistent. We thought it made sense for the Court to defer this issue when no fines had been incurred and it was still two weeks before any fines would be incurred. We hoped that no fines would have to be incurred and, and these issues would not have to be decided. Unfortunately, they have been and so the issue now is ripe and

it does have to be decided. We think it is ripe and it should be decided and should be decided, hopefully, at the next omnibus hearing so the, the claimants and all the parties have clarity on, on this issue as, as they move forward.

Thank you, your Honor.

THE COURT: Uh-huh. Thank you.

Anything further, Mr. Waldrep?

MR. WALDREP: Your Honor, I don't think today is the, is the time or, or the, the procedure for, for deciding that particular issue. I just raised it as a threshold issue.

THE COURT: Okay.

MR. WALDREP: I'm not advocating one way or another at this time. I just think that it needs to be addressed.

And yes, there are -- there -- there will be arguments made as to the logical extension of various positions if, for instance, a court leaves out provisions and, therefore, makes the order not final, then it cannot be appealed. And so there are implications here.

So we need to, we need to think about that --

THE COURT: Okay.

MR. WALDREP: -- Judge. That's all I'm saying.

THE COURT: All right.

Let me take just a brief recess and then I'll come back, okay?

Oh, Ms. Ramsey.

MR. WALDREP: Yes, ma'am.

THE COURT: I'll hear from you before I take that brief recess. I'm sorry.

MS. RAMSEY: Thank you. I would appreciate it. Thank you, your Honor.

I really only have two brief points to make. The first is that based on even the statistic of the largest number of claimants that remain noncompliant to a degree -- I think Mr. Waldrep's calculation and mine is the same, which is 80.5 percent compliance, fully compliant -- again, we advocate that we've now reached the place of substantial compliance for purposes of estimation and that additional proceedings regarding sanctions and further compliance, we do not believe materially affect the estimation proceeding.

And the second is that to the extent that some of the alleged non-compliant folks are people who are now saying they don't have claims, understanding that, that it would have been preferable to know that earlier, those individuals don't have claims. And so it, it really is not affecting the estimation process at all. We don't represent them. They're not going to be considered as part of this case.

And so, again, we would propose that those individuals be eliminated from sort of this consideration, altogether, and that, that sanctions are not benefiting, are not achieving the, the dual goals that the Court had in mind. They're certainly,

it's certainly not motivating (garbled).

Thank you your Honor. That's all I had.

THE COURT: Thank you.

And let me ask before I take that brief recess. Does anybody else have anything to add?

(No response)

THE COURT: All right.

I'll be right back. Thank you.

(Recess from 10:00 a.m., to 10:05 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Having considered the update that Mr. Worf and Mr. Waldrep offered and considering the comments of Ms. Ramsey, we will continue this, obviously, for a further status on the -- at the hearing -- at the omnibus hearing on June 23rd.

And I agree with the suggestion of Mr. Worf that we brief the issue of when, to whom, the daily fine should be paid as well as how to treat those claimants who did not identify themselves as not having a pending claim until after the sanctions order was entered.

And I do think that it makes sense -- and both of you agree -- that we should also address the issue of whether or not the pending appeal divests the Court of jurisdiction to amend the order. And I would also like for you all to go ahead

and address the issue of substantial compliance and, you know, apprise the Court of, of where, where you all think we stand with respect to substantial compliance.

As Mr. Worf suggested, I think that it would make sense for you all to submit simultaneous briefs by the end of the business day on June 16th, which I believe is the week before that June 23rd hearing.

So unless there are further questions, we will just further continue the compliance hearing until June 23rd.

MR. WORF: Thank you, your Honor.

THE COURT: All right. And so I think with that -- and I'm trying to get my hands on the Notice of Agenda -- I believe where that leaves us is with the Court's ruling on the motion to strike and I suspect if I'm wrong about that, somebody will turn their camera on and tell me otherwise. It's easier to have you all in the courtroom than it is to do this by Teams.

So I look forward to having you back here in June.

So with respect to the objection to and motion to strike *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises or, in the alternative, to determine that the debtor has waived privilege to the case files of any matched claimant, having considered the pleadings and the arguments of counsel at the April 21st hearing I conclude that I should grant the motion in part and

deny the motion in part.

As you all know all too well, the motion to strike relates to the *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises seeking data on claims and exposure for approximately 30,000 resolved and pending mesothelioma claims against Bestwall. The fields of data that were sought in the *subpoena* included the law firm which represented the party against the debtor defendant, jurisdiction, status of the claim against the debtor from whom discovery is being sought, the date of resolution of the claim, the date of payment, when exposure began and ended, the manner of exposure, occupation and industry of the claimant when exposed, and the products to which the claimant was exposed.

Based on a review of the motion to strike itself, while I had some pause about Bestwall seeking aggregate discovery from another debtor, I was not inclined to grant the motion primarily for the reasons articulated by the debtor in its response. In short, the ACC did not identify valid reasons under either the discovery rules or pursuant to case law regarding why the discovery sought by the debtor should not proceed.

And to address just a few of those points, the *subpoenas* don't seek highly personal, sensitive, confidential, or privileged data. Most of the information sought pursuant to

the *subpoenas* could be found in complaints and other public court filings. Section 107 of the Code is not applicable because it relates to the kind of information that can be placed on the Court's public docket rather than the discoverability of information. The *subpoenas* don't raise a concern about identity theft because Bestwall already has the personal identifying information about the claimants and they don't seek any medical information. And finally, notice was sufficient and was not required to be served on the claimants.

However, the ACC largely switched gears in its argument at the hearing on the motion and I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with our estimation hearing date of October 2023. That was until I learned about the discovery the ACC served on four of the defense law firms a few weeks ago, but more importantly, the discovery the ACC served on the debtor the Friday before the hearing on the motion to strike which consisted of 31 discovery requests relating to 24,000 resolved mesothelioma claims, which is in addition to the discovery already served pertaining to the 2700 claim sample.

I can't in good conscience grant the motion to strike, given the magnitude of this recently served discovery, particularly having concluded that there isn't anything

otherwise problematic about the discovery sought by the debtor. I don't share the ACC's concerns about this discovery unleashing the floodgates for aggregate discovery on debtors in bankruptcy cases and that issue can be addressed on a case-by-by case basis.

I'm also hard-pressed to feel sympathetic towards the ACC in the face of the discovery that they just served on the debtor. Their major complaint was that it would precipitate discovery by them on those same debtors, but they didn't clearly articulate exactly what that discovery will need to be.

And in addition, the discovery the debtor seeks is consistent with the discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case. Three of the four debtors upon whom the discovery was served did not object to the discovery. DBMP did indicate at the hearing that it was willing to condition production on Bestwall's agreement to protect the responsive data pursuant to a protective order and I will direct that the data be produced subject to such a protective order.

And it appears that the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the

non-compliant claimants.

And we don't hold a crystal ball regarding what the Third Circuit may do on appeal, but my hope is that by getting this information it may accelerate the debtor's discovery, particularly in the event that the debtor does not succeed on appeal in the Third Circuit.

Nevertheless, Ms. Ramsey was right when she said it was time to start contracting the university of, the universe of discovery rather than expanding it and in that regard the debtor conceded at the hearing on the motion to strike that it was really focused on the 2700 claim sample, plus the 6,000 pending mesothelioma claims, and offered that that was the information the debtor really needs.

So in an effort to begin reining in discovery, that's what I will allow and I'll grant the motion to strike as to the balance of the approximately 21,300 claimants.

With respect to at-issue waiver, I'll deny that part of the motion. I can't conclude there's been at-issue waiver pursuant to the Rhône-Poulenc standard where the debtor is seeking discovery from third, from a third party that is not, that is non=privileged information. By seeking this discovery, the debtor has not asserted a claim or a defense and attempted to prove that claim or defense by disclosing an attorney-client communication.

So that is the Court's ruling with respect to the

motion to strike.

And, Mr. Worf, I would ask you to draw the order granting in part and denying in part the ACC's motion to strike.

MR. WORF: Thank you, your Honor. I'll do that.

THE COURT: All right. Thank you.

And in reviewing the transcript from the hearing on April 21st, there was a lot of talk about the, the mini 502(d) order and the large 502(d) order.

So, Mr. Gordon, I didn't know if you all were planning to provide the Court a status of those proposed 502(d) orders.

MR. GORDON: Your Honor, Greg Gordon on behalf of the, the debtor.

We continue to have conversations with the other side about those two orders. We've provided drafts, revised drafts of those orders to the other side. The other side has agreed to continue discussions with us on those issues and other issues related to the estimation and I'm hoping in the next week or two we're going to know exactly where we stand on those orders and some other issues and then we can provide a more definitive report to your Honor about where we are.

THE COURT: Okay. Thank you.

Anything to add to that, Ms. Ramsey, or anybody else?

MS. RAMSEY: No, your Honor. I think that's a, a fair summary of where we are.

THE COURT: Okay.

Ms. Zieg?

MS. RAMSEY: Thank you.

THE COURT: I saw you pop into my screen for about a minute there.

MS. ZIEG: I, I agree. I was going to say the same thing as Ms. Ramsey. That's a fair summary of where we are.

THE COURT: All right.

I think with that, then, folks, we've got some things to tackle on June 23rd or -- I didn't bring my calendar, but -- yeah, June 23rd.

Is there anything else that the Court needs to address today before we recess?

(No response)

THE COURT: All right. Well --

Mr. Gordon?

MR. GORDON: I was just going to say, your Honor -- I'm sorry -- not from the debtor's perspective, your Honor.

And we very much appreciate you allowing us to appear via Teams. We recognize that's not the best for you, but it worked out well for us and we appreciate it.

THE COURT: Sure. And I -- and the Court will be willing to entertain that, particularly if we're going to have, you know, a short hearing like this where I may be offering a ruling and, you know, we're otherwise just conducting a status

hearing. I'm not keen on arguments being offered by Teams, but I, I think for these kinds of issues it's appropriate for us to try to do it by Teams 'cause it saves you time and expense.

So we will consider that request going forward as well, all right?

MR. GORDON: Thank you, your Honor.

THE COURT: Thank you.

And with that, we will recess and let y'all enjoy the rest of your day.

Thank you.

MR. GORDON: Thank you.

MS. RAMSEY: Thank you, your Honor.

(Proceedings concluded at 10:17 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* May 18, 2022

Janice Russell, Transcriber Date

Exhibit 2

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re BESTWALL LLC,[1] Debtor.	Chapter 11 Case No. 17-31795 (LTB)

DECLARATION OF CHARLES E. BATES, PHD

Charles E. Bates, PhD, deposes and states as follows:

1. I am the Chairman of Bates White, LLC ("Bates White"), which maintains offices at 2001 K Street NW, North Building, Suite 500, Washington, DC 20006.

2. I am duly authorized to make this Declaration as a consultant for Bestwall LLC ("Bestwall" or the "Debtor") in this case. I make this Declaration at the request of the Debtor's counsel regarding the need and usefulness of the information requested in *Debtor's Motion for Order Pursuant to Bankruptcy Rule 2004 Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants* (the "PIQ Motion") and in *Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* (the "Trust Discovery Motion"). In particular, I explain the need for the requested information to prepare a reliable estimate of Bestwall's legal liability for mesothelioma claims; assess whether Bestwall's pre-petition settlements and resolutions of mesothelioma claims in the tort system represented its liability for such claims and can be extrapolated to estimate the Debtor's liability for current and future claims; provide support to the Debtor in designing Trust Distribution Procedures ("TDPs") that

[1] The last four digits of the Debtor's taxpayer identification number are 5815. The Debtor's address is 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

will provide payments to claimants that cover Bestwall's share of any liability for current and future mesothelioma claims; and evaluate payments to claimants based on the distribution procedures that accompany the plan of reorganization proposed by the Asbestos Claimants' Committee ("ACC") and the Future Claimants' Representative ("FCR").

3. In my declaration filed on June 19, 2020 regarding Bestwall's estimation motion (Doc. No. 1207-1) (the Estimation Declaration), I discussed the information needed to prepare a reliable estimate of Bestwall's legal liability. Rather than repeating that testimony here, I have attached a copy of the Estimation Declaration (Exhibit A), and incorporate my statements in that declaration into this one.

4. In this Declaration, I first provide some basic background on a legal liability estimate for purposes of providing context with respect to the need for the information. Second, I describe certain additional information regarding the need for the information sought in the PIQ Motion. Finally, I describe certain additional information regarding the need for the information sought in the Trust Discovery Motion.

I. Qualifications

5. A detailed description of Bates White's and my experience and expertise is contained in my Estimation Declaration and November 2, 2017 Declaration, attached as Exhibit A to the Debtor's *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[2] In addition, a complete and updated copy of my *curriculum vitae* is attached to my Estimation Declaration as Exhibit 1.

[2] *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*, Nov. 2, 2017, Doc. 29, pp. 11–26.

6. This Court issued an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[3]

II. Overview

7. In my Estimation Declaration, I included a chart (p. 3) depicting the components of a legal liability estimate, including the factors that bear on the estimate. I then described specific categories of information needed to prepare a reliable estimate (pp. 3-9). I will not repeat that testimony here, but will begin by describing some general principles that support using a legal liability estimate rather than an estimate based on a defendant's settlement history to determine a company's liability for asbestos claims.

8. There are multiple reasons why the amount paid to settle a disputed claim may not reflect or equate to a defendant's actual liability for such claim. A company like Bestwall may spend large amounts of money on settlements when it faces little actual liability. Fundamentally, such settlements are rooted in the economic differences between defending and prosecuting asbestos exposure-related lawsuits. It is a well-established principle in the Law and Economics literature that the amount that a defendant pays and a plaintiff accepts to settle a lawsuit is not a direct measure of the defendant's liability.[4]

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[3] *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*, Nov. 2, 2017, Doc. 40.

[4] *See*, for instance:
Richard A. Posner, "An Economic Approach to Legal Procedure and Judicial Administration," *Journal of Legal Studies* 2, no. 2 (1973): 399–458;
Lucian A. Bebchuk, "Litigation and Settlement Under Imperfect Information," *RAND Journal of Economics* 15, no. 3 (1984): 404–15;
George L. Priest and Benjamin Klein, "The Selection of Disputes for Litigation," *Journal of Legal Studies* 13, no. 1 (1984): 1–55;
David Rosenberg and Steven Shavell, "A Model in which Suits Are Brought for Their Nuisance Value," *International Review of Law and Economics* 5 (1985): 3–13;
Lucian A. Bebchuk, "Suing Solely to Extract a Settlement Offer," *Journal of Legal Studies* 17 no. 2 (1988): 437–50;
Lucian A. Bebchuk, "A New Theory Concerning the Credibility and Success of Threats to Sue," *Journal of Legal Studies* 25, no. 1 (1996): 1–25.

9. Depending on the nature of the litigation, settlements can be lower or higher than liability. Some situations will lead the parties to settle for an amount less than liability (a windfall to the defendant and a loss for the plaintiff), while others will lead the parties to settle for an amount more than the actual liability (a windfall to the plaintiff and a loss for the defendant).

10. Factors that affect the amount that a defendant pays in settlement, other than its potential liability, include the direct costs of litigation, the potential impact on the defendant's reputation, the effect of litigation on the defendant's finances (stock price, ability to borrow, etc.), the time and resources that certain employees would have to spend on the process, and the distraction of management from the main business of the company. The amount that plaintiffs accept for releasing a defendant from the litigation is also affected by factors other than liability alone. Plaintiffs' litigation costs in personal injury claims also matter, though they are structured differently than defendants' costs.

11. In asbestos litigation, there is a large asymmetry in avoidable costs between the defendants and the plaintiffs. Mesothelioma plaintiffs typically name over 50 defendants in their complaints.[5] Plaintiff depositions typically include many defense attorneys, but only one lawyer representing the plaintiff. Because each defendant pays its own costs and defense lawyers typically bill by the hour, a defendant can avoid all of its future costs by settling with the plaintiff and leaving the case. In contrast, a plaintiff can only avoid future costs if he settles with the last defendant standing because whether the case goes to trial against one or multiple defendants has little effect on the cost the plaintiff will incur from continuing to pursue a claim. This characteristic of asbestos cases means that defendants have more to save in costs than plaintiffs

[5] Garlock Report, ¶ 123.

by settlement, which means plaintiffs can routinely extract a portion of the defendant's avoidable cost savings in settlement.

12. Further, there is an additional source of asymmetry between the total expense a defendant expects to incur and the net recovery a claimant expects to receive from that defendant. This is because the amounts that claimants recover are net of the contingency rate that plaintiff law firms charge over the amounts received from defendants. Plaintiff law firms charge a 30% to 40% contingency rate over recoveries. Therefore, for example, if the defendant and the claimant agree on a $100 settlement and the plaintiff law firm charges a 40% contingency rate, the defendant pays $100 for the settlement but the claimant only receives $60. This means that any additional dollar that increases a settlement amount represents a higher cost to the defendant than the benefit for the claimant. Thus, for a net payment to the claimant to reach a certain amount, the defendant has to spend proportionally more. In other words, the claimant is less sensitive to changes in settlement amounts than the defendant due to the asymmetry in the structure of defendant payouts and claimant recoveries.

13. Another reason that settlement payments may not reflect actual liability is the effect of withholding plaintiff exposure information, which Bestwall believes it experienced in cases filed against it starting with the bankruptcy wave of the early 2000s. By withholding relevant alternative exposure information from a defendant in a particular case, a plaintiff can effectively increase the amount of the settlement the plaintiff can receive from the defendant. First, with fewer available co-defendants disclosed, the defendant's liability share appears higher than it would if the plaintiff disclosed all sources of exposure, even in jurisdictions in which several liability apportionment rules. Second, with the most likely contributors to a plaintiff's disease out of the case, the likelihood that a remaining defendant in the case will be found liable

appears higher than it would if all exposure sources were disclosed. Third, if a plaintiff does not willingly disclose all sources of the plaintiff's asbestos exposure, the defendant must spend more money trying to find such exposure information through indirect sources. Bestwall's resolution history is consistent with this effect, with the increase in the number of cases resolved for large payments to plaintiffs and the large increase in defense expenses observed after the bankruptcy wave of the early 2000s.

III. The information sought in the PIQ Motion

14. As explained above, Bestwall's expected liability is distinct from the settlements it paid historically or would have paid in the absence of bankruptcy. Reliable estimation of expected liability requires analysis of the various factors relevant to compensatory award share and likelihood of plaintiff success, as well as the number of claims that could go to trial. For the reliable estimation of Bestwall's liability with respect to current claims and for the valuation of current claims under other contexts such as an extrapolation of settlements or under TDPs, it is necessary to know the identity and characteristics of such pending claims.

15. Based on my experience of working with a large number of asbestos defendants since the 1990s, asbestos defendants generally do not possess complete and up-to-date information for most pending claims for several reasons. Discovery may not have been initiated or completed; information provided by plaintiffs in discovery may not be complete or correct; or defendants in some cases may not collect certain information about claims and claimants until such claims resolve. Moreover, as I explain in more detail below, Bestwall has no information at all for a number of claims that may exist but were not filed against Bestwall before it filed for bankruptcy protection.

16. In my Estimation Declaration, I described the importance of the PIQ information in determining the number of mesothelioma claims actually pending against Bestwall. The importance of this information is illustrated by *Garlock*. As of its petition date, Garlock's claims database showed 5,813 "pending" mesothelioma claim records. The PIQ process in that case revealed that about 2,000 of those 5,813 claim records in fact did not represent pending mesothelioma claims against Garlock.[6] The PIQs established that many claimants had already resolved their claims through dismissal or settlement; many did not have mesothelioma; many did not have Garlock exposure; and many had withdrawn or were no longer pursuing claims against Garlock. Further, of the approximately 3,800 PIQ claimants who still asserted a pending claim against Garlock, only about 54% described any direct, bystander, or secondary exposure to Garlock's asbestos-containing products.[7] Similarly, the PIQ process in the Bondex bankruptcy case revealed that about 1,500 of the 3,500 claims reflected as pending mesothelioma claims in the Bondex database in fact did not represent pending claims.[8]

17. Based on my experience and analysis of Bestwall's claims and costs, Bestwall has incomplete information regarding most unresolved claims in its database. In particular, among the 5,700 unresolved mesothelioma records in the Bestwall claims database there are about 3,000 records associated with law firms with which Bestwall had agreements, under which Bestwall paid settlement amounts based on an agreed-upon matrix or resolved groups of claims for negotiated lump sums without examining individual claims. Historically, approximately 70% of

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6 *See* Expert Report of Jorge Gallardo-García, PhD, *In re Garlock Sealing Technologies LLC*, *et al.,* No. 10-31607 (Bankr. W.D.N.C. Feb. 15, 2013) (Trial exhibit GST-8004) [hereinafter "Gallardo-García Garlock Report"], Exhibit 1 and ¶ 33.

7 Expert Report of Charles E. Bates, PhD, *In re Garlock Sealing Technologies LLC, et al*., No. 10-31607 (Bankr. W.D.N.C. Feb. 15, 2013) (Trial exhibit GST-0996) [hereinafter "Garlock Report"], Exhibit 46.

8 Expert Report of Charles H. Mullin, PhD, *In re Specialty Products Holding Corp. et al.*, No. 10-11780 (Bankr. D. Del. Aug. 15, 2012), Doc 3473-5, pp. 22–23.

the mesothelioma claims Bestwall paid to settle after 2010 were resolved through these kinds of agreements. Bestwall entered into these arrangements to avoid the cost of going through discovery and gathering information to resolve the claims on a piecemeal basis. Instead, Bestwall incurred on average less than $3,000 in defense costs in connection with mesothelioma claims brought against it by these firms before resolving them as part of such agreements. As a result, Bestwall likely has little information about those 3,000 claims. Further, there are more than 600 mesothelioma unresolved records in Bestwall's claims database filed within the six months prior to Bestwall's Petition Date. Bestwall likely has little information about those claims, as the litigation process for such claims had just begun when Bestwall filed for bankruptcy protection.

18. The second group of potentially pending mesothelioma claims are those not identified as such in Bestwall's claims database due to the lack of disease information. Bestwall currently has no practical way to identify whether these claims involve mesothelioma or some other disease. Because Bestwall did not participate in any additional tort discovery on these claims that continued after Bestwall's petition date (due to the automatic stay), and some of these claims may be dormant, Bestwall has no information on whether there are any unresolved mesothelioma claims within "unknown disease" records.[9] There are more than 21,300 of such records in Bestwall's claims database that appear as unresolved, of which about 5,400 appear as "open." In my experience, the vast majority of these records either represent old claims alleging non-malignant conditions or are abandoned claims with no prospects against the defendant. This is likely the case with most of the 21,300 unresolved records with unknown disease information,

[9] Further, although some unresolved records show a non-mesothelioma disease, the claimant may indeed have mesothelioma. This type of error is possible in databases with hundreds of thousands of records.

as about 21,000 of them were filed more than four years before Bestwall's Petition Date. However, there may be some active pending mesothelioma claims in this group of records, as almost 300 were filed within four years of the Petition Date, including about 150 filed within a year and about 70 filed in the six months prior to the Petition Date.

19. The Bestwall claims database also contains no information on mesothelioma claimants who may exist but have not filed a claim. Bestwall therefore has no information on these claims. This lack of information is particularly acute with respect to claimants with exposure profiles that Bestwall did not see in the tort system before its Petition Date. For instance, it is my understanding that the ACC and the FCR have argued that claimants alleging exposures to Bestwall products beyond Old GP's Gypsum Division based on alleged asbestos contamination may exist**.** The Debtor has stated that it has no history of receiving such claims in the tort system. Therefore, because those claims are not in Bestwall's claims database, there is no basis to estimate their number and evaluate any Bestwall liability with respect to them. If such claimants exist, information about them is needed to assess the extent of any liability Bestwall may have for them.

20. Based on my preliminary analysis of Bestwall's claims and resolutions history, I expect that discovery in this matter will show that the number of entities sharing liability with Bestwall in pending and future mesothelioma claims will be substantial. As part of that preliminary analysis, I have joined the publicly available Garlock Analytical Database[10] and Bestwall's claims database to determine the overlap between the two claiming populations. The overlap is substantial: three out of four Bestwall/Old GP mesothelioma claims filed from 2002 to

[10] This database is part of the Garlock Estimation Trial record that the *Garlock* Court made public. For a description of the Garlock Analytical Database, see Gallardo-García Garlock Report.

Garlock's petition date on June 5, 2010 were also claims filed against Garlock, and three-fourths of Bestwall's/Old GP's payments to mesothelioma claimants during this time period were to claimants who also pursued claims against Garlock. These data, however, do not provide sufficient information about Bestwall's and Old GP's historical claims, because about one-quarter of Bestwall's mesothelioma claims that were filed before Garlock's petition date were not asserted against Garlock (including many of Bestwall's highest-value claims) and because the Garlock data do not include claims filed after June 5, 2010 (Garlock's petition date and more than seven years before Bestwall commenced this case).

21. Finally, the information requested in the PIQ Motion will be essential for calculating and estimating the potential settlement offers that Bestwall claimants would receive from an eventual section 524(g) trust established in this case. For example, the PIQ information in *Garlock* was fundamental for this task. After the Garlock Estimation Trial, once Garlock, the asbestos committee in that case, and the future claimants' representative in that case reached a settlement regarding total trust funding, the data gathered through the Garlock PIQ was a key input in calculating the settlement offers that different types of claimants would receive from the Garlock trust's Claims Resolution Procedures (the "CRP"). Based on Bates White's analysis using the Garlock Analytical Database, of which the PIQ data was a principal component, the parties were able to determine the level of baseline settlement offer values for the Garlock trust. As these data were an important input for determining trust settlement offers, the PIQ data in *Garlock* also enabled my team at Bates White and me to evaluate whether the trust funding under the Garlock Plan would allow the Garlock Trust to provide substantially equivalent treatment to pending and future claimants. The PIQ data requested here in the PIQ Motion will play a similar role in allowing me to evaluate any proposed plan of reorganization, the design and evaluation of

TDPs and payments to claimants at levels that are substantially equivalent for present and future claimants.

IV. <u>The information sought in the Trust Motion</u>

22. The information Bestwall requests from asbestos trusts is fundamental for estimating Bestwall's legal liability. It is also critical to test whether claimants withheld exposure information from Bestwall while in the tort system and how its payments to claimants were impacted by such practices. This data is needed to assess contentions from the ACC and FCR that Bestwall's historical settlements reflect its liability and their contentions that Bestwall's historical settlements reveal amounts necessary to induce claimants to accept a plan of reorganization in this case. The proposed trust discovery will permit us to compare data from asbestos trusts that document claimants' exposures to the products of the reorganized entities with what those same claimants revealed about their asbestos exposures in their tort litigation against Bestwall and Old GP.

23. Having trust claims information on Bestwall claims resolved with payments within a wide range of values will permit me to evaluate the impact on historical settlement amounts caused by claimants delaying the filing of trust claims and failing to disclose to Old GP the exposure evidence supporting them. In addition, analysis of the settlements under the Law and Economics model will permit me to test how the non-disclosure of trust exposure evidence may have affected the likelihood of success factor under the model in historical cases.

24. The trusts and the trust processing facilities possess the requested information in readily available electronic form. The trusts' search can be performed electronically with simple computer code. Bestwall has Social Security Numbers ("SSNs") for most mesothelioma claims it resolved by settlement or verdict. Using SSNs to match Bestwall's settled and tried cases to

the trusts' databases will yield a reliable identification of claimants and will minimize the risk of false positives. In particular, the computer code required for identifying claims in the trusts' databases will be very simple, as it will only have to focus on SSN matches or matches of the last four digits of the SSN plus last name.

V. Data security.

25. In the ordinary course of business, Bates White routinely receives privileged and confidential information, often highly sensitive in nature. Bates White has data security protocols that implement industry best practices for data confidentiality and protection. Such protocols include, but are not limited to, the following safeguards: (a) each staff member has unique log-in credentials to access Bates White's systems; (b) data access in each matter is limited to staff based on "need to know" and "least privilege" principles, which includes time restrictions and other controls as necessary; (c) transmission of confidential or privileged information is done through encrypted file sharing systems that are password-protected (all media that leave Bates White are encrypted and password-protected); (d) physical external media with confidential information are secured in a locked safe or cabinet; (e) to comply with data destruction requirements, external media are destroyed, and external hard drives and laptops are wiped to ensure all data are removed; and (f) Bates White's network is protected by next-generation firewalls, web filtering, intrusion detection and prevention capabilities, and 24/7 monitoring by a third party. Bates White also deploys next-generation antivirus to all endpoints, two-factor authentication for external connections, and data loss protection designed to monitor and prevent theft and unauthorized uses of data. All Bates White employees must complete a cybersecurity training program.

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

Dated: July 30, 2020

Charles E. Bates, Ph.D.
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Exhibit A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re BESTWALL LLC, Debtor.	Chapter 11 Case No. 17-31795 (LTB)

DECLARATION OF CHARLES E. BATES, PHD

Charles E. Bates, PhD, deposes and states as follows:

1. I am the Chairman of Bates White, LLC ("Bates White"), which maintains offices at 2001 K Street NW, North Building, Suite 500, Washington, DC 20006.

2. I am duly authorized to make this Declaration as a consultant for Bestwall LLC ("Bestwall" or the "Debtor") in this case. I make this Declaration at the request of the Debtor's counsel regarding (1) the data and claims-related information Bates White needs to (a) render a reliable estimate of Bestwall's liability for present and future mesothelioma claims and (b) properly evaluate any estimation opinions or other opinions or positions related to the value of asbestos claims offered by the Asbestos Claimants Committee ("ACC"), the Future Claimants' Representative ("FCR"), or their experts, and (2) the work Bates White has performed for the Debtor and its counsel to date in this chapter 11 case.

3. In this Declaration, I first describe the information necessary to perform a reliable estimation of Bestwall's legal liability with respect to mesothelioma claims and to evaluate the settlement extrapolation analyses that, I understand, the ACC and FCR experts will render in this matter. Much of this information is unavailable to the Debtor, either in whole or in significant

part. Next, I provide a summary overview of the work Bates White has performed for the Debtor and its counsel since the start of this bankruptcy case.

I. Qualifications

4. I specialize in the application of statistics and computer modeling to economic and financial issues. I have more than 25 years of experience in a wide range of litigation and commercial consulting areas, including extensive experience working on asbestos-related claims and liability valuation issues. A detailed description of Bates White's and my expertise is contained in my November 2, 2017 Declaration, attached as Exhibit A to the Debtor's *Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[1] In addition, a complete and updated copy of my curriculum vitae is attached to this Declaration as Exhibit 1.

5. This Court issued an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[2]

II. Data and claims-related information necessary to render a reliable estimate of Bestwall's liability for present and future mesothelioma claims.

6. Bestwall's counsel has requested that I estimate Bestwall's legal liability for mesothelioma claims, i.e., Bestwall's share of final judgments that would be obtained by current and future Bestwall mesothelioma claimants.

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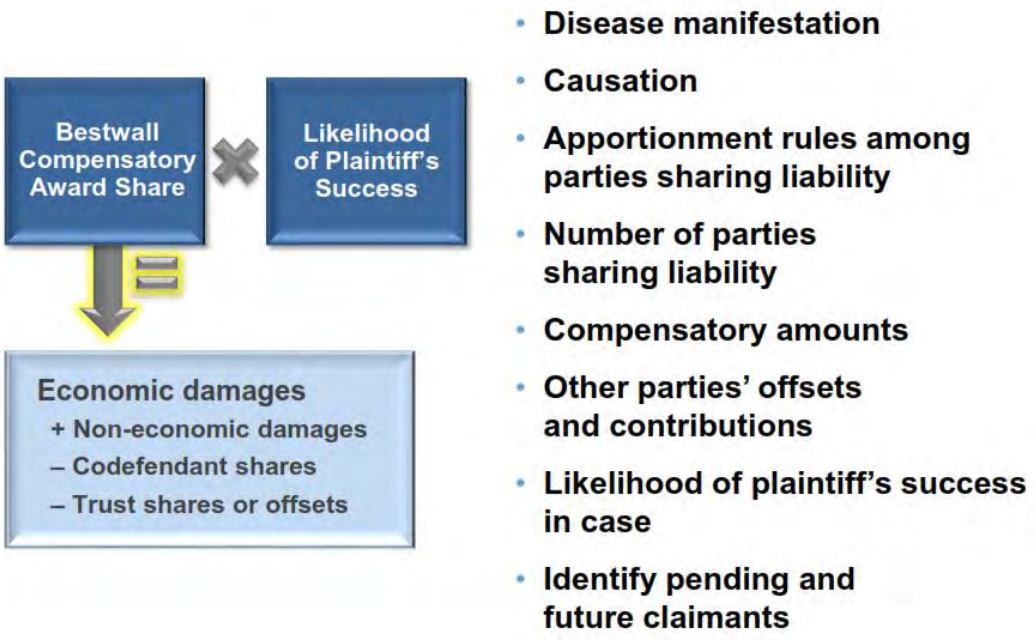
1 Ex Parte Application of the Debtor for an Order Authorizing It to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, Nov. 2, 2017, Doc. 29, pp. 11–26.

2 Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, Nov. 2, 2017, Doc. 40.

Figure 1. Components of the estimate of Bestwall's Expected Legal Liability for current and future mesothelioma claims



7. As demonstrated in Figure 1, Bestwall's Expected Legal Liability with respect to a given present or future claimant has two principal components: (1) the expected Bestwall Compensatory Award Share with respect to such claimant and (2) the expected likelihood of such claimant's success at trial (the Likelihood of Plaintiff's Success). As further demonstrated in Figure 1, the extent of Bestwall's Expected Legal Liability is determined by consideration of the factors listed on the right.

8. Below, I explain the data and claims-related information the methodology requires to render an estimate of Bestwall's liability for present and future mesothelioma claims.

9. **Status of Bestwall claims.** It is first necessary to identify the number and characteristics of the mesothelioma claims that would currently be asserted against Bestwall. As of today, there are at least three groups of potential current mesothelioma claimants: (1) claimants who filed pre-petition mesothelioma claims against Bestwall or the former

Georgia-Pacific LLC ("Old GP")[3] and are reflected in Bestwall's claims database as having an unresolved mesothelioma claim; (2) claimants who filed pre-petition mesothelioma claims but are not listed in the database as having an unresolved mesothelioma claim (e.g., because the database does not have information about the claimant's alleged disease); and (3) claimants who developed mesothelioma and allege contact with Bestwall's asbestos-containing products but did not file a pre-petition claim against Bestwall.

10. The Bestwall claims database contains more than 5,600 records identified as unresolved mesothelioma claims. However, the number of records that actually represent a pending mesothelioma claim against Bestwall is unknown, and information is necessary to determine which of the records that actually do represent pending mesothelioma claims. This is the case for several reasons. First, about 2,000 of those records appear to have been resolved before Bestwall's petition date but were in different states of documentation.[4] Of those, 1,800 are described as resolved without payment; thus, most, if not all, of those records likely represent dismissed claims. The remaining 200 of the 2,000 records appear as "settled but not documented," which may or may not indicate that a settlement was reached. The remaining 3,600 of the 5,600 unresolved pending mesothelioma records are described as "open," which appears to indicate they represent pending claims as of the petition date. But more than 800 had been filed more than four years before Bestwall's petition date. It is necessary to determine which of these 800 records represent active claims against the Debtor.

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3 When discussing historical matters preceding a 2017 corporate restructuring by Old GP, the term "Debtor" and "Bestwall" refer to the Debtor and the historical businesses that manufactured or marketed asbestos-containing products when they were part of Old GP or Bestwall Gypsum.

4 These claim records in the Bestwall claims database include those with the following statuses: "dismissed but not documented," "inactive," "resolved but not finalized," and "settled but not documented."

11. The fact that a substantial number of mesothelioma records shown as unresolved or pending in the Bestwall claims database are neither unresolved nor pending claims is typical. In my experience, asbestos claims databases consistently do not contain up-to-date information on abandoned or dismissed claims because keeping track of that information is costly and provides no benefit to the defendants in the tort system.

12. The Bestwall claims database includes unresolved records with no alleged disease information. Because no additional tort discovery on these claims continued after Bestwall's petition date (and any discovery relating to other defendants proceeded without Bestwall's participation due to the automatic stay), Bestwall has no information on whether there are any unresolved mesothelioma claims within "unknown disease" records.[5]

13. The Bestwall claims database also contains no information on mesothelioma claimants who may exist but have not filed a claim. Therefore, although claimants who have not filed claims may currently exist, Bestwall has no information on them.

14. Determining the actual number of pending mesothelioma claims against Bestwall is a critical starting point for any evaluation of Bestwall's liability. It is necessary to determine the extent of Bestwall's liability for the current claims and is also essential for estimating the number of future mesothelioma claims that could proceed to trial against Bestwall. To estimate Bestwall's liability for future mesothelioma claims, I will project the number of future claims that will be filed and the trial risk associated with each claim. This estimate will take into account differences in demographic characteristics and exposure profiles. However, I am currently unable to perform this estimate because of the lack of information on the number and

[5] Further, although some unresolved records show a non-mesothelioma disease, the claimant may indeed have mesothelioma. This type of error is possible in databases with hundreds of thousands of records.

type of current claims alleging Bestwall exposure, and on other exposure allegations made by holders of Bestwall resolved and current claims in their claims submitted to asbestos trusts.

15. **Identifying information for the individual with mesothelioma and the individual pursuing the claim.** For the individual with mesothelioma, we need 9-digit Social Security Number ("SSN"), gender, birth date, life status, death date (if applicable), and state of residency. For the individual pursuing the claim, we need name and SSN. This information is essential for identifying claimants across the multiple sources of asbestos claims information available in this matter. In addition, this information is necessary to identify multiple claims that may have been generated by a single mesothelioma diagnosis, such as personal injury and wrongful death claims for the same person. This is important for valuation purposes, because these claims may appear twice in the claims database but represent a single mesothelioma diagnosis.

16. **Diagnosis information.** This information includes the date of diagnosis and the mesothelioma body site (e.g., pleural versus peritoneal). This information is necessary to assess the viability of the claim and to understand the potential economic loss for the claimant and, accordingly, the possible damage amount. Although Bestwall's database includes general disease information for many claim records, as discussed above, there may be unidentified mesotheliomas in the database. Similarly, the database includes diagnosis dates for a number of records, but it lacks this information for a large number of unresolved records. The diagnosis date provides information about when the alleged disease manifested, so that it can be determined what portion of total diagnoses in a given year were pursued against Bestwall. Also, as described above, the database contains no information on claims that were not filed pre-

petition. Further, Bestwall's claims database does not include information on the mesothelioma body site.

17. **The injured party's alleged exposure to asbestos-containing products for which Bestwall is responsible.** The methodology requires information concerning the injured party's alleged exposure to Bestwall asbestos-containing products. We currently have little exposure information for current claims, including how many claimants will actually assert contact with a Bestwall asbestos-containing product.

18. If the claimant alleges Bestwall exposure, the methodology requires, for each alleged exposure, information regarding type of exposure (occupational, non-occupational, secondary), location where the exposure allegedly occurred, dates of alleged exposure, occupation/job type of individual while the alleged exposure occurred, and specific Bestwall products to which the individual alleges exposure. This information regarding the nature and extent of the plaintiff's exposure is fundamental for assessing the share of liability (if any) that Bestwall should cover for that claim.

19. **The injured party's alleged exposure to asbestos-containing products manufactured by or associated with other entities.** The methodology also requires information concerning allegations of exposure to non-Bestwall asbestos-containing products and, for each alleged exposure, basic exposure-related information, including type of such exposure (occupational, non-occupational, secondary), location where the exposure allegedly occurred, dates of alleged exposure, occupation/job type of the individual while the alleged exposure occurred, and specific products to which the individual alleges exposure.

20. In apportioning damages, it is first necessary to identify and quantify the number of entities and codefendants that would share in the liability with Bestwall, should Bestwall be

found liable. This determination requires sufficient information on claimants' work and alleged exposure histories so that the sources of asbestos exposure for claimants can be identified and accounted for.

21. Information on current and past claimants' job histories and exposure to other companies' asbestos-containing products is essential to identify alternative sources of exposure and assess the relative contribution of Bestwall asbestos-containing products (if any) to a claimant's alleged asbestos exposure. The exposure-related information will be supplemented and compared to the information we would obtain on the claimant's asbestos trusts filings and tort claims, to construct a full description of the exposure profiles of claimants with a pending mesothelioma claim against Bestwall. This information is central to liability apportionment and for the estimation of the likelihood of plaintiff's success against Bestwall, but it is unavailable in the Debtor's database.

22. **Injured party's economic loss.** Economic loss is another fundamental component of a liability estimate because it enables us to ascertain the expected award that a claimant may receive should he or she proceed to trial and prevail. Economic loss estimates are based on the claimant's demographic information, as well as on information related to lost income and expenses caused by the alleged disease. They require information about key claimant characteristics, including work/retirement status, current or last occupation, current or last annual income, medical expenses, dependent information, and funerary expenses (if applicable).

23. **Information about the claimants' lawsuits and claims against other entities.** Information about other parties' payments to claimants and the status of claims against other

entities is important for producing a reliable estimation of Bestwall's share of liability for a given claim.

24. To apply the liability apportionment rules described above, it is necessary to obtain information regarding claimants' settlements and recoveries from tort defendants and asbestos trusts. This information permits us to take into account offsets when estimating Bestwall's share of the liability, if any. Bestwall does not possess sufficient information that would enable it to evaluate amounts that claimants have recovered or will recover from other sources.

25. Basic information regarding the plaintiffs' claims against other entities, their status, and the amounts the claimants have recovered from those entities is not included in the Bestwall claims database. This is particularly the case for plaintiffs' trust claims for claims resolved by Bestwall in the tort system and for unresolved current claims.

III. Data and claims-related information necessary to evaluate opinions offered by the experts for the Asbestos Claimants Committee and the Future Claimants' Representative

26. I understand that the ACC and the FCR contend that Bestwall's settlement history reflects Bestwall's legal liability for settled claims and that Bestwall settlement payments should be used as proxies for Bestwall's liability for current and future claims. Additional data are needed to demonstrate and quantify to what extent this is the case.

27. Much of the information needed to quantify the impact of avoidable costs and the actual exposure profile of Bestwall claimants on Bestwall's settlements is not currently available to Bestwall.

28. I understand that Bestwall has little information on the exposure profile of claims dismissed without payment and what distinguishes them from other claims.

29. Bestwall has little or no information on the exposure profile or the other characteristics of group settlement claims that distinguish them from each other or from claims that the plaintiffs abandoned without payment, or explains why some claims were paid and not others.

30. The data I described in detail above are needed to quantify Bestwall's legal liability for claims individually litigated but not prepared for trial and claims prepared for trial but settled before trial started.

31. Although Bestwall has more robust information on claims settled during trial, information is still needed to assess the extent of alternative exposures.

32. Bestwall has substantial information on claims that proceeded to verdict. But, even for these cases, information on alternative exposures is necessary.

33. Information on trust claims filings will be essential. By comparing exposure allegations in the tort system to allegations in the plaintiffs' trust claims, I can determine whether settlement (and verdict) amounts can be properly extrapolated into the future.

34. Further, the information on current claims against Bestwall that I discussed above is also necessary for the opposing experts' settlement approach.

IV. Bates White's work to date in this case

35. In this section, I provide a summary of the work that Bates White has performed since the commencement of Bestwall's chapter 11 case.

36. The principal tasks that Bates White has undertaken are the following:

a. Construction of the preliminary Bestwall Analytical Database

b. Update of the model to estimate and forecast mesothelioma incidence

c. Analysis of Bestwall's claims history and defense costs data for estimation of Bestwall's legal liability

37. Below I provide more detail on each of these tasks. At the direction of counsel, I am providing only a high-level overview to protect attorney-client-privileged and work product–protected information.

a. Construction of the preliminary Bestwall Analytical Database

38. The Bestwall Analytical Database is and will be the foundation for most of the analyses Bates White will perform in this case. In particular, this database will be the foundation for my estimate of Bestwall's legal liability.

39. Part of the work that Bates White has performed to date relates to the development of an updated analytical database using other sources of information available to us (such as the publicly available Garlock Analytical Database, limited data from the Social Security Administration, and a copy of the Manville Trust database as of 2002 purchased by Bates White, among others).

40. Although we have been able to add information to update the existing claims database, as described above, other fundamental information is necessary to construct a database of reliable information for Bestwall asbestos claims, as described in detail in Sections II and III above. None of the other sources of data we have been able to use has information collected specifically with respect to Bestwall mesothelioma claims. In the present matter, the work on the construction of the preliminary Bestwall Analytical Database has taken approximately 35% of Bates White's fees so far.

b. Update of model to estimate and forecast mesothelioma incidence

41. As I explained above, a central element of the estimate of Bestwall's legal liability is a forecast of the number of mesothelioma diagnoses that will arise in the future. For this purpose, Bates White has been developing an updated version of an incidence model.

42. This task involves a number of components. Those include researching the applicable literature and publicly available data and incorporating that research into the model by developing complex computer code to model and estimate incidence. This project has constituted approximately 30% of Bates White's fees in this matter so far.

c. Analysis of Bestwall's claims history and defense costs data for estimation of Bestwall's legal liability

43. Settlement payments, together with defense costs data, provide useful information to assess the extent to which claims are settled for trial risk or to avoid defense costs. Bates White has been engaged in a detailed and iterative analysis of the available data. Some of this analysis is reflected in Section III above and informs my opinions about the information necessary to assess the ACC's and FCR's proposed valuation approaches in this matter. In addition, this analysis was the basis for providing support to the Debtor and its counsel during the mediation proceedings the Court ordered early in 2020. This analysis has constituted approximately 25% of Bates White's fees in this matter so far.

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

Dated: June 19, 2020

Charles E. Bates, Ph.D.
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Exhibit 1

Curriculum Vitae

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CHARLES E. BATES, PHD

Chairman

AREA OF EXPERTISE

- Asbestos liabilities and expenditures estimation
- Economic analysis
- Statistical analysis
- Microsimulation modeling
- Econometrics

SUMMARY OF EXPERIENCE

Charles E. Bates has extensive experience in statistics, econometric modeling, and economic analysis. He specializes in the application of statistics and computer modeling to economic and financial issues. Dr. Bates has more than 25 years of experience and provides clients with a wide range of litigation and commercial consulting services, including expert testimony and guidance on economic and statistical issues.

Dr. Bates is a recognized expert in asbestos-related matters. He speaks in national and international forums on the asbestos litigation environment and estimation issues. Dr. Bates is frequently retained to serve as an expert on such matters in large litigations and has testified before the US Senate Judiciary Committee and Federal Bankruptcy Court.

EDUCATION

- Advanced Seminar in Pharmacoeconomics, Harvard School of Public Health
- PhD, Economics, University of Rochester
- MA, Economics, University of Rochester
- BA, Economics and Mathematics (high honors), University of California, San Diego

PROFESSIONAL EXPERIENCE

Prior to founding Bates White, Dr. Bates served as a Vice President of A.T. Kearney. Previously, he was the Partner in Charge of the Economic Analysis group at KPMG. Dr. Bates began his career on the faculty of Johns Hopkins University's Department of Economics, where he taught courses in advanced statistical economic analysis and trade theory.

SELECTED ASBESTOS AND PRODUCT LIABILITY EXPERIENCE

- Retained as an asbestos liability valuation 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 as an asbestos liability valuation 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 as an asbestos liability valuation 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.
- Served as an asbestos liability valuation expert on behalf of Garlock Sealing Technologies in its bankruptcy proceedings. Testified before the US Bankruptcy Court for the Western District of North Carolina both in preliminary case hearings and at trial.
- Served as an expert in asbestos claims valuation for financial reporting purposes in *Erica P. John Fund Inc. et al. v. Halliburton Company et al.* on behalf of certain Halliburton stockholders regarding Halliburton's financial disclosures of its asbestos liabilities after its acquisition of Dresser in 1998.
- Served as the Individual Claimant Representative on behalf of potential future No Notice Individual Creditors as part of the Amending Scheme of Arrangement for OIC Run-Off Limited (formerly the Orion Insurance Company plc).
- Authored expert reports and provided testimony in *United States Fid. & Guar. Co. v. American Re-Insurance Company* in asbestos claims valuation, estimation methodology, and asbestos reinsurance billing regarding the proper reinsurance bill associated with USF&G's reinsurance bill of its asbestos-related payments to Western MacArthur.
- Served as an asbestos liability valuation expert on behalf of Specialty Products Holding Corp./Bondex International in its bankruptcy proceedings.
- Retained as an asbestos liability valuation expert on behalf of the Official Committee of Unsecured Creditors of Motors Liquidation Company (f/k/a General Motors Corporation) in its bankruptcy proceedings.
- Authored expert report and provided deposition testimony regarding the value of diacetyl claims on behalf of the Official Committee of Equity Security Holders in the Chemtura Corporation bankruptcy proceedings.
- Testified in deposition on behalf of the ASARCO Unsecured Creditors Committee in the ASARCO bankruptcy proceedings regarding the valuation of past and future asbestos-related personal injury claims.
- Authored expert report and provided deposition testimony on behalf of the policyholder in the matter of *Imo Industries, Inc. v. Transamerica Corp.*
- Currently retained as an expert by Fortune 500 companies to produce asbestos expenditure estimates for annual and quarterly financial statements. Estimations aid clients with Sarbanes-Oxley compliance.
- Currently retained as an expert in asbestos estimation and insurance valuation, for numerous asbestos litigation matters, on behalf of insurance companies, corporations, and financial creditors' committees of federal bankruptcy proceedings.
- Testified before the Senate Judiciary Committee on the economic viability of the Trust Fund proposed under S.852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005. Testimony clarified Bates White's independent analysis on the estimate of potential entitlements created by the administrative no-fault trust fund that uses medical criteria for claims-filing eligibility.

- Testified in deposition on behalf of Liberty Mutual Insurance Company in the Plibrico bankruptcy proceedings regarding the valuation of past and future asbestos personal injury claims and exposure criteria in plan proponents proposed trust distribution procedures.
- Testified at deposition on behalf of the joint insurers defense committee to address the fraction of expenditures associated with the company's asbestos installation operations in *Owens Corning v. Birmingham Fire Insurance Company of Pennsylvania.*
- Testified in the Babcock & Wilcox bankruptcy confirmation hearing on behalf of the Insurers Joint Defense Group to address asbestos liability. Developed claims criteria evaluation framework to assess asbestos liability forecasts and trust distribution procedures.
- Testified at deposition on behalf of Sealed Air in the fraudulent conveyance matter regarding the 1998 acquisition of Cryovac from W.R. Grace. Directed estimation of foreseeable asbestos liability for fraudulent conveyance matter to advise the debtor in the bankruptcy of a defendant with over $200 million in annual asbestos payments. Developed asbestos liability forecasting model and software. Directed industry research and interviewed industry experts.
- Testified at deposition on behalf of Hartford Financial Services Group to address the asbestos liability of MacArthur Company and Western MacArthur Company. Estimated asbestos liability in the context of bankruptcy proceedings.
- Testified at deposition on behalf of the Center for Claims Resolution in arbitration proceedings of *GAF v. Center for Claims Resolution*.
- Served as testifying expert on behalf of CSX Transportation on the suitability of asbestos claim settlements for arbitration proceedings of *CSX Transportation, Inc. v. Lloyd's, London.*
- Developed an econometric model of property damage lawsuits for estimating the future liability of a former asbestos manufacturer arising from the presence of its asbestos products in buildings.

SELECTED LITIGATION AND CONSULTING EXPERIENCE

- Testified in US Tax Court on behalf of the taxpayers on the statistical basis and accuracy of shrinkage accruals in *Kroger v. Commissioner*.
- Served as consulting expert and performed statistical and quantitative analyses to assess the merits of a class action alleging payment of fees to mortgage brokers for referral of federally related mortgage loans.
- Testified in US Tax Court on behalf of the taxpayer analyzing the statistical prediction of bond ratings using company financial data in *Nestlé Holdings Inc. v. Commissioner*.
- Submitted written expert testimony on the statistical and financial analysis of option transactions and an analysis of alternative stock option hedges in *McMahon, Brafman, and Morgan v. Commissioner*.
- Testified in US Tax Court on behalf of the taxpayers of IRS experts on the statistical basis and accuracy of shrinkage accruals in *Wal-Mart v. Commissioner*.
- Served as consulting expert and analyzed the racial composition for a large manufacturing corporation using EEO data and employed sophisticated statistical analysis and modeling to determine the validity and strength of an employment discrimination claim.
- Testified on behalf of VNC in the arbitration hearing of *VNC v. MedPartners*.

- Provided expert testimony in California Superior Court on the validity of economic comparability adjustments for pipeline easement rents in *Southern Pacific Transportation Corp. v. Santa Fe Pacific Corp.*
- Served as statistical expert and developed detailed statistical analysis of customs trade data for use in criminal transfer-pricing litigation.
- Submitted written testimony in US Tax Court on the beneficial life of company credit card in a tax matter for a large retailer drawing on the company's point-of-sale data, credit card data, and customer demographic information.
- Developed state-of-the-art models to account for default correlation for underwriting credit insurance; models became the standard tools for the country's largest credit insurance firm.
- Led a team of economists that provided litigation-consulting services in one of the largest US price-fixing cases. Case involved the development of state-of-the-art economic models, damages' analyses, client presentations, pretrial discovery, industry research, preparation of evidence and testimony, depositions, and a critique of opposing expert analyses and reports.
- For a start-up global telecommunications enterprise, provided consulting services and developed a comprehensive computer model to evaluate the firm's financial plan. Model incorporated marketing, pricing, and communications traffic in a single modeling framework to facilitate sensitivity analysis by creditors and to evaluate the risk associated with the strategic business plan.
- Served as senior economic advisor on issues of analytical methodology for numerous pharmacoeconometric and health outcomes research projects. Provided expertise in the development of decision tools and the creative use of modeling applications for pharmacoeconomics and outcomes research.

PUBLICATIONS

- Bates, Charles E., Charles H. Mullin, and Marc C. Scarcella. "The Claiming Game." *Mealey's Litigation Report: Asbestos* 25, no. 1 (February 3, 2010).
- Bates, Charles E., Charles H. Mullin, and A. Rachel Marquardt. "The Naming Game." *Mealey's Litigation Report: Asbestos* 24, no. 15 (September 2, 2009).
- Bates, Charles E., and Charles H. Mullin. "State of the Asbestos Litigation Environment—October 2008." Mealey's Litigation Report: Asbestos 23, no. 19 (November 3, 2008).
- Bates, Charles E., and Charles H. Mullin. "Show Me The Money." *Mealey's Litigation Report: Asbestos* 22, no. 21 (December 3, 2007).
- Bates, Charles E., and Charles H. Mullin. "The Bankruptcy Wave of 2000—Companies Sunk By An Ocean Of Recruited Asbestos Claims." *Mealey's Litigation Report: Asbestos* 21, no. 24 (January 24, 2007).
- Bates, Charles E., and Charles H. Mullin. "Having Your Tort and Eating It Too?" *Mealey's Asbestos Bankruptcy Report* 6, no. 4 (November 2006).
- Bates, Charles E., and Halbert White. "Determination of Estimator with Minimum Asymptotic Covariance Matrices." *Econometric Theory* 9 (1993).
- Bates, Charles E., and Halbert White. "Efficient Instrumental Variables Estimation of Systems of Implicit Heterogeneous Nonlinear Dynamic Models with Nonspherical Errors." In *International Symposia in Economic Theory and Econometrics,* vol. 3, edited by W.A. Barnett, E.R. Berndt and H. White. New York: Cambridge University Press, 1988.

- Bates, Charles E. “Instrumental Variables.” In *The New Palgrave: A Dictionary of Economics,* edited by John Eatwell, Murray Milgate, and Peter Newman. London: Macmillan, 1987.
- Bates, Charles E., and Halbert White. “An Asymptotic Theory of Consistent Estimation for Parametric Models.” *Econometric Theory* 1 (1985).

SELECTED SPEAKING ENGAGEMENTS

- “The Top Emerging Trends in 2015 Asbestos Litigation.” Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference, March 15–17, 2015.
- “Asbestos Bankruptcy: A Discussion of the Top Trends in Today’s Chapter 11 Cases.” Perrin Conferences Asbestos Litigation Conference: A National Overview & Outlook, Sept. 8–10, 2014.
- “An Asbestos Defendant's Legal Liability—The Experience in Garlock's Bankruptcy Asbestos Estimation Trial.” Bates White webinar, July 29, 2014.
- “Concussion Suits against the NFL, NCAA, and Uniform Equipment Manufacturers.” Perrin Conferences’ Legal Webinar Series, May 24, 2012.
- “An Update on US Mass Tort Claims.” Perrin Conferences’ Emerging Risks on Dual Frontiers: Perspectives on Potential Liabilities in the New Decade, April 12–13, 2012, London, United Kingdom.
- “The Next Chapter of Asbestos Bankruptcy: New Filings, Confirmations, & Estimations.” Perrin Conferences’ Asbestos Litigation Conference: A National Overview & Outlook, September 13–15, 2010, San Francisco, CA.
- “Trust Online: The Impact of Asbestos Bankruptcies on the Tort System.” Perrin Conferences’ Asbestos Bankruptcy Conference: Featuring a Judicial Roundtable on Asbestos Compensation, June 21, 2010, Chicago, IL.
- “Current Litigation Trends that are Impacting Asbestos Plaintiffs, Defendants, & Insurers.” Perrin Conferences’ Asbestos Litigation Mega Conference, September 14–16, 2009, San Francisco, CA.
- “Verdicts, Settlements, and the Future of Values: Where Are We Heading? A Roundtable Discussion.” HB Litigation Conferences’ Emerging Trends in Asbestos Litigation, March 9–11, 2009, Los Angeles, CA.
- “Role of Bankruptcy Trusts in Civil Asbestos.” Mealey’s Emerging Trends in Asbestos Litigation Conference, March 3–5, 2008, Los Angeles, CA.
- “The Intersection between Traditional Litigation & the New Bankruptcy Trusts.” Mealey’s Asbestos Bankruptcy Conference, June 7–8, 2007, Chicago, IL.
- ABA’s Insurance Coverage Litigation Committee Conference, March 1–4, 2007, Tucson, AZ.
- Mealey’s Asbestos Conference: The New Face of Asbestos Litigation, February 8–9, 2007, Washington, DC.
- Mealey’s Asbestos Bankruptcy Conference, December 4–5, 2006, Philadelphia, PA.
- “Seeking Solutions to European Asbestos Claiming: Will it be FAIR?” Keynote address, Mealey’s International Asbestos Conference, November 1–2, 2006, London, United Kingdom.
- Mealey’s Asbestos Bankruptcy Conference, June 9, 2006, Chicago, IL.
- Harris Martin Publishing Asbestos Litigation Conference, March 2, 2006, Washington, DC.
- Mealey’s Wall Street Forum: Asbestos Conference, February 8, 2006, New York, NY.
- Mealey’s Asbestos Legislation Teleconference, February 7, 2006.

PROFESSIONAL ASSOCIATIONS

- National Association of Business Economists
- American Economic Association
- Econometric Society

Exhibit 3

From: Ross, Valerie
To: C. Michael Evert, Jr.
Cc: Geise, Elizabeth; Rao, Sony
Subject: RE: DBMP - Subpoenas to Aldrich and Murray Boiler
Date: Thursday, March 21, 2024 10:41:35 AM
Attachments: image001.jpg
Docket 2730.pdf

Mike,

As I suspect you already know, last night the DBMP ACC filed the attached motion to strike DBMP's subpoenas to Aldrich/Murray (as well as its subpoena to Bestwall), which motion is set for hearing on 4/17/24. As we've previously discussed, DBMP agrees that no production pursuant to the DBMP subpoenas are necessary until after the attached motion is resolved.

Let me know if you wish to discuss.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453

From: Ross, Valerie
Sent: Thursday, February 29, 2024 10:42 AM
To: C. Michael Evert, Jr. <CMEvert@ewhlaw.com>
Cc: Geise, Elizabeth <elizabeth.geise@afslaw.com>; Rao, Sony <sonul.rao@afslaw.com>
Subject: DBMP - Subpoenas to Aldrich and Murray Boiler

Mike,

See attached. As you may have seen, DBMP filed a notice of service of these subpoenas yesterday. I will let you know when/if we hear anything from the DBMP Claimant Representatives about these.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453
My Bio | LinkedIn | Subscribe
1717 K Street NW, Washington, DC 20006

From:	Ross, Valerie
To:	Doc Schneider
Cc:	Mercer Jr, Joel J; Baugher, Melissa Halstead; Greg M. Gordon (gmgordon@jonesday.com); Jeff B. Ellman (jbellman@jonesday.com); Cassada, Garland; Worf, Richard; John Tucker; Geise, Elizabeth; Rao, Sony
Subject:	RE: Letter on DBMP Subpoena
Date:	Thursday, March 21, 2024 10:39:14 AM
Attachments:	image001.png Docket 2730.pdf

Doc:

As I suspect you already know, last night the DBMP ACC filed the attached motion to strike DBMP's subpoena to Bestwall (as well as its subpoenas to Aldrich/Murray), which motion is set for hearing on 4/17/24. As we've previously discussed, DBMP agrees that no production pursuant to the DBMP subpoena is necessary until after the attached motion is resolved.

Let me know if you wish to discuss.

Regards,

Valerie

Valerie E. Ross SHE/HER/HERS
PARTNER | **ARENTFOX SCHIFF LLP**
valerie.ross@afslaw.com | DIRECT 202.778.6453

From: Doc Schneider <DSchneider@KSLAW.com>
Sent: Tuesday, March 12, 2024 12:07 PM
To: Ross, Valerie <valerie.ross@afslaw.com>
Cc: Mercer Jr, Joel J <joel.mercerjr@kochcc.com>; Baugher, Melissa Halstead <melissa.baugher@kochcc.com>; Greg M. Gordon (gmgordon@jonesday.com) <gmgordon@jonesday.com>; Jeff B. Ellman (jbellman@jonesday.com) <jbellman@jonesday.com>; Cassada, Garland <GCassada@robinsonbradshaw.com>; Worf, Richard <RWorf@robinsonbradshaw.com>; John Tucker <JTucker@KSLAW.com>
Subject: Letter on DBMP Subpoena

Valerie:

I hope this finds you well.

Please see the attached letter that updates the current status of DBMP's subpoena to Bestwall and serves a formal alert under Rule 45 that we plan to file the same production process that DBMP followed with respect to the similar subpoena Bestwall served on DBMP last year.

With best regards,

Doc

Richard A. Schneider (Doc)
Partner

Cell 404 428 6135 Office 404 572 4889 | E: dschneider@kslaw.com | Bio | vCard

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
King & Spalding

kslaw.com

EXHIBIT C-3

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	Case No. 20-30608 (JCW)
Debtors.	(Jointly Administered)

DEBTORS' RESPONSE TO THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' MOTION TO QUASH SUBPOENAS SENT TO DEBTORS

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), hereby file this response to the *Motion to Quash Subpoenas Sent to Debtors* [Docket No. 2157] (the "Motion") filed by the Official Committee of Asbestos Personal Injury Claimants (the "ACC").

1. The ACC moves this Court for the entry of an order quashing the Subpoenas to Produce Documents, Information, or Objects or Permit Inspection of Premises in Bankruptcy Case (Or Adversary Proceeding) (the "Subpoenas") served on both Aldrich and Murray by DBMP LLC ("DBMP"). The Subpoenas seek the production of information regarding asbestos claimants of Aldrich and Murray respectively, from the Debtors' asbestos claim database. The Debtors understand that the Subpoenas have been served in connection with ongoing estimation proceedings concerning DBMP and are the subject of a pending objection and motion to strike filed by the Official Committee of Asbestos Claimants in the DBMP chapter 11 case.

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

2. The Subpoenas and subsequent Motion place the Debtors in the unusual position of being the target of the served Subpoenas, with a motion to quash having been filed not in the court of compliance, but in the Debtors' bankruptcy cases. As a result, the Debtors file this Response to clarify its position with the Court.

3. First, the Debtors clarify that they will not produce any information in response to the Subpoenas until the pending Motion and its companion motions are resolved, but have taken, and are continuing to take, reasonable steps to preserve potentially responsive information pending the Court's rulings.

4. Second, in the Debtors' view, the Motion before this Court in this case is filed in the wrong case and, therefore, procedurally improper. Under Rule 45, the Motion shall be filed in "the district where compliance is required." See Fed. R. Bankr. P. 9016 incorporating Fed. R. Civ. P. 45. While the Debtors agree that the district of compliance for the Subpoenas served on the Debtors is the Western District of North Carolina, the Debtors believe the Motion should proceed in the issuing Court (i.e., *In Re: DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C.)).

5. A separate objection and motion to strike these same Subpoenas was filed in DBMP's chapter 11 case by the Official Committee of Asbestos Claimants in the DBMP proceeding (*Official Committee of Asbestos Personal Injury Claimants of DBMP LLC's Objection to and Motion to Strike Subpoenas Issued by Debtor To Aldrich Pump LLC, Bestwall LLC, and Murray Boiler LLC* [Docket No. 2730], *In Re: DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C.)). As your honor presides over both the DBMP chapter 11 case and the Aldrich and Murray chapter 11 cases, the multiple motions to quash filed in the DBMP and Aldrich/Murray matters are being heard jointly at a single hearing.

6. The Debtors have not objected to the Subpoenas and do not intend to do so. Although the Debtors will leave it to the proponent and the objecting parties to litigate the propriety and substance of the Subpoenas, the Debtors would bring the Court's attention to the following:

a) The issues raised by these Subpoenas have already been litigated before both this court and the *Bestwall* court. In March 2022, Bestwall served almost identical subpoenas to those at issue here on both DBMP and Aldrich/Murray. In *Bestwall*, on May 18, 2022, Judge Beyer largely overruled the Bestwall Committee's objections to the subpoenas.[2] Likewise, in *Aldrich*, this Court largely overruled the DBMP and Aldrich Committee's objections to the subpoenas.[3]

b) The Debtors do not anticipate that the production of the information sought by these Subpoenas would pose an unreasonable burden.

c) The data that would be produced in response to these Subpoenas would be a subset of the data that has already been produced to the ACC, FCR, and their experts through the production of the Debtors' claims database. Pursuant to the language of the Subpoenas, the Debtors understand that the data produced in response to the Subpoenas would be subject to the same confidentiality protections as the production to the ACC, the FCR, and their experts.

7. Should this Court rule that the Subpoenas are valid, the Debtors, subject to any expenses of compliance being reimbursed by the appropriate party, will be prepared to comply with the Subpoenas within a reasonable time thereafter, and, as with other productions of database information in this case, pursuant to the same or similar confidentiality restrictions provided for under the *Agreed Protective Order Governing Confidential Information* [Docket No. 345] (the "Protective Order"), this Court's *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Docket No. 1240] or in any other manner the Court deems just and proper.

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2 See 5/18/22 Tr. in *In re Bestwall*, Case No. 17-31795-LTB (Bankr. W.D.N.C.).

3 See 5/26/22 Tr. of joint hearing in *In re DBMP LLC*, Case No. 20-30080-JCW and *In re: Aldrich Pump LLC, et al.*, Case No. 20-30608-JCW (Bankr. W.D.N.C.).

8. Further, should this (or some other) Court rule that the Subpoenas are valid, the Debtors will seek similar information relevant to their own estimation proceeding via subpoena from Bestwall and DBMP. To that end, with respect to such a subpoena, the Debtors believe the information is relevant to this estimation proceeding, is limited in scope, can be produced with minimal cost and effort, will be protected by the in-place confidentiality orders, and production of the information will allow the Debtors experts to increase the reliability of their ultimate forecast.

Dated: April 3, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
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227 West Trade Street, Suite 1200
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-and-

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Morgan R. Hirst (IL Bar No. 6275128)
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-and-

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cmmaisano@ewhlaw.com
(Admitted *pro hac vice*)

SPECIAL ASBESTOS LITIGATION
COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 17-31795-LTB
BESTWALL LLC,	:	Chapter 11
Debtor.	:	Charlotte, North Carolina Wednesday, May 18, 2022
	:	9:33 a.m.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

For the Debtor:	Robinson, Bradshaw & Hinson, P.A. BY: RICHARD C. WORF, ESQ. KEVIN CRANDALL, ESQ. GARLAND CASSADA, ESQ. HANA M. CRANDALL, ESQ. 101 N. Tryon Street, Suite 1900 Charlotte, NC 28246
	Robinson, Bradshaw & Hinson, P.A. BY: PREETHA S. RINI, ESQ. 1450 Raleigh Road, Suite 100 Chapel Hill, NC 27517
Audio Operator:	COURT PERSONNEL
Transcript prepared by:	JANICE RUSSELL TRANSCRIPTS 1418 Red Fox Circle Severance, CO 80550 (757) 422-9089 trussell31@tdsmail.com

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

APPEARANCES (via Teams continued):

For the Debtor:	Jones Day BY: GREGORY M. GORDON, ESQ. 2727 North Harwood St., Suite 500 Dallas, TX 75201-1515
	Jones Day BY: JEFFREY B. ELLMAN, ESQ. 1221 Peachtree St., N.E., #400 Atlanta, GA 30361
	Jones Day BY: JAMES M. JONES, ESQ. 250 Vesey Street New York, NY 10281-1047
For Future Claimants' Representative, Sander L. Esserman:	Young Conaway BY: EDWIN HARRON, ESQ. SHARON ZIEG, ESQ. ELISABETH S. BRADLEY, ESQ. ERIN EDWARDS, ESQ. 1000 North King Street Wilmington, DE 19801
	Alexander Ricks PLLC BY: FELTON PARRISH, ESQ. 1420 E. 7th Street, Suite Charlotte, NC 28204
For Various Law Firms:	Waldrep Wall BY: THOMAS W. WALDREP, JR., ESQ. 370 Knollwood Street, Suite 600 Winston-Salem, NC 27103
For Official Committee of Asbestos Claimants:	Robinson & Cole LLP BY: NATALIE RAMSEY, ESQ. DAVIS LEE WRIGHT, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801

ALSO PRESENT (via telephone):

	SANDER L. ESSERMAN Future Claimants' Representative 2323 Bryan Street, Suite 2200 Dallas, TX 75201-2689

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: All right. Good morning.

We are here in the Bestwall case, Case No. 17-31795. We've got a few matters on the calendar and admittedly, I'm having to remember how to do this by Teams. But I think, probably, rather than having everybody who is on the camera announce their appearance, what I'm going to ask you to do is to turn on your camera if you anticipate having a speaking role at today's hearing. Otherwise, if everybody would turn your camera off -- and I don't see too -- so that we can announce appearances.

So go ahead and turn your camera on if you anticipate having a speaking role and then I'm going to, I'll call your name and ask you to announce your appearance. I think that might be the best way to go about doing this. All right.

Mr. Waldrep, you were the first one in my screen. So I'll ask you to announce your appearance, please.

MR. WALDREP: Good morning, your Honor. Tom Waldrep on behalf of several claimants.

THE COURT: All right.

Mr. Wolf? It says Richard Wolf, but you are not Richard Wolf. Mr. Worf. Sorry. I just --

MR. WORF: That makes me sound a --

THE COURT: I looked --

MR. WORF: -- a lot more fierce than I am.

Richard Worf, your Honor, Robinson Bradshaw, for the debtor. I'm in the room with Hana Crandall and I believe Mr. Cassada, Preetha Rini, and Kevin Crandall are also on the phone.

THE COURT: Okay, very good.

MR. WORF: Thank you.

THE COURT: My apologies, Mr. Worf. I just read the name. I didn't even look at your face.

Ms. Zieg.

MS. ZIEG: Good morning, your Honor. Sharon Zieg of Young Conaway Stargatt & Taylor on behalf of the Future Claimants' Representative. It's interesting, your Honor. My team asked me how this was going to work this morning and I said, "It's been so long I can't even remember. You introduce yourself or I introduce you."

With that said, the members of Young Conaway that are on the phone today or participating via Teams are Ms. Edwards, Ms. Bradley, and Mr. Harron. North Carolina counsel, Felton Parrish, is on the line and Mr. Esserman is also on the line.

THE COURT: Okay, very good. Thank you.

MS. ZIEG: Thank you.

THE COURT: I think they're laughing at our expense, Mr. Worf.

Ms. Ramsey.

MS. RAMSEY: Good morning, your Honor. Natalie Ramsey on behalf of the Asbestos Claimants' Committee and also on the line is Mr. Wright from my office.

THE COURT: Okay, very good. Thank you.

And Mr. Gordon.

MS. RAMSEY: Thank you.

MR. GORDON: Good morning, your Honor. Greg Gordon, Jones Day, on behalf of the debtor. Also with me are Jeff Ellman and Jim Jones.

THE COURT: Okay, very good.

So in looking, folks, we've got a couple matters on the calendar and I'll start by noting that the hearing on the motion to reconsider the order and debtor's response -- that's the way it's listed on the calendar -- that that has been continued to June 23, 2022.

And so that leaves us with the continued hearing on the motion to strike for which the Court will give its ruling, but in looking at the Notice of Agenda, of course, we also have the status conference regarding the debtor's supplemental motion to enforce the PIQ order and as we tend to do, we, we typically start with that.

And so, Mr. Worf and Mr. Waldrep, is that what you all were anticipating?

MR. WALDREP: Yes, ma'am, I was.

MR. WORF: That is just fine with us, your Honor.

THE COURT: All right. So, Mr. Worf -- and we do have -- and if I call you Mr. Wolf, that is the name on the screen. So bear with me if I do that -- we will start with the status conference regarding the debtor's supplemental motion to enforce PIQ order with respect to non-compliant claimants.

MR. WORF: Thank you, your Honor. Richard Worf for the debtor, Robinson Bradshaw.

So your Honor entered the sanctions order on April 25th which set forth sanctions that were imposed on certain claimants who had failed to comply with one or more of Parts 8, 8A, 10 or Tables A, B, and C in the PIQ and had been found in contempt. The order provided that claimants would incur a daily fine beginning on the 14th day after entry of the order if they had not purged their contempt and that day was May 9th.

Since the sanctions order was entered, there has been additional compliance with your Honor's orders and I'll put up on the screen a, some slides that summarize the current state of compliance.

So as your Honor will recall, as of the April 6th hearing 493 claimants remained noncompliant with one or more of those parts and then there was no additional compliance between the April 6th hearing and the entry of the sanctions order on April 25th, but since the entry of the order on April 25th there has been additional compliance and, in the debtor's view, 111 of the 493 claimants, or about a quarter, have now fully

complied with those PIQ parts and, in the debtor's view, have purged their contempt. Eighty-four of those 111 claimants, in the debtor's view, fully complied before any fine was incurred beginning on May 9th, while 27 of those claimants fully complied after some amount of fine was incurred. And I'll get into the, the details of that in, in a moment. 382 claimants remain noncompliant with one or more of those PIQ parts, but even among those claimants 357 of those claimants have provided partial additional compliance since the Court entered the sanctions order on April 25th. And I'll get into more detail on that as well.

We have provided to the Court and the parties an exhibit that is modeled on the Exhibit A that your Honor has seen on previous occasions and this exhibit lists the 493 claimants who are subject to the sanctions order and lists their law firms and their names. We shared a version of this with counsel for the claimants last Friday and then shared a version of it yesterday when we shared it with the Court with claimants as well as the ACC and the FCR. The exhibit like previous versions of this exhibit indicates the parts that claimants still have not complied with in the columns listed Part 8, 8A, Table A, B, and C, and Part 10. Additional columns that we've now added are the Date Complied column and the Sanctions Owed column. The Date Complied column lists if a claimant is still noncompliant with one or more of those parts

or, alternatively, lists the date the claimant fully complied with those parts. And finally, the Sanctions Owed column calculates the, the sanctions that each claimant owes based on when the claimant complied with the Court's order.

One note about how we calculated the sanctions that are in the Sanctions Owed column. The order said that sanctions would start accruing on May 9th. The debtor adopted a claimant-friendly interpretation of that under which the sanction on a particular day is not accrued until the end of the day so that claimants whose materials were received and, and who became fully compliant on May 9th did not incur any fine, in the debtor's view, and claimants who complied on May 10th incurred a fine of a hundred dollars and so on and so forth.

We provided a slightly updated exhibit, version of this exhibit to the Court this morning. We heard yesterday afternoon that 49 of The Gori Law Firm claimants who are now fully compliant believed their responses had been received by the claims agent on May 9th rather than May 10th. Donlin had told us they were received on May 10th, but we went and checked on that and it turns out that Donlin's mailroom had received those responses on May 9th. They didn't make their way to the relevant personnel at Donlin until May 10th, but, long story short, we did agree with The Gori Law Firm on that and changed the date of compliance for them to May 9th which meant that

those 49 claimants did not incur any fine. And that change has, has been made in the exhibit.

The other change from the version we shared with the Court yesterday is that we learned later yesterday that five of the SWMW law firm claimants are no longer asserting pending claims. And so we've also provided that those claimants are compliant as of yesterday.

So where does this leave us? This is a version of a slide that the Court has seen before which summarizes where compliance stands by part and one of the interesting things is that because of the partial compliance that we've had over the last almost a month there are now relatively few claimants who are not compliant with Part 8 on aggregate settlement amounts and aggregate recoveries from trusts as well as Part 8A on lawsuit information. Notably, the Shrader law firm, which represents 330 of the 382 remaining non-compliant claimants, has now responded to Part 8 for almost all of the claimants they represent and that, that's a striking result because Part 8 has been the most hotly contested PIQ part since the original litigation over the PIQ.

So there are now, of the claimants who submitted PIQs indicating that they assert pending claims, there are now only 56 claimants out of the 1,955 who, who have not answered Part 8, which is 3 percent. The 1,955 has gone down some because additional claimants informed us that they do not have pending

mesothelioma claims.

But the problem is now with sections that historically have been much less controversial, including Tables A, B, and C on tort claims, trust claims, and claims against other entities as well as Part 10 requiring submission of trust claim forms. We do believe we're moving in the right direction and the Court's order is accomplishing what it is intended to do.

On this slide, I've broken it out by law firm and the Court can see the approaches to this still do vary by law firm. Some law firms' claimants have now fully complied or, or almost fully complied, including the Dean Omar firm, the Robins Cloud firm, and, with, with just a few exceptions, The Gori Law Firm. Other law firms have, have claimants who, who have partially complied in, in a uniform way, including the Shrader firm and the Provost Umphrey firm, and we understand that the Provost firm is in the process of fully complying and we, and we hope they will finish that as soon as they possibly can. Other firms' claimants have not provided any additional compliance and your Honor can see those on this list.

But the debtor thinks it, it make sense to continue to play this process out and we hope that by the time of the next omnibus hearing that all or most of these claimants will have fully complied. Only nine claimants appealed the Court's sanctions order to the district court and all but the same nine claimants have now dismissed their appeal of the contempt order

that led to the sanctions order.

So we hope that is a sign that there will be additional compliance and the debtor will, as we have been doing, will continue to diligently monitor additional submissions and determine whether claimants have fully complied with the Court's orders.

In the meantime, the debtor believes that it also makes sense before the next omnibus hearing for the parties to brief the question the Court left open in the sanctions order which is when, to whom, and at what intervals the daily fine will be paid. At the time your Honor entered the order the debtor urged the Court and the Court agreed that those matters should be deferred as the debtor observed at that time claimants had not incurred any sanctions and we hoped that no claimants would. But claimants now have incurred sanctions and the questions the Court deferred do need to be decided and we think it makes sense for the parties to submit simultaneous briefs on that before the next hearing. Also, perhaps the prospect that fines are going to have to start being paid on some regular basis would inspire further compliance and get us to the point where we have all or the vast majority of these claimants fully complying with the Court's orders.

So the debtor would request that the Court entertain that briefing and we think it makes sense to submit simultaneous briefs by June 16th, if your Honor is amenable to

that.

As part of those briefs, the parties could also brief another dispute that has arisen which is how to treat claimants who first told us that they do not have pending mesothelioma claims only after the fine under the Court's sanctions order started accruing? I believe so far this affects seven claimants, including the five claimants that we first heard this for yesterday. The debtor does believe those claimants incurred a fine. All of those claimants had previously told us they did have pending claims and they had checked the, the box so indicating in Part 1 of the PIQ. They could have told us at any time in the many months of litigation before sanctions were ordered that they did not have pending claims and why, but chose not to do so and apparently would not have done so without a fine and the debtor does not think that claimants should have the opportunity to essentially wait and see what the fines are and then unilaterally escape a fine by asserting they are no longer asserting a pending claim and we urge any claimants who are not asserting pending claims to let us know at the earliest opportunity so we can mark them as compliant with the PIQ order.

So unless your Honor has questions, that is the debtor's status update.

THE COURT: I don't. Thank you, Mr. Worf.

MR. WORF: Thank you, your Honor.

THE COURT: Thank you.

We'll hear from Mr. Waldrep.

MR. WALDREP: Thank you, your Honor.

So I'll start with the, the numbers. I don't think that the claimants are in any substantial disagreement about the numbers. There is some disagreement. We have, as before, your Honor, been going back and forth with looking at versions of Exhibit A and, and, and us questioning certain ones. They making changes.

So that process has gone on many times. I won't say it goes on daily, but almost daily quite a bit. There are even some that we challenged as to whether they really are in compliance or not and Bestwall's still looking at that.

So that's an ongoing process, but our numbers are not that different from the numbers. We would have said there are 362 non-compliant claimants which would mean that overall compliance is at 81.5 percent. Now Bestwall's number is a little higher than that, 382, which would be 80.5 percent, but that's not, you know, a 1 percent difference, that's not enough to, to really matter.

Now on the idea of the briefing, your Honor remembers at April, at the April 21st status hearing -- and there the terms of the status order were discussed -- I urged the Court on behalf of the claimants to provide in the sanctions order for further terms, such as to whom the fines were to be paid,

when they were to be paid, and we advocated for a position, a provision, rather, that any fine be set off against any claim against the future trust, that that was -- and so we, we took those positions on that day and Bestwall argued there was no need for any of that.

April 25th, the sanctions order was entered and then on May 3rd we appealed the sanctions order. We stated the issues on appeal and one of them was that the sanctions order was fatally flawed because it failed to provide the terms that we urged the Court to include. Now today, May 18th, Bestwall now realizes their error and advocates what we urged the Court to do and exactly the opposite of what they urged the Court to do on April 21st. Since then the -- since the appeal -- the appeal of the contempt order and the appeal of the sanctions order have been consolidated by the district court, as they should be, with no opposition by Bestwall and we -- and -- and we all understand it's all part of the same process.

So with regard to the position of Bestwall that we should now brief these issues, I want to raise what I think is a threshold issue and that is does the appeal divest the Court of jurisdiction to amend or add to the sanctions order? I think, I think that is a threshold issue that if the Court is inclined now to consider these additional terms, I think that threshold issue also needs to be briefed. Again, it was what we advocated on April 21st.

And the additional issue of, you know, claimants who said they were nonpending only after the fine, yeah, we can brief that as well if the Court wants to, to hear that.

So that's our response, your Honor.

THE COURT: All right. Thank you.

And let me ask you to respond to that last issue that was raised by Mr. Waldrep, Mr. Worf, with respect to did the, does the appeal divest the Court of jurisdiction to basically alter or amend the sanctions order at this point?

MR. WORF: Yes, your Honor.

As to the jurisdictional question, we do not believe it divests the Court of jurisdiction, although we're happy to brief that as part of the, the brief we contemplated. The debtor is, is going to be filing a motion to dismiss the appeals. Your Honor may recall we filed a motion to dismiss the previous contempt appeals with respect to the Illinois lawsuit matter and for many of the same reasons we believe that the sanctions and contempt order, the latest contempt and sanctions orders, are not final, including for the additional reason that the Court did not decide the issue of to whom the fine is paid and when and, and under what terms.

So we think that's another reason why there's not a final order and, and it's not appealable.

But putting that to the side, these issues because they were not addressed by the Court's prior orders, they are

not encompassed by the matters that the nine claimants have appealed. And, and I would emphasize that only nine claimants have appealed. So there are a great many, hundreds of claimants who, who have not appealed and, therefore, do not have a pending appeal before the district court which also affects the jurisdictional analysis.

But these are matters that, that were not encompassed by the Court's previous order and, you know, if this jurisdictional point were taken to, to, to its logical conclusion, it would prevent the Court from deciding when the fines stop, which the Court has the authority to do and, and would have the authority to do, and I'm sure the claimants would, would, would not want the Court to lack that authority while their appeal is pending because appeals can take quite a long time to be resolved.

So we don't think there is a jurisdictional issue. We're, we're happy to brief this as part of the briefs we contemplate.

And I also don't believe that Bestwall is admitting any error because our, our position is entirely consistent. We thought it made sense for the Court to defer this issue when no fines had been incurred and it was still two weeks before any fines would be incurred. We hoped that no fines would have to be incurred and, and these issues would not have to be decided. Unfortunately, they have been and so the issue now is ripe and

it does have to be decided. We think it is ripe and it should be decided and should be decided, hopefully, at the next omnibus hearing so the, the claimants and all the parties have clarity on, on this issue as, as they move forward.

Thank you, your Honor.

THE COURT: Uh-huh. Thank you.

Anything further, Mr. Waldrep?

MR. WALDREP: Your Honor, I don't think today is the, is the time or, or the, the procedure for, for deciding that particular issue. I just raised it as a threshold issue.

THE COURT: Okay.

MR. WALDREP: I'm not advocating one way or another at this time. I just think that it needs to be addressed.

And yes, there are -- there -- there will be arguments made as to the logical extension of various positions if, for instance, a court leaves out provisions and, therefore, makes the order not final, then it cannot be appealed. And so there are implications here.

So we need to, we need to think about that --

THE COURT: Okay.

MR. WALDREP: -- Judge. That's all I'm saying.

THE COURT: All right.

Let me take just a brief recess and then I'll come back, okay?

Oh, Ms. Ramsey.

MR. WALDREP: Yes, ma'am.

THE COURT: I'll hear from you before I take that brief recess. I'm sorry.

MS. RAMSEY: Thank you. I would appreciate it. Thank you, your Honor.

I really only have two brief points to make. The first is that based on even the statistic of the largest number of claimants that remain noncompliant to a degree -- I think Mr. Waldrep's calculation and mine is the same, which is 80.5 percent compliance, fully compliant -- again, we advocate that we've now reached the place of substantial compliance for purposes of estimation and that additional proceedings regarding sanctions and further compliance, we do not believe materially affect the estimation proceeding.

And the second is that to the extent that some of the alleged non-compliant folks are people who are now saying they don't have claims, understanding that, that it would have been preferable to know that earlier, those individuals don't have claims. And so it, it really is not affecting the estimation process at all. We don't represent them. They're not going to be considered as part of this case.

And so, again, we would propose that those individuals be eliminated from sort of this consideration, altogether, and that, that sanctions are not benefiting, are not achieving the, the dual goals that the Court had in mind. They're certainly,

it's certainly not motivating (garbled).

Thank you your Honor. That's all I had.

THE COURT: Thank you.

And let me ask before I take that brief recess. Does anybody else have anything to add?

(No response)

THE COURT: All right.

I'll be right back. Thank you.

(Recess from 10:00 a.m., to 10:05 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Having considered the update that Mr. Worf and Mr. Waldrep offered and considering the comments of Ms. Ramsey, we will continue this, obviously, for a further status on the -- at the hearing -- at the omnibus hearing on June 23rd.

And I agree with the suggestion of Mr. Worf that we brief the issue of when, to whom, the daily fine should be paid as well as how to treat those claimants who did not identify themselves as not having a pending claim until after the sanctions order was entered.

And I do think that it makes sense -- and both of you agree -- that we should also address the issue of whether or not the pending appeal divests the Court of jurisdiction to amend the order. And I would also like for you all to go ahead

and address the issue of substantial compliance and, you know, apprise the Court of, of where, where you all think we stand with respect to substantial compliance.

As Mr. Worf suggested, I think that it would make sense for you all to submit simultaneous briefs by the end of the business day on June 16th, which I believe is the week before that June 23rd hearing.

So unless there are further questions, we will just further continue the compliance hearing until June 23rd.

MR. WORF: Thank you, your Honor.

THE COURT: All right. And so I think with that -- and I'm trying to get my hands on the Notice of Agenda -- I believe where that leaves us is with the Court's ruling on the motion to strike and I suspect if I'm wrong about that, somebody will turn their camera on and tell me otherwise. It's easier to have you all in the courtroom than it is to do this by Teams.

So I look forward to having you back here in June.

So with respect to the objection to and motion to strike *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises or, in the alternative, to determine that the debtor has waived privilege to the case files of any matched claimant, having considered the pleadings and the arguments of counsel at the April 21st hearing I conclude that I should grant the motion in part and

deny the motion in part.

As you all know all too well, the motion to strike relates to the *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises seeking data on claims and exposure for approximately 30,000 resolved and pending mesothelioma claims against Bestwall. The fields of data that were sought in the *subpoena* included the law firm which represented the party against the debtor defendant, jurisdiction, status of the claim against the debtor from whom discovery is being sought, the date of resolution of the claim, the date of payment, when exposure began and ended, the manner of exposure, occupation and industry of the claimant when exposed, and the products to which the claimant was exposed.

Based on a review of the motion to strike itself, while I had some pause about Bestwall seeking aggregate discovery from another debtor, I was not inclined to grant the motion primarily for the reasons articulated by the debtor in its response. In short, the ACC did not identify valid reasons under either the discovery rules or pursuant to case law regarding why the discovery sought by the debtor should not proceed.

And to address just a few of those points, the *subpoenas* don't seek highly personal, sensitive, confidential, or privileged data. Most of the information sought pursuant to

the *subpoenas* could be found in complaints and other public court filings. Section 107 of the Code is not applicable because it relates to the kind of information that can be placed on the Court's public docket rather than the discoverability of information. The *subpoenas* don't raise a concern about identity theft because Bestwall already has the personal identifying information about the claimants and they don't seek any medical information. And finally, notice was sufficient and was not required to be served on the claimants.

However, the ACC largely switched gears in its argument at the hearing on the motion and I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with our estimation hearing date of October 2023. That was until I learned about the discovery the ACC served on four of the defense law firms a few weeks ago, but more importantly, the discovery the ACC served on the debtor the Friday before the hearing on the motion to strike which consisted of 31 discovery requests relating to 24,000 resolved mesothelioma claims, which is in addition to the discovery already served pertaining to the 2700 claim sample.

I can't in good conscience grant the motion to strike, given the magnitude of this recently served discovery, particularly having concluded that there isn't anything

otherwise problematic about the discovery sought by the debtor. I don't share the ACC's concerns about this discovery unleashing the floodgates for aggregate discovery on debtors in bankruptcy cases and that issue can be addressed on a case-by-by case basis.

I'm also hard-pressed to feel sympathetic towards the ACC in the face of the discovery that they just served on the debtor. Their major complaint was that it would precipitate discovery by them on those same debtors, but they didn't clearly articulate exactly what that discovery will need to be.

And in addition, the discovery the debtor seeks is consistent with the discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case. Three of the four debtors upon whom the discovery was served did not object to the discovery. DBMP did indicate at the hearing that it was willing to condition production on Bestwall's agreement to protect the responsive data pursuant to a protective order and I will direct that the data be produced subject to such a protective order.

And it appears that the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the

non-compliant claimants.

And we don't hold a crystal ball regarding what the Third Circuit may do on appeal, but my hope is that by getting this information it may accelerate the debtor's discovery, particularly in the event that the debtor does not succeed on appeal in the Third Circuit.

Nevertheless, Ms. Ramsey was right when she said it was time to start contracting the university of, the universe of discovery rather than expanding it and in that regard the debtor conceded at the hearing on the motion to strike that it was really focused on the 2700 claim sample, plus the 6,000 pending mesothelioma claims, and offered that that was the information the debtor really needs.

So in an effort to begin reining in discovery, that's what I will allow and I'll grant the motion to strike as to the balance of the approximately 21,300 claimants.

With respect to at-issue waiver, I'll deny that part of the motion. I can't conclude there's been at-issue waiver pursuant to the Rhône-Poulenc standard where the debtor is seeking discovery from third, from a third party that is not, that is non=privileged information. By seeking this discovery, the debtor has not asserted a claim or a defense and attempted to prove that claim or defense by disclosing an attorney-client communication.

So that is the Court's ruling with respect to the

motion to strike.

And, Mr. Worf, I would ask you to draw the order granting in part and denying in part the ACC's motion to strike.

MR. WORF: Thank you, your Honor. I'll do that.

THE COURT: All right. Thank you.

And in reviewing the transcript from the hearing on April 21st, there was a lot of talk about the, the mini 502(d) order and the large 502(d) order.

So, Mr. Gordon, I didn't know if you all were planning to provide the Court a status of those proposed 502(d) orders.

MR. GORDON: Your Honor, Greg Gordon on behalf of the, the debtor.

We continue to have conversations with the other side about those two orders. We've provided drafts, revised drafts of those orders to the other side. The other side has agreed to continue discussions with us on those issues and other issues related to the estimation and I'm hoping in the next week or two we're going to know exactly where we stand on those orders and some other issues and then we can provide a more definitive report to your Honor about where we are.

THE COURT: Okay. Thank you.

Anything to add to that, Ms. Ramsey, or anybody else?

MS. RAMSEY: No, your Honor. I think that's a, a fair summary of where we are.

THE COURT: Okay.

Ms. Zieg?

MS. RAMSEY: Thank you.

THE COURT: I saw you pop into my screen for about a minute there.

MS. ZIEG: I, I agree. I was going to say the same thing as Ms. Ramsey. That's a fair summary of where we are.

THE COURT: All right.

I think with that, then, folks, we've got some things to tackle on June 23rd or -- I didn't bring my calendar, but -- yeah, June 23rd.

Is there anything else that the Court needs to address today before we recess?

(No response)

THE COURT: All right. Well --

Mr. Gordon?

MR. GORDON: I was just going to say, your Honor -- I'm sorry -- not from the debtor's perspective, your Honor.

And we very much appreciate you allowing us to appear via Teams. We recognize that's not the best for you, but it worked out well for us and we appreciate it.

THE COURT: Sure. And I -- and the Court will be willing to entertain that, particularly if we're going to have, you know, a short hearing like this where I may be offering a ruling and, you know, we're otherwise just conducting a status

hearing. I'm not keen on arguments being offered by Teams, but I, I think for these kinds of issues it's appropriate for us to try to do it by Teams 'cause it saves you time and expense.

So we will consider that request going forward as well, all right?

MR. GORDON: Thank you, your Honor.

THE COURT: Thank you.

And with that, we will recess and let y'all enjoy the rest of your day.

Thank you.

MR. GORDON: Thank you.

MS. RAMSEY: Thank you, your Honor.

(Proceedings concluded at 10:17 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* May 18, 2022

Janice Russell, Transcriber Date

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	Chapter 11
Debtors,	:	Charlotte, North Carolina
	:	Thursday, May 26, 2022 9:30 a.m.
	:	

: :

DBMP LLC,	:	Case No. 20-30080-JCW
Debtor.	:	Chapter 11

: :

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

APPEARANCES:

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

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P R O C E E D I N G S

(Call to Order of the Court)

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

(Counsel greet the Court)

THE COURT: Okay. Even by our standards, it's a full house today.

We are here on joint hearings in both the Aldrich Pump, Murray Boiler, and the DBMP cases. We've got a Notice of Proposed Agenda.

I think it might make sense if we are going to start with, with the Aldrich, purely Aldrich cases, that we just take appearances in those, unless y'all have a strong feeling that the DBMP appearances shouldn't be deferred until we get to the second matter.

Anyone feel differently about that?

(No response)

THE COURT: Okay.

Well, let me just ask for your appearances if you are appearing in the Aldrich Pump/Murray Boiler cases, either now or in the consolidated hearing that, that will follow, so.

All right, Mr. Erens.

MR. ERENS: Thank you, your Honor. Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors. I've got a number of parties on behalf of the debtors. Sitting next to me is Morgan Hirst of Jones Day --

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

MR. ERENS: -- and then sitting next to him is Michael Evert from the Evert Weathersby firm. In the gallery, we also have Greg Mascitti on behalf of Trane, Jack Miller again on behalf of the debtors, Caitlin Cahow on behalf of the debtors --

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

MR. ERENS: -- Rick Rayburn on behalf of Trane -- excuse me -- on behalf of the debtors -- I apologize -- Rob Sands from the debtors and Sara Brown and Evan, Evan Hirtz, Evan Turtz -- excuse me -- from Trane.

I think I've got everybody, but I want to make sure I didn't miss any. And Stacy Cordes, since I'm also introducing Trane --

THE COURT: Okay.

MR. ERENS: -- on behalf of Trane.

Thank you.

THE COURT: How about on this side for the ACC?

MS. RAMSEY: Good morning, your Honor. Natalie Ramsey of Robinson & Cole on behalf of the ACC, along with my colleagues, Davis Lee Wright, Katherine Fix, Ryan Messina, and Rob Cox of Hamilton Stephens.

Thank you.

THE COURT: Okay.

FCR?

MR. GUY: Good morning, your Honor. Jonathan Guy on behalf of the FCR. Mr. Horkovich is on the phone, our insurance counsel, and my colleague, Debbie Felder.

Thank you, your Honor.

THE COURT: Very good.

Any other parties in the courtroom needing to announce?

Ms. Rusher.

MS. RUSHER: Yes, your Honor. Good morning. Ashley Rusher appearing on behalf of Paddock and I have with me today -- I'm appearing as local counsel and counsel for Paddock here is Amy Quartarolo. She's appearing from the Latham & Watkins firm in Los Angeles and she will be presenting to the Court today. She has been admitted *pro hac vice*.

THE COURT: All right, excellent.

Others? Good morning.

Anyone else needing to announce in the courtroom?

(No response)

THE COURT: Any other telephonic appearances in the Aldrich/Murray cases? Anyone on the phone that has not been announced previously?

(No response)

THE COURT: Okay. Looks like we're ready to go, then.

Are there any preliminaries, any status updates, remarks that counsel feels like need to be made before we get to the agenda?

MR. ERENS: Yes, your Honor. I think a couple items that, worthy of going through before we get to the substantive agenda.

Couple of case management order issues. So with respect to estimation, you may recall that the debtors and the ACC were working on a case management order for estimation. The original order entered by the Court provided that the parties would submit an agreed order or competing orders, potentially, within three weeks of entry. We weren't able to accomplish that. We gave the ACC another three weeks, to June 1st. We just got comments from the ACC, I think, for the first time yesterday. So we are going to need some more time.

What we would suggest at this point is that the parties either reach agreement or provide forms of competing orders by June 9th. We don't think we need a lot more time to get through the issues. If we're going to agree, we're going to agree. If we're not going to agree, we're not going to agree.

We appreciate the comments from the ACC. There are some things we need to go through, but there aren't so many items that we think we can't get this done, either to impasse or resolution, the next ten days.

And then June 9th has significance 'cause that's 21 days before the next omnibus hearing, which is June 30th. So that would give the normal 21-day notice, not that we necessarily need 21 days, but it was a logical date to say we'll, we'll file competing orders if we can't agree by then and then we'll have a hearing on the 30th and not try to set a special hearing on this.

So we appreciate the efforts of the ACC. We would like to get going on, on the remaining items for estimation.

Another case management order issue. With respect to the substantive consolidation proceeding, similar to the DBMP case, I guess a CMO was issued automatically out of the clerk's office.

THE COURT: Hmm. Okay.

MR. ERENS: So as in the DBMP case, we assume your Honor would prefer that the parties work on a CMO and that that be withdrawn. We want to just bring that to your Honor's attention.

THE COURT: We will do that.

Make a note to let the clerk know not to automatically set our standard orders in these two cases. We have to have some tailored, nuanced CMOs in the case, so.

All right. Go ahead.

MR. ERENS: Our assumption with respect to that -- we haven't talked to the ACC about this yet -- but our assumption

is we'll negotiate an order very similar to what was entered in the DBMP case covering subcon as well as other litigation. The two-year statute of limitation with respect to fraudulent transfer and the like hasn't quite run in our case yet.

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

MR. ERENS: It's June 17th or 18th. The case was filed June 18 --

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

MR. ERENS: -- 2020. So we assume we're going to see those complaints soon and then we'll have discussions with the ACC. The good news is, you know, there's a, there's a prototype now for this in DBMP and, and we see no reason that we shouldn't just follow the same path. But we haven't had those discussions yet.

THE COURT: All right. Anything else on the debtors' plate?

MR. ERENS: I think there is one other item I'm going to turn over to Mr. Hirst. There was an issue with respect to sealing and we, we still need to deal with that. I'll have, I'll have Mr. Hirst explain that.

MR. HIRST: Good morning, your Honor. Morgan Hirst for the debtors. Nice to see you in person for the first time, your Honor.

Yeah, this is a real short one. We had, when we filed the subcon answer in the subcon adversary, we had to seal a couple of minor items. That motion is still hanging out there. We just, given the amount of things, I think, today, we wanted to set that for the June 30th omnibus and take care of it then.

THE COURT: Was anyone opposed to that, to moving the, the two motions to seal over to June 30?

MS. RAMSEY: No, no objection, your Honor.

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

MR. HIRST: Okay. Thank you, your Honor.

THE COURT: All right.

MR. MILLER: Your, your Honor, one fine point on what Mr. Erens covered.

Previously with respect to the estimation CMO, we did a, a consent order --

THE COURT: Right.

MR. MILLER: -- resetting that deadline. We'll just do another one of those and submit it to your Honor, if it's okay.

THE COURT: I was going to circle around and see if the ACC or FCR wanted to comment about the, the proposal there.

MR. GUY: No comment, your Honor.

THE COURT: Everybody good?

MS. RAMSEY: We're in agreement, your Honor.

THE COURT: Send me another consent order, then.

MR. MILLER: Thank you, your Honor. Will do.

THE COURT: All right.

We were back to the -- did the ACC have anything else by way of status or case news or anything else we need to discuss?

MS. RAMSEY: No, your Honor.

THE COURT: FCR?

MR. GUY: Gladly no, your Honor.

THE COURT: We had the Paddock matter as well. I'm not sure if y'all've been here long enough to have any other issues other than the motion that's teed up today.

Any preliminaries from your perspective?

MS. QUARTAROLO: Nothing other than the motion, your Honor.

THE COURT: Okay. All right, then.

Okay. Are we ready, then, to go to the motion that appears? The first matter, the Clark matter appearing No. 1 on the proposed agenda filed at Docket 1184, I understand you want to carry that over to June 30th?

MR. ERENS: That's correct, your Honor.

THE COURT: Is, is anyone opposed to that?

(No response)

THE COURT: Okay, very good.

All right. And then as I understand the way the parties wish to approach the calendar, we wanted to hear No. 2,

the debtors' motion for an order authorizing them to issue subpoenas on the asbestos trusts and Paddock, and hear that, then take a break and then consider the consolidated case matters, right?

(No response)

THE COURT: Okay, very good. Well, I'm ready to go to that point if you are. Whenever --

MR. ERENS: We are, your Honor. If it's all right, I'd like to take the podium.

THE COURT: Please.

MR. ERENS: Thank you.

Again, Brad Erens on behalf of the debtors.

Your Honor, this is the debtors' motion for trust discovery. I'm not going to spend any time going through specifically what we're seeking in the motion because your Honor has seen the motion before and that's part of the point here --

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

MR. ERENS: -- your Honor. This is not the first time this motion has come before your Honor. It's not the first time this type of motion's come before this Court in this jurisdiction.

Your Honor, the order that the debtors are tendering to the Court and seeking approval on is essentially the same

order that your Honor entered in the DBMP case just three months ago in February. It's subject to the same anonymization, notice, confidentiality provisions. It's subject to the same access and use restrictions. It's essentially the identical order that your Honor has already entered. And again, it seeks no personally identifiable information from the producing parties, the trusts or Paddock. It does seek information from two additional sources -- and we'll get into that in a second -- Paddock and an additional trust facility, the Verus facility.

With respect to Paddock, last week Judge Beyer in the Bestwall case approved essentially, again, the exact same subpoena that the debtors are seeking approval for here with respect to the same type of information. Again, Paddock -- and I think you've heard this in this case before -- in the tort system acted very much like a trust. It was, it was rarely sued in the tort system. It acted much more like a trust. Judge Beyer did restrict the number of claimants that Bestwall can seek from Paddock. Originally, they asked for, I believe, somewhere between 20 and 30,000. Judge Beyer reduced that to approximately 8700. We did our math, your Honor, with respect to the number of claimants that we would be seeking from Paddock and we came up with approximately 8800.

Now the motion references 12,000 claimants, but Paddock, as you may recall, had an earlier cut-off date with

respect to exposure, 1958. So some of our claimants, we know, will not be relevant to Paddock. So we did the math and we came up with, roughly, 8800 claimants that we'd be seeking information from Paddock. Again, Judge Beyer approved 8700.

So somewhat by coincidence, but the point is that we're seeking, effectively, the same number as Bestwall is going to be seeking in the, in their case and was approved by Judge Beyer, again just last week.

The ACC indicates that the order we're, we're seeking is really not the same, but that's simply not the case, your Honor. In Footnote 5 of our reply we indicate the minor differences between the order that your Honor signed in February in DBMP and our order. Two minor differences, really procedural. We added a provision in Paragraph 9 that matching claimants would be given seven days' notice of the opportunity to seek to quash and we provided that, if they do seek to quash, they would do so in the same jurisdiction as the producing parties. No one has objected to those provisions. They're to organize the matter and provide some certainty with respect to timing.

So we don't view those as substantive, significant changes and again, no one's objected to those. That's it, your Honor. So this should not be controversial, in our view. Again, same order your Honor has already entered and again, consistent with precedent in this jurisdiction.

As a result of the fact that the substance of what the debtors are seeking is not different than what has been sought before, both the ACC and Paddock go to what effectively are procedural objections rather than, than what we would consider to be substantive objections. But, your Honor, again, the precedent in this jurisdiction has been to bring this type of motion to the bankruptcy court first. As we cite in Footnote 6 in our reply, in each of the prior cases the order approving trust discovery was entered after the order approving estimation. That was true in the Garlock case. That was true in the Bestwall case. That was true in the DBMP case. As we indicated in Garlock, the motion itself wasn't even filed, the motion for trust discovery, until the estimation order was entered. That has been the precedent and we are following the precedent in this jurisdiction. My guess is if we hadn't followed the precedent, we would have been criticized for that. That's good case management. It provides your Honor a view as to what the debtors are doing in terms of third-party discovery before they go off and do it.

And, your Honor, we actually have an example which is relevant today of what happens if the debtor doesn't seek, initially, bankruptcy court review of third-party discovery. In the Bestwall case, Bestwall issued a subpoena to Paddock as well as DBMP as well as Aldrich and Murray and as to DBMP and Aldrich and Murray, you'll be hearing about that --

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

MR. ERENS: -- after this part of the hearing.

What happened? The ACC in Bestwall filed a motion to strike in front of Judge Beyer in the bankruptcy court, the ACC in DBMP filed a motion to quash in that case, and the ACC in our case filed a motion to quash in our case. So in a situation where the debtor did not go first to the bankruptcy court it wound, the, the litigation wound up in the bankruptcy court, anyway, not in one case, but in three cases.

So, your Honor, this just shows why it is good case practice as well as precedent to come to this Court first.

In our particular case, there are some differences in the motion that your Honor can review. As I indicated, there's two additional sources that we're seeking information from, Paddock itself -- and again, if we had sought the subpoena directly from Paddock without coming here first, we know what would have happened because it already happened in the Bestwall case. The ACC in that case sought to come back here, anyway -- and then we're also seeking information from one additional trust facility, Verus, and giving the ACC an opportunity to argue before we go off and do that and give your Honor an ability to review our request for that because that, again, is somewhat different than what has happened in prior cases. The ACC describes that as a massive expansion of the discovery. We

dispute that and we'll get into that in a second.

So, your Honor, we think the ACC can hardly complain that we're coming here first, but they've done so, nonetheless.

But that's our main point, your Honor. Precedent and good practice means we should have this hearing first and then the debtors should go off and do what your Honor approves.

I do want to respond relatively quickly to the procedural points that the, both the ACC and the -- and -- excuse me -- both ACC and Paddock raises in their objections. It's all in our papers, your Honor. I'm sure you've read our papers. I don't want to go into great depth. It's their arguments and I think, in general, we would reserve most of our time for rebuttal on this point, on these points, but I do just want to highlight our main positions on the various main objections that have been raised by the parties before we turn it over to the ACC and Paddock. But again, we, we intend to mostly reserve time for rebuttal on these points.

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

MR. ERENS: First of all, there's been an argument that the debtors have not specified the legal bases for the relief they're seeking. Your Honor, again, this is not the first time this type of motion's been in front of your Honor. There are several legal bases for your Honor to approve the motion.

First is Section 105 of the Bankruptcy Code. Your Honor has the ability to manage its own docket, to manage discovery and the like, and your Honor even made this point in connection with the PIQ in the DBMP hearing. We quoted this in the reply where there were various arguments being raised about 2004 and Rule 26 and your Honor said:

"Well, those are all fine, but you know what? I don't think the issue is limited to that under Section 105 and general authority to regulate my case. I have the ability to entertain" -- in that case it was the PIQ motion -- "and to approve the discovery."

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

MR. ERENS: So 105 is applicable.

Rule 2004 itself is also applicable. Again, in each of the cases, as I mentioned before, Garlock, Bestwall, and DBMP, the order approving this trust discovery was entered after the order for estimation. So there you had a 2004 issue, potentially. In, in Bestwall and DBMP, the trust discovery was explicitly approved under 2004. And the ACC has raised the pending proceeding rule. But again, as we've talked about, I think, in several hearings, both in this case and others, the pending proceeding rule is discretionary, especially in contested matters, as set forth in Rule 9014. We're not in an adversary here and it has been waived or not followed several

times in the course of these mass tort cases in this jurisdiction.

And finally, your Honor, there's Rule 26. For all the reasons set forth in the motion and the reply, the discovery that the debtors are seeking, there's good cause. It's proportional. The burden is, is, is, is relatively minimal, in our view, and we'll get into that in a second.

So the, the discovery can also be approved under Rule 26 for the same reasons that it's been approved in the prior cases.

So those are the main points on the procedural issues. Again, in rebuttal, we'll get more into this, as necessary. And if it's all right with your Honor, since Mr. Hirst is really more versed in the ins and outs of the procedural rules under the Federal Rules and 2004, I would ask him to do the rebuttal for this particular point.

THE COURT: Any objection to spitting? Okay.

MS. RAMSEY: No objection, your Honor.

THE COURT: Okay. Go ahead.

MR. ERENS: Thank you.

The next main point that's been raised by the ACC is that the debtors need to provide not only evidence, but admissible evidence to obtain discovery here. Your Honor, in the reply we provide a variety of law that that's simply not the case. It's, it's not the case that you have to provide

admissible evidence just to get discovery in a, in a proceeding. And, your Honor, there's no mystery why we're seeking discovery here. We're seeking it for the same reasons that it was sought in Garlock, for the same reasons it was sought in Bestwall, and for the same reasons it was sought in DBMP, in connection with estimation as well as plan formulation and, and I'd say TDPs. In this case we're proposing CRPs, but the procedures that govern a trust.

So it's not like there's a mystery as to why we're seeking the information. We're seeking it for the same reasons sought in the prior cases and the same reasons it was approved in the prior cases.

The next main point that's been raised, mostly by Paddock, is burden. Paddock is arguing that the discovery we're seeking is highly burdensome. Well, a couple of things. As to Paddock itself, again Paddock is subject to a subpoena now that's been approved by Judge Beyer as is, or as Aldrich and Murray are. So it's the same subpoena was served on Paddock, was served on Aldrich and Murray.

So we had to, ourselves, review what we would need to do to prepare and produce the information that Bestwall is seeking from us, same information they're seeking from Paddock. We did our review. Our conclusion was the amount of time and the amount of costs is fairly minimal. Again, all of these entities, whether it's a debtor in the case of Paddock, or in

the case of DBMP or Aldrich and Murray or a trust, have all this information in electronic form which requires electronic searches. It can be done cheaply. It can be done with relatively low cost and again, under the proposed order. The debtors are willing to pay the, the reasonable costs of all that activity. In fact, in the case of Paddock we're willing to do the work ourselves. If they provide us the names that, that would need to be searched through, we can tell them which of those names we're looking for. We're willing to do the work ourselves. If they want to do it, that's fine, but we can take the laboring oar off them.

In the Garlock case, as we indicated, there is precedent. There was two productions by the trusts in both cases, one with respect to mesothelioma, one with respect to non-mesothelioma claims. In both cases, once the trust discovery was actually fully approved, the trusts were able to produce the information fairly easily through electronic searches of their database.

So, your Honor, burden is not an issue here. The costs are being paid. The information is readily available. And again, as you've seen in the motion, we're seeking limited information, non-personally identifiable information, and a few data fields with respect to the claimants.

Paddock has also raised an additional burden-type argument, that they're in the middle of confirmation and this

is a terrible time for them to be doing this. Well, couple of points, your Honor. First of all, Paddock's already had its confirmation hearing at the bankruptcy court. That occurred on May 16th. As we understand, it was a rough, it was a relatively uncontested three-hour hearing. It went smoothly. They have, you know, full votes in favor of their plan and the only thing they have left is to go to the district court to get affirmation. I mean, the confirmation order hasn't been entered, but the hearing is over. We haven't issued the subpoena yet, your Honor. It's not like we're asking for the information tomorrow. My guess is by the time we get through this they should be pretty much done with their case.

So it's not a, it's not a legitimate argument for Paddock to argue that they just can't deal with this right now because they're on the eve of confirmation.

The next main issue that's been raised in the papers is Verus. Now here's a substantive issue, your Honor. As I indicated before, most of the issues that are being raised are procedural, but this is substantive. And again, we don't understand why the ACC is arguing procedurally when we're giving them the opportunity to argue whether the debtors should be able to get information from the Verus facility.

So the Verus facility is an additional trust facility that operates and manages 20 trusts. We're not seeking all 20 trusts. We're seeking, first of all, the Garlock trust.

That's the main, sort of initial reason to seek Verus. As your Honor has heard in this case, there's substantial overlap of issues claiming products and the like between this case and the Garlock case. These are both gasket cases.

So the Garlock trust itself, of course, is one of the most highly relevant trusts with respect to this case.

Once we're sort of into the Verus case, we looked at some other facilities -- or excuse me -- we looked at some other trusts within the Verus facility and we noticed 7 of the other 19 trusts have significant assets. The debtors had products in industrial settings and it's highly likely there's significant overlap in claiming, which would mean the claimants who claimed against Aldrich and Murray in the tort system and the claimants who may have claimed against those additional companies in the trot system.

So we didn't ask for all 20 trusts. We tailored it to the seven additional trusts, in addition to Garlock. So we're seeking eight additional trusts, again only one trust facility. There are numerous trust facilities throughout the United States. We're not seeking a massive expansion of, of trust discovery in this case. We're seeking one additional facility and less than half the trusts within that facility and we've tailored it for the reasons I just indicated because these are larger trusts where there's likely overlap.

With respect to sort of aggregate data, as I think we

indicated in our motion and maybe again in our reply, there are maybe 70 plus trusts out there right now with respect to former asbestos claims. We're seeking at this point 19 of those trusts. So we're still in the 20 percent. All of the trusts are relevant, your Honor. If there's overlap in claiming, all of the trusts are relevant. We're trying to come up with a, sort of a, a dividing point that makes some sense. We're seeking only the larger trusts where it's more likely that there's overlap and we're not seeking a hundred percent of the trusts. We're in the 20 percent range, so to speak. So we're still not seeking a lot of information that is relevant out there. We're trying to be proportionate.

So in our view, getting information from the Verus trusts is hardly a massive expansion of discovery. It's one additional facility and less than half of the trusts within that facility.

Next item that's been raised is confidentiality. Your Honor, I have to admit. I'm a little bit confused by this one. As I indicated, we're not seeking personally identifiable information. Same as in DBMP. Again, the order that we're tendering is subject to the same confidentiality restrictions as your Honor approved in DBMP. Issues have been raised about data hacking. There's a -- there's -- there's an argument made, "Well, if we have all this information together, then there's the risk that if there's a data hack it'll all get

out." Well, you know, the information is already collected in various places throughout the world. As an example, all of the trust claims for a particular claimant are sitting with the law firm for that claimant, not just the ones we're seeking, but all of them across any of the 70 trusts I just mentioned. So it's collected in one place. There's no reason to believe that the Bates White security procedures are worse than the law firms who are holding those claims.

So we think the data-hacking arguments are simply a red herring.

Also, Paddock has raised the issue that they have settlements. Well, your Honor, we cited case law in our reply. Settlements, settlement agreements themselves are not immune to discovery, but we're not seeking the settlement agreements, your Honor. We're just seeking the fact of settlement. We're not seeking the amount. We're not seeking the terms of the settlement. We're just seeking the fact.

So the issues raised by Paddock with respect to confidentiality, again, we think, are just not, just not viable.

Couple of other issues raised by Paddock and then I'll turn it over to the ACC. Paddock has raised because they're in bankruptcy the automatic stay prevents us from obtaining the discovery we seek. Again, your Honor, we cited numerous cases within our, in our reply that that's simply not the law.

Debtors in possession are not immune from third-party discovery. They're certainly immune from discovery with respect to someone trying to collect a claim against the debtor. That, that's the type of cases they cite, but this is not to collect a claim against Paddock. This is to get third-party discovery. As we cited in our case law, numerous courts have said that as long as the litigation is unrelated to trying to collect a claim against the debtor, the debtor is not immune to third-party discovery. Otherwise, no debtor could ever be subject to such discovery.

In a similar vein, Paddock has argued that the debtors cannot obtain the information under the so-called Barton doctrine. The Barton case is a case from 1881, I believe, that says, "Receivers cannot be sued for acts taken in their," "in their official capacity during a receivership." Well, that makes some sense, your Honor, but that's hardly what we're doing. We're not suing Paddock. We're not suing Paddock for actions they've taken during their bankruptcy. We're just seeking third-party discovery. And I don't think Paddock is seriously pushing this argument, your Honor, they stuck in a footnote

But if, if the Barton doctrine really applied, the automatic stay might as well apply. I mean, there's no reason to apply the Barton doctrine because the logic of the position is you have to go back to the bankruptcy court anytime you

wanted third-party discovery. Well, you might as well, then, take the position the automatic stay applies 'cause you're going to have to be back in the bankruptcy court, anyway.

So the Barton doctrine, your Honor, also does not apply.

So unfortunately, your Honor, I'll leave it at that for now. We're relitigating, in our view, something your Honor has already decided, for the most part, in the DBMP proceeding. The order, again, is essentially identical. We're just seeking Paddock as an addition, again a subpoena that Judge Beyer just approved last week in the Bestwall case, and we're seeking Verus for the reasons I mentioned prior and is in our motion and reply. And again, the number of claimants we're seeking from Paddock is effectively the same as the number of claimants that Judge Beyer just approved in Bestwall.

So I've gone through the points quickly. Again, we'll, we'll reserve the rest of our time for rebuttal. Unless your Honor has any questions, I will sit down and turn it over to the ACC and Paddock.

THE COURT: Not at the moment. Thank you.

MR. ERENS: All right. Thank you very much.

THE COURT: All right.

Ms. Ramsey.

MS. RAMSEY: Good morning, your Honor.

May I also --

THE COURT: Certainly.

MR. WRIGHT: May I approach?

THE COURT: You may.

MS. RAMSEY: Your Honor, we do have slides, if --

THE COURT: Okay.

MS. RAMSEY: -- my colleague may approach.

Thank you.

(Slide presentation handed to the Court)

THE COURT: Well, as a native North Carolinian I'm all for the North Carolina practice. As I get older, I see the merit of speaking from a lectern. You can actually read the materials.

MS. RAMSEY: Exactly, your Honor.

THE COURT: All right. Whenever you're ready.

MS. RAMSEY: Thank you. Appreciate it.

Your Honor, Natalie Ramsey for the record, Robinson & Cole.

With respect to an overview, your Honor, the debtors' argument breaks down, largely, into, "Why are we even here. The Court's heard this before. We should just do what has been done in the other cases," and we certainly understand that the Court has heard this argument before, fairly recently even, in the DBMP case, and that Judge Beyer has obviously authorized trust discovery in Bestwall and it was authorized in the Garlock case, but this case is quite different.

So I, I just wanted to hit a few of the overarching themes quickly.

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

MS. RAMSEY: The first is our objection's not purely procedural. We object to trust discovery in this case under the unique facts of this case. This case is very different in its posture. The Court had entered an estimation order before the trust discovery motion was sought and that just is, is an important distinction from what happened in the Bestwall and DBMP cases where the discovery was sought and then an estimation order was entered.

The second really key difference of this case is that, here, we have the debtor and the FCR having reached a settlement which values the future claims liability and that settlement is embodied in a plan that has been filed in this case. And so to some extent this is very different than the circumstance that you have in the DBMP or Bestwall cases where those debtors are saying, "We're, we're uncertain of this liability and we, the debtor, and the other parties need to project that." Here, the debtor has valued that liability.

There's also, I think, a couple of points I just wanted to respond to at the beginning and then I'll take some of the arguments in sequence. The first is this issue of we really need to come here first. We, we couldn't just serve the

discovery under Rule 26 because if we had done that, goodness knows, everybody would have come in to this case and raised an argument that we should have approached the Court first.

In the Bestwall case there was no argument in connection with the motion to strike, that the debtor had proceeded improperly from a procedural perspective. There was -- the -- the arguments were different than that. They, they went to the underlying merits of whether those subpoenas should be, should be stricken, but there was no suggestion at all that the debtor couldn't do that. And frankly, who knows whether had the debtor proceeded that way here we would be in front of this Court at all.

The second thing that I wanted to correct sort of was with respect to what just happened with regard to the ruling that Judge Beyer issued on the motion to strike. What Judge Beyer did in terms of narrowing was she narrowed the field of settled claims to 2700 and then there was an additional 6,000 pending claims that were authorized and that got you to the 8700. But when we're comparing respective volume of claims as to which discovery is sought, it's the 2700 figure that compares to what the debtor is seeking here.

And with those, with those sort of overarching comments, your Honor, I think I'd like to start by just hitting, really, three points. And I am going to try to rely principally on our objections to the extent of arguments that

the Court has heard before that are, are the same arguments that we've raised in other cases.

The first argument is that the trust discovery motion is procedurally deficient and that will, gets us into the Rule 26 versus 2004 issue; the second is whatever the standard is, the debtors have failed to satisfy the standard; and the third is that the requested relief is overbroad.

With respect to the first argument that the trust discovery motion is procedurally deficient --

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

MS. RAMSEY: -- the Federal Bankruptcy Rule 9013 requires that a motion state with particularity the grounds for relief. Here, we have absolutely no support in the record for what the debtor is seeking unlike what you had in DBMP, Bestwall, and Garlock. In each of those cases the expert for the debtors put in a declaration explaining, or at least arguing that, that the expert needed the information in order to conduct the type of estimation that the expert had been asked to provide. Here, there is no declaration and the debtor says in its reply, "Well," you know, "we don't need, really, to have evidence of why we need this discovery. The Court should just sort of by implication rely on the fact that in the other cases it's been approved and we're advocating the same sort of theory." But with respect to the cases that the debtor has

cited in its reply, they're inapposite and clearly distinguishable.

First of all, in the Metiom case the court held that, that declarations were not necessary there because the party had included underlying e-mails that were evidence of why it allegedly needed that discovery and that there were representations regarding witness statements. The combination of those two things the court found to be sufficient.

In the Hammond case, there, the district court overturned the bankruptcy's imposition of a, what it called a novel extraordinary circumstances standard for examination of the debtor. That is not our argument at all. We're not arguing for a higher standard. What we're arguing is that there has to be some evidentiary basis for why discovery should proceed. And in that case, also, they noted that the party could establish cause based on information that was readily available from other sources. But here, our contention is those sources can't be evidence that was unique to other pending cases. It's just, proves too much.

The other cases cited similarly are distinguishable. In UN4 Productions there was a motion to quash that alleged that the subpoena failed to establish the underlying merits. Again, what we're arguing here is that the burden of proof is to present some good cause or, or, or relevance of the discovery and, and we are not looking at this point to get to

the underlying merits of that discovery.

And in Federal Election Commission v. Christian Coalition the court's ruling was that disputes arising from a motion to compel were based on privileges, not on a lack of, of evidentiary support as we have here.

With respect to the standards, our contention is, again, that the support that the debtor relies on here is (a) evidence from other cases which we, we say does not support it, its informational brief, which is really an advocacy piece and not evidence, and two declarations that the debtor cites to, the declaration -- and I always mispronounce Mr. Pittard, Pittard --

THE COURT: Pittard.

MR. ERENS: Pittard.

THE COURT: Pittard.

MS. RAMSEY: Okay. I'm sorry. One --

THE COURT: Pittard.

MS. RAMSEY: Pittard -- Mr. Pittard's name, your Honor -- but his first day declaration and the declaration of Mr. Tananbaum in connection with support for the debtors' preliminary injunction. And if you review those two declarations, there are no references, zero, to estimation, to trust discovery, to the Garlock decision, rather surprisingly, or to any instance of alleged evidence suppression.

So those declarations don't do anything in terms of

the present motion.

When we also look about, to the, the debtors' support the debtors admit that their predecessors routinely settled cases "regardless of underlying merit." In the face of that admission seeking now to go back and try to relitigate, which is what the debtors are really suggesting that they should be able to do, their entire history in the face of an admission that that was not something that was considered in the tort system simply is distinguishable, again. Because what you've heard in the other cases, or in DBMP what you've heard is, well, it was a combination of cost and, and evidence suppression. Here, what you have is an admission that, that they really were not looking at merit.

So this idea that we should be able to go back, the debtors should be able to go back and conduct discovery on 12,000 settled claims is just inconsistent with the theories of this case.

So moving to the second argument, the debtors failed to meet the standards of both 2004 and Rule 26, whichever of those procedural rules it is seeking this discovery under. With respect to the other cases -- and I mention this first, your Honor -- the timeline was that in each of those cases there was a Rule 2000 [sic] trust discovery motion filed before the estimation order was entered. In this case, the estimation motion was filed, the estimation was entered, and then several

months later the debtors sought trust discovery.

Moving then to the Federal Rules, the Federal Rules are the default in the case of a pending contested matter and our contention is, as the debtor said, that the debtors should just serve these subpoenas. And why do we say that? Why do we care whether they do it under Rule 2004 or under Rule 26 given that in either instance the debtor has admitted or suggested that its intention is to, is to serve subpoenas? We care because we believe that the debtor has come to this Court with this motion to get a leg up when and if there is an effort to quash the subpoenas so that they have this Court's order to point to to say, "See, our Court has found that this is relevant and, therefore, in, in connection with the motions to quash we should have this discovery." We contend that they can point to the estimation order, which the Court has entered, without the Court further blessing this particular discovery.

With respect to the -- again, the differences here, we think, are very significant with respect to both the filing of a plan in this case that has an embodied agreement with one of the parties in the case and also with respect to the fact that we have a pending estimation order and that, therefore, just as Judge Beyer decided with respect to a recent decision in Bestwall where the debtor came back to her in that case and said that it was asking for permission to file a new subpoena on the trusts, which the debtor alleged there complied with the

district court in Delaware's order for sampling and anonymization, and in that instance Judge Beyer ruled that she was not prepared to bless that subpoena, that, in fact, they should just go and serve it on the Delaware courts. We contend that that is what this Court ought to do in this circumstance.

Moving then to Point 3, the requested relief is overbroad. Under Rule 2004, a movant is required to demonstrate good cause and that requires a reasonable basis to examine the materials sought to discover. I want to reiterate again the complete lack of evidence here. And then if good cause is shown, then the Court has to balance the competing interests of the parties weighing the relevance and necessity of the information with the burden. Here, the only party that has, has appeared before this Court in response who is a recipient, the Paddock debtor, has argued burden. The Court has heard the burden arguments before, but these arguments are not insignificant. And with respect to burden, to move it to the Committee's interests, part of what the Committee will need to do as well as the FCR, if this discovery takes place, is also to spend the time to go through each of those files to pull the information to be in a position to respond to or address any allegations that the debtor is going to make based on that information.

With respect to Rule 2004 examinations, they're also supposed to not be used to annoy, embarrass, or oppress the

party being examined. Here, our contention is that the examination is being conducted to embarrass and oppress the Claimant Representatives and the attorneys for those Claimant Representatives and that that's an improper purpose for this discovery.

Moving then to Rule 26. Your Honor, again, the debtors do not need this Court's authority. As I mentioned in response to a similar motion before Judge Beyer, the court said that it was not prepared to enter a order under 2004, but that the party should, the debtor should exercise its discovery rights under Rule 26.

And then with respect to the unduly burdensome nature, again what we have here is a settlement. And so the question is what possible justification can the debtor, who has agreed to this settlement, have in attempting to obtain this information? And what I heard a little bit was -- and, and saw this in the response -- is that the debtor has to be in a position to respond to potential theories that the Committee may argue here, but the Committee hasn't argued anything yet here unlike in the Bestwall case, for example, where the Committee had filed a motion seeking a determination that the court ought to make a decision about the methodology that would be used in estimation at the early stages. There, the court denied that motion without prejudice.

With respect to the DBMP case, the Court will recall

that there was a motion by the Committee to take the estimation in sequence and to conduct a settlement methodology estimation first and then if that did not result in assisting the parties, to then open up estimation to other theories that the debtor might want to proceed with. There is no record of any of that in this case.

So there is no basis for the debtor to obtain the discovery based on the assumption of the theory that the Committee might use in estimating claims.

With respect to the disproportionate nature of the discovery in this case, the debtor has said, "Well, it's only 20 percent. It's 19 trusts, plus it's Paddock." The Court's going to hear the motion to quash later this afternoon, but if that discovery is allowed it will also then include Bestwall. It will include DBMP, at a minimum.

So when you look at the volume of information where, again what this is moving closer to is an absolute relitigation of every single case that the debtor has ever settled in its entire history and that point is also important. The debtor has made no proposal of sampling, none at all. The debtor has made the same proposal with respect to anonymization that was made in DBMP. We, as the Court may guess, like the Committee in DBMP, contest that the debtors' anonymization protocol satisfies what the district court in Delaware had ordered, but the debtor has proposed some anonymization, but absolutely no

sampling.

And with respect to the justification that's now been made with respect to, "Well, the Verus trusts are," you know, "have some very large trusts and, therefore, there may be overlap," that argument, then, would suggest maybe that the Delaware Claims Facility trusts shouldn't be part of this or there should be some control over the volume of the discovery over the breadth of what we are talking about and we are going to be presenting to the Court in connection with estimation.

The debtor is looking to compile personal and private information for 12,000 people from 20 different sources into one single location and that is the concern with confidentiality. It's aggregation of the data and you heard the debtor argue, "Well, data breaches, the, the information's already there. It's already subject. There's no reason to believe that, that, that Bates White is any more subject to a data breach than Verus." But what, what the debtor is now doing is compiling all of that information, if their motion is permitted, into one place.

And we know that data breaches happen. We know cyber attacks happen. It's in the news all the time and it's happened to major entities. It's happened to the Federal Government. It's happened to Equifax. It happened to eBay, Capital One, Dropbox, Facebook. Those data breaches are significant and the Court will recall it was a major concern of

the Committee early in the case in connection with the approval of Bates White when Bates White sought to cap its potential liability in that circumstance.

We are very concerned about the aggregation, No. 1, because of data breach and, No. 2, because, as the Court knows and has heard this theme many times, there is a concern about the potential that the information could be subject to a motion seeking to disclose it, similar to the motion that was filed by Legal Newsline in the Garlock case and that aggregated information increases the risk to a vulnerable population with every single additional piece of information that is compiled and consolidated.

So with respect to our arguments, to summarize, your Honor, the motion does not state grounds for the requested relief. The motion does not provide evidence in support of its motion. It does not argue that the Court's approval is necessary to issue a subpoena. In fact, the subpoenas ought to be just served by the debtor.

With respect to good cause, there is none because, again, there is a lack of evidence and relying on what has happened in other cases for an evidentiary basis in this case, we contend, is improper.

And with respect to limiting the scope of and proportionality that the, the debtor has not proved either proportionality or that the discovery is not unduly burdensome.

Thank you, your Honor.

THE COURT: Thank you.

All right. Ready to hear from Paddock. Whenever you're ready.

MS. QUARTAROLO: Good morning, your Honor. Amy Quartarolo of Latham & Watkins on behalf of Paddock Enterprises, debtor in separate proceeding pending in Delaware. I will endeavor not to reiterate or go over ground that Ms. Ramsey's already tread, but I would like to briefly address a few points that relate to Paddock more specifically.

First, I think it bears reiterating Paddock is differently situated. Paddock is not a trust.

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

MS. QUARTAROLO: Paddock is an Ohio-based entity and it is a debtor, again in its own pending chapter 11 case in Delaware. The Aldrich debtors' representation in their reply, which they had supplemented this morning, regarding the state of Paddock's case was not correct in the reply. Paddock does not have a confirmed plan at this time. Yes, we had our confirmation hearing last week. It was for that reason that we originally reached out upon the filing of the motion and asked the Aldrich debtors to please defer the hearing as to Paddock so that we could focus on our confirmation proceedings. They declined to do so and, and without any apparent urgency with

regard to the estimation proceedings in this case.

As your Honor knows, even once we receive a confirmation order in our case we, we will be focused on getting that affirmed by the district court and then on taking our own plan effective. Respectfully, I think it would be setting dangerous precedent to suggest that a debtor in one case should be permitted to serve discovery, which we contend is quite burdensome -- and I'll get to that in a minute -- on a completely independent debtor in the middle of that debtor's confirmation proceedings. It is for this reason that we asked the debtor to, to delay and separate Paddock from the rest of its motion and again, it declined to do so.

We heard just this morning that there's not even a schedule that's been agreed upon for the estimation proceeding. So it's unclear why this information is needed from Paddock and needed now. If there is an argument that Paddock has been operating by, as a trust, we hope that in a number of months we will be a trust and that there will be a trust that is operating under 5, Section 524(g) of the Bankruptcy Code to, to address the claims that were asserted against Paddock and, and that if, if it will be a trust in a matter of months and if there's no schedule in the estimation matter in this case, we see no reason why they couldn't be deferred and if there is to be a subpoena that is issued, that that subpoena should be issued to the trust once the trust is established.

We also don't think it's fair to say that Judge Beyer actually approved the subpoena that was issued in, in the other matter. That's, it's, it's really not the case. Paddock was not a party to that proceeding and did not appear. We obviously have read the transcript. But in that case, there was a subpoena that was issued, as is appropriate under the procedure. Paddock objected to the subpoena and we will work with, with counsel in that matter to, to address those issues and if they need to be brought to a court, they will be brought to the court that's required under the Rules and that's, you know, under Rule 45. As the Aldrich debtors concede in their reply, that's the court of compliance.

THE COURT: Was Paddock served in, with Judge Beyer's motion?

MS. QUARTAROLO: No.

THE COURT: You were left out of this and, and you're saying now that you're going back to Judge Silverstein afterwards, right?

MS. QUARTAROLO: Well, put it this way. After there was a hearing last week in the other matter, we did not receive outreach in regard to a subpoena that we had objected to.

So that, it just remains to unfold and we'll figure out --

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

MS. QUARTAROLO: -- if it needs to go before Judge Silverstein or it can be deferred --

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

MS. QUARTAROLO: -- or it needs to go to the Northern District of Ohio. But there's -- it -- it certainly, and our position respectfully, is not this Court.

THE COURT: Right.

And the request for a continuance as to Paddock, are you renewing that at this point?

MS. QUARTAROLO: Yes.

THE COURT: Okay, very good.

MS. QUARTAROLO: We would, we would request that, as we requested from the debtor directly, from the Aldrich debtor directly, that this Court defer any ruling with respect to the appropriateness of a subpoena related to Paddock's claims until a trust is established.

THE COURT And we don't really have a feel for when that would be.

Is there any opposition at this point to confirmation by either the U. S. Trustee or anyone else?

MS. QUARTAROLO: We did have an objection from the U. S. Trustee. We are hopeful that that has been resolved in terms of what happened at the confirmation hearing last week --

THE COURT: Uh-huh (indicating an affirmative

response).

MS. QUARTAROLO: -- and that, again, we are hopeful that we are able to get our plan affirmed by the district court in short order and then to go effective shortly thereafter. And so that's why what we had requested and this, given that we are now ten days post our confirmation hearing and don't yet have a confirmation order entered, it might be slight, slightly optimistic to think that the end of June would be, you know, when, when there, we'll be up and running and, and going effective. But we're certainly, you know, hoping to move as quickly in that direction as possible.

THE COURT: The district court's being asked to, to approve the 524 injunction or --

MS. QUARTAROLO: Correct.

THE COURT: -- or are they passing over? In the last case I had, the parties wanted to, effectively, have the district court confirm the plan. It's been confirmed by a ruling by Judge Silverstein and then it's going to district court for a 524?

MS. QUARTAROLO: Yes, for affirmation.

THE COURT: Okay, very good.

MS. QUARTAROLO: Yes.

THE COURT: All right. Thank you.

MS. QUARTAROLO: And, and just briefly to touch on a few other points, to the extent the Court is, is not inclined

to, to defer the ruling, which we would --

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

MS. QUARTAROLO: -- respectfully request. As to confidentiality concerns, we do have confidentiality concerns that, that sort of go beyond, I think, what's been addressed this morning in terms of argument. There was some suggestion in discussions with the Aldrich debtors that they would be willing to remove some language in the proposed order about the notice being required, but I think that, that misses the point and doesn't necessarily solve for Paddock's concerns, which are that the production of information about claims that Paddock settled prepetition and that's really what they're seeking. Paddock may owe obligations to those claimants or to those counsel to maintain the confidentiality of that information and to not provide it.

So we, we cannot risk exposing Paddock to claims that it improperly disclosed information that it was contractually obligated not to disclose.

And finally, turning to the particular discovery sought, we heard from counsel this morning that this should be a simple exercise. Unfortunately, that's anything but from what I have inquired and learned. Yes, they, they expected this would be something where they're, you know, accessing a database and waving a magic wand, then, then you get an output.

That's not the case. They're seeking 13 separate categories of information, some of which we may have, some of which we may not, for 12,000 individuals. I think we heard this morning that maybe they would be willing to limit that, but it's still many thousand individuals and that's a burden and certainly a burden at this point in our case. And, and when you're assessing proportionality, I think the particular circumstances of the target of the discovery, here a debtor on --

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

MS. QUARTAROLO: -- you know, trying to achieve its own confirmation, really needs to be taken into account.

So with that, we would ask that the Court defer ruling as to any subpoena on Paddock until a trust is established and defer to the appropriate court under Rule 45 to address any issues with regard to a subpoena.

THE COURT: Okay, very good.

MS. QUARTAROLO: Thank you.

THE COURT: Anyone else before -- I don't think the FCR took a stand in this one.

MR. GUY: No comment your Honor.

THE COURT: Ready to have rebuttal, or do y'all need a break first? We normally break about 11:00, but if this is a better time, I, I'm open for it.

Ready to go?

MR. HIRST: I certainly don't and will try and be quite brief, your Honor.

THE COURT: Okay. Thank you.

MR. HIRST: Again, Morgan Hirst of Jones Day for the debtors. And again, it's nice to be here in person with your Honor.

I just want to address a couple of points, first from the Committee. Counsel kept referring to this case being different in some ways than the other case and they're certainly, each case is unique and we understand that, but the relevance and the importance of the discovery we're seeking is no different than it was in Garlock or Bestwall or DBMP and I think your Honor's aware of that. The, the case we will be presenting has many similarities which makes this information "relevant" and, and "necessary," I think is the words the courts have actually used in granting this discovery. The fact that we have a deal with the FCR, I don't know how that impacts anything about the relevance here. The Committee certainly hasn't agreed to that deal in any way, shape or form.

On the support motion or this idea that we have not properly supported our motion, this, to me, is maybe the most striking argument. It appears that the position is that in order to obtain discovery we need to put forward admissible evidence showing entitlement to that discovery and that's just not, that's not Rule 2004, that's not the Federal Rules, that's

not anything. That's essentially made up. We supported our motion with numerous cases that demonstrate we don't need to put forward admissible evidence. We put forward our bases for the discovery and why it is relevant and necessary here. On its own, I think Judge Hodges' ruling and his opinions -- and again, Judge Hodges' rulings and opinions, we know, will be debated from a substantive standpoint in this case for the foreseeable future -- but at the very least, I think Judge Hodges' opinions make clear that this information is at least relevant from a discoverability standpoint and that's what we're seeking here, discovery.

And so I, I don't understand the support notion. Our motion is well supported with the bases for why we need it. It satisfies both Rule 2004. It satisfies the Federal Rules.

As to the particular standards themselves -- oh. I guess one other thing on the, the difference notion, your Honor.

One of the criticism the Committee had was the timing of when we filed our motion for trust discovery versus estimation.

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

MR. HIRST: And I was looking with interest in Slide 11 at the ACC's packet which shows the different timeline between Bestwall, DBMP, and Aldrich and Murray. What they

didn't include was Garlock and that's very intentional because our timeline is exactly the same as the timeline in Garlock. Estimation order was approved. Subsequent to the estimation order a trust discovery motion was filed and subsequent to that in Garlock, at least, the trust discovery motion was entered. We hope that timeline will follow suit here as well.

As to the standards, you know, I think relevance, burden, and proportionality are kind of the three touchstones whether you're talking about Rule 2004 or the Federal Rules of Civil Procedure. We think they're certainly all met here. I talked about relevance earlier. On the burden side -- and I guess I'll address the one party that's here who actually can speak to burden, which is Paddock -- while Paddock expressed a burden, we do know based on Paddock's own filings that they have a claims database. We believe that claims database has to be searchable in some ways. We are willing to work with them in any way, shape, or form to take the burden off of them. We are willing, as we said in our papers, to pay all reasonable costs of obtaining that information.

And so I -- I -- we just don't see the burden argument and usually when a subpoena recipient is objecting on burden, you actually do see evidence. That's the one place you do. You lay out where that burden is, what the hours are going to take to do it, what the costs are going to take. We didn't see any of that, your Honor. We really don't know other than their

exclamation that there is burden here what that burden is and we are willing to do everything in our power to eliminate that burden, both from a cost and time perspective, including having our own folks at Bates White get in there and essentially do the work for them, if they want.

Proportionality was one that the Committee, in particular, focused on and I found Slides 19 and 20 of their presentation to be interesting with regards to that. Slide 20 is their disproportionate 11 trusts versus 19 trusts.

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

MR. HIRST: Again, we're seeking fields of information. We're not seeking a single document, your Honor. We're not seeking anybody to search e-mails. We're seeking 7 fields of information from these 19 trusts. As Slide 19 shows, the settlement with the FCR renders us a $545 million case. I know the Committee believes that number is much, much higher. In light of the, the dollars at stake in this case, I don't know how they, the ACC, can take the position that seeking 7 fields of information from 19 trusts where we have explained the relevance of each of those trusts can be disproportionate to the needs of the case.

Lastly, just to address Paddock's continue, continuance request, keep in mind the time here, your Honor. We, we filed this motion in early April. It was originally set

for the April 28th omnibus. We agreed based on a request from the Committee to continue it till now. Also importantly, we have not issued a subpoena. Paddock's already under a subpoena from Bestwall for this same information. So the burden on Paddock has already existed via subpoena.

We haven't asked Paddock to do anything. We are here before your Honor asking for our trust discovery motion to be approved. We are more than willing to work with Paddock on timing of subpoena responses, the time they need to work on the subpoena. We are not trying to interfere with their case or burden them. We are simply trying to have our trust discovery motion approved so then we can take the next steps. And we understand we may have to be talking about this again in front of another court, certainly as it relates to Paddock, and these issues will be brought up.

But there's no reason to delay your Honor's ruling today to let us, at least, have the tools to go forward and hopefully, work with Paddock to reach an agreement, to eliminate the burden, to address their confidentiality issues.

So with that, your Honor, absent any questions from your Honor, that's all I have.

THE COURT: That got it?

MR. HIRST: Thank you.

THE COURT: Anything else?

MS. RAMSEY: Three points, your Honor, in rebuttal? I

can do them very quickly.

THE COURT: Okay.

MS. RAMSEY: With respect to Slide 11 and the trust discovery that was conducted in the Garlock case, while it is correct that there, there was a motion that was approved by the court, that motion was approved under Rule 26. It was not a 2004. So it is consistent, we believe, with the argument that we are making here that Rule 26 is in place.

With respect to the 7 fields of information and whether that is both burdensome or disproportionate to the needs of the case, those 7 fields are going to be multiplied by at least 19, in addition to the 2 before your Honor. That is an extraordinary amount of information on these claimants.

And then just to sum up, your Honor, it is our contention that the motion should be denied, that the unique circumstances of this case are different from the other cases here, and that in that there is this settlement which values the future claim between the debtor and the FCR which no one has said is now no longer the deal now that we're in estimation. And, No. 2, there is no evidence in front of the Court that supports the relevance of the information requested.

And then to the extent that your Honor denies that and, and is inclined to permit the debtor to proceed, we would ask that the Court deny the motion for the reason that the debtor should simply serve the discovery under the contested

matter.

Thank you.

THE COURT: Okay, very good.

Anyone else?

(No response)

THE COURT: In terms of planning for what we are doing today on the contested, on the consolidated matter, were the parties anticipating that we would take a break and just start up with that as soon as we finish with this or were you -- someone said something about this afternoon. Are we breaking this in, in two pieces?

MR. ERENS: Your Honor, we weren't sure how long this portion of the hearing would go. I think it went a little faster than people expected. We figured maybe it would go to more like 11:30 and then we'd break for an early lunch, but it's only --

THE COURT: 10:30.

MR. ERENS: -- 10:40 or so.

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

MR. ERENS: So I don't know if you want to rule on this or rule on both motions or, I guess, three motions at the end of the day.

THE COURT: That's a question and the question is do I want to take a recess now and, and our morning break and then

come back and give you a ruling. And then the question is do we go into the second matter. I see Mr. Cassada in the back of the room saying, yes.

Other parties?

I just wanted to know if you had an arrangement as to how this was to be approached.

MR. EVERT: Yeah. We're going to take a break.

MS. RAMSEY: We -- we don't -- Natalie Ramsey, your Honor.

We, we didn't really have an arrangement, but we had talked a little bit about the timing that the next motion might take and we expect that that will also go fairly quickly.

And so if we're talking about trying to do it in the morning or breaking and doing it in the afternoon, I think that the consensus of the people here would be to go ahead and have the argument, your Honor.

THE COURT: We had an inquiry yesterday from the Bestwall folks that some of the attorneys wanted to appear telephonically and I, we will need to take a break to, to let y'all know to have those folks call in.

Let's take about a ten-minute recess. I'll give you a ruling on this, then we will stand down again long enough to get them on the line and then we'll pick up with the second set of hearings, so.

(Recess from 10:39 a.m., until 10:52 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat, everyone.

I'm not going to bore you or put you through reading back through detailed remarks with regard to the current motion because I generally agree with the debtor here and I believe that, particularly, the response brief for the reasons stated in that and as announced in the DBMP matter. I think, for the most part, the motion should be granted. Couple of *caveats* with that, though.

The first is the Paddock time needs. I think since it was already argued it, it doesn't make much sense to continue as to Paddock and then have y'all come back and argue everything again. So I'd like to avoid that burden. I wish I had, even if the debtor was not willing to agree to a continuance, we could have considered a motion to continue had I known about it, but I didn't.

So the bottom line is that I'm sympathetic to the needs of that case and I am sensitive also not to try to override Judge Silverstein and what she's doing to manage the Paddock bankruptcy case. It's what they -- the old expression is "You've gone from preaching into meddling" when you start doing that sort of thing. We all have our bit to play in all, in these dramas. My belief is that if the debtor will hold off and not serve the subpoena on Paddock until June 30th, that

should give sufficient time.

The second *caveat*, though, is what happens afterwards there. From my chair under the facts presented -- and I think the facts are important -- as you know, there's a split of authority as to whether or not you have, whether discovery may be obtained from a debtor without violating the bankruptcy stay. For my own part, I believe that the law is it depends. It depends what you're doing, how close it is to the claims against the debtor. It depends on the needs of the bankruptcy case. I think the most prudent practice is to seek relief from stay before you do it just in case you run into a judge that has an opinion that the stay applies and stops all discovery. I don't feel that strongly about it, myself. I believe you can raise it either way.

But I don't know what the, the Delaware court thinks. I looked a little bit to see what the rulings were up there as to where they got in on the two-sided debate as to whether the automatic stay prevents or not. I also don't know how they feel about the Barton doctrine application in this context.

So from my vantage point on the facts presented it's okay with me to serve these subpoenas, but I am not going to try in any way to influence what Judge Silverstein thinks about that. You may have to have this same fight up in Delaware afterwards and if they decide to file a stay violation motion against you or whatever, then you're going to have to live with

it if you want this discovery. There's just a limit to what we do and at the next NCBJ Committee meeting where I sit on the committee with Judge Silverstein I don't want to hear her telling me that I was messing in her affairs.

So that's the ruling. Otherwise, the debtors' motion is granted with those *caveats* and with that extension of time on the service.

So if you'll draw an order consistent with your brief as modified by those remarks.

MR. ERENS: We, we will do so, your Honor.

Again, on the point you raised, we will not be authorized to serve the subpoena until June 30th. And again, as counsel for Paddock indicated, we did promise them that we would not require them to notice claimants.

So we will take that out of the order. I think that's in Paragraph 9 as well. But those are the only two changes. And we'll try to upload the order as soon as we can.

THE COURT: All right, very good.

MR. ERENS: Thank you.

THE COURT: Okay. We will take another recess. Tell me how much time you think you need to get organized and ready to go with the, the consolidated hearings.

MR. GORDON: Your Honor, Greg Gordon.

I, I don't think we need any time if you're ready. We've already notified people to the --

THE COURT: Do we have --

MR. GORDON: -- call.

THE COURT: -- everyone on the telephone that we need? Anyone know?

MR. GUY: We don't know, your Honor.

THE COURT: I think it was the Bestwall people that were wanting to get on. I don't know if anyone else was planning to join.

MR. WORF: Yes, your Honor. Richard Worf for Bestwall.

They've been notified and anybody who wants to join is going to be on the phone.

THE COURT: Got any folks on the line?

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

THE COURT: Are they open where someone could join?

THE COURTROOM DEPUTY: Yes, they are.

THE COURT: Okay. Let's keep it open for about ten minutes while we, we talk.

I'm ready to go if you are.

(Pause)

MS. RAMSEY: We're having a little technical snafu, your Honor.

THE COURT: All right. Let's go off record for a moment. Whenever y'all are ready.

MS. RAMSEY: Thank you.

(Off record from 10:57 a.m., until 10:58 a.m.)

THE COURT: Let's start with the Aldrich appearances and I don't know if there are any changes in Aldrich of, of parties that had -- I would assume that if you announced this morning, you're announcing again.

MR. EVERT: I think that's correct, your Honor. Michael Evert on behalf of the debtors, Aldrich and Murray. And we've got the same cast of characters as this morning.

THE COURT: All right, very good.

So we just need the DBMP participants.

All right.

MS. GEISE: Elizabeth Geise from the Arent Fox Schiff firm for DBMP, your Honor. Morning.

THE COURT: Good morning.

I was going to suggest that we start with making, letting the principal attorneys, those who are speaking today, introduce all that, that are announcing on their side.

Mr. Worf.

MR. WORF: Good morning, your Honor. Richard Worf. I'm here for Bestwall. I'll be making the argument for Bestwall. As your Honor knows, I also represent DBMP, but I will not be arguing for DBMP today. Mr. Gordon is here, I believe, on behalf of all four debtors and Mr. Cassada is here with me. He also represents Bestwall and DBMP.

THE COURT: Okay, very good.

It's going to get complicated. We may need a chart for the, for just the appearances in these cases.

Any other DBMP announcements? Anyone?

MS. EDWARDS: Good morning, your Honor. Erin Edwards from Young Conaway Stargatt & Taylor on behalf of the Future Claimants' Representative for DBMP. On the phone is my partner, Sharon Zieg. And with me is our North Carolina counsel, Felton Parrish, from Alexander Ricks.

THE COURT: All right, very good.

Other DBMP announcements? Anyone else in the courtroom announcing?

(No response)

THE COURT: Anyone on the telephone announcing?

(No response)

THE COURT: Ready to go?

All right. Joint motions by the ACC. So, in the cases. So if you want to lead off.

MS. RAMSEY: Thank you, your Honor. Natalie Ramsey, appearing on behalf of the Asbestos Claimants' Committee for both DBMP and also for Murray and Aldrich.

Your Honor, we have some slides if we could approach.

THE COURT: You may.

MS. RAMSEY: Thank you.

(Slide presentation handed to the Court)

MS. RAMSEY: Your Honor, I may move to the lectern again, if the Court is okay.

THE COURT: You may.

MS. RAMSEY: Thank you. Thank you, your Honor.

We don't want to belabor these motions. We understand that Judge Beyer's decision in Bestwall authorized, with respect to Bestwall, the issuance of the subpoenas that are at issue in our motions to quash. We did want, your Honor, however, to address the different contexts and standard in these cases and, and respond to some of the arguments that were made by counsel for Aldrich or DBMP.

So I'm going to try, mostly, to rely on our briefing and move fairly quickly through this, but, but we do think it's important that the record reflects the arguments and --

THE COURT: Sure.

MS. RAMSEY: -- and the motion today.

Your Honor, the Court, first of all, we believe, has jurisdiction over these subpoenas. The, the debtors have argued that the bankruptcy court is not the right court and that these motions to quash should not have been brought in front of your Honor. We think the case law is clear that when the subpoena target is in bankruptcy the motion is properly referred to the bankruptcy court. And there are a series of cases cited in our materials, In re Wolf, In re SBN Fog Cap, and Official Committee of Secured Priority Noteholders v.

Kleisner.

With respect to --

If we could have the next slide, please.

With respect to the argument that has also been raised about whether the Committees have standing to seek to quash, we believe that it is clear under the law that the Committee does have that standing. First of all, Section 1103(c) provides for broad authority for the committee and the case law is that Congress consciously built in some flexibility for the committee to be able to respond to the issues that come up in the case. We also have cited in our materials to Collier on Bankruptcy, that the larger and more complex the case, the greater the role, the greater the number of issues that a committee would have standing to address.

Here, we think it's really important that the Committee brought these motions to quash because we're the only entity with notice. And so if -- in, in a circumstance where there would be no one else in light of both debtors' statements to us in advance of our motions to quash that it was their intention to comply with the subpoena, there was no one else with the claimants not having had notice of this for, to, to rise and address the issues that we have raised in our papers.

And we are also concerned about the fact that there is substantial overlap of counsel and other professionals in the cases, other than Paddock, where the subpoenas have been served

and DBMP and Aldrich and Murray have also been very forthcoming that if this process is permitted, it would be their intention to serve similar discovery. And again, we are going to have significant aggregation of information.

What we are, are very concerned about is an issue that was raised by Ms. Quartarolo today in the earlier argument, which is the precedent that this, that this establishes of having an asbestos debtor file a bankruptcy case and become really a repository of information that can be accessed by anyone who wants the information not for purposes of the bankruptcy case, but for their own purposes. And that, we believe, is a very troubling precedent that is being set by these subpoenas. What is to prevent every single asbestos defendant from subpoenaing these debtors in exactly the same way for exactly the same information for their own purposes under similar types of arguments? And because we believe that this is extremely dangerous precedent, we do believe that in this instance the prudent thing for the debtor to have done, the Bestwall debtor to have done would be to have come to the Court with a motion for relief from stay that would have been fully heard by the Court and the issues to be addressed that way. Obviously, when we come in as the movant it is our burden to seek to quash. It changes the dynamic, but we, we believe that the Court should have heard whether this, these subpoenas should be issued and we believe that with respect to the

argument today the decision by the court presiding over the Bestwall case that the discovery was appropriate in that case for the purposes of that case is very different than what we're asking your Honor to decide today, which is we are asking the Court to protect the information of these debtors in these cases from third-party discovery designed, again, for purposes that have absolutely nothing to do with the conduct of this bankruptcy case.

And I have to digress for a moment to again remark that particularly these types of debtors who have engaged in a structure to cabin their asbestos liabilities and put that entity into bankruptcy with a stated purpose of resolution, but with a, very strong actions taken to attempt to litigate those claims in the context of bankruptcy, which the Committees believe is a misuse of bankruptcy.

With respect to further cases, your Honor, where the debtor has raised arguing that the Committees do not have standing to object, the debtors cite to Dow, Manville, and Eagle-Picher. Each of those three cases involved very, very different types of litigation and to summarize them without going into the details of each one, essentially in each of those cases the committee was looking to take action outside the bankruptcy or for purposes that the courts found was designed to be for purposes other than what their role was in the bankruptcy.

Here, we have a very strong interest in preserving the confidentiality of claimant information and we have a very strong interest in the use of that claimant information and we have an interest in what is going to happen in estimation and as we said, the foreshadowing is that if this discovery is permitted, it is going to be discovery that is also sought by the debtors.

Bestwall also has cited cases arguing that the Committee does not have standing. And again, to summarize the essential facts of those cases without going into the specifics of them, essentially those cases stand for the proposition that information that was being sought was fundamentally different than information that was provided in the normal course of, of relationships. Here, this information is being sought, we believe, as part of a litigation strategy. It's clearly being sought for purposes of estimation. And again, that is a subject that the Committee has a very strong interest in.

The parties also raise, the objectors also raise the doctrine of issue preclusion and essentially arguing that because Judge Beyer ruled that the discovery was relevant to the Bestwall case, that the issue has been decided and that these motions to quash, therefore, have essentially been decided. Again, we do not believe that issue preclusion applies because the issues are different, the issues in the two cases, relevance versus the use of bankruptcy and the use and

protection of the information that is sought in this case that is the debtors' information.

The other argument that we make on issue preclusion is that the parties that are, that are here before the Court today did not appear in Bestwall. Even though there is overlap of some of the law firms that represent the tort claimants that serve on the various committees, each of these committees are different. Each of these committees appeared in their own cases. They did not appear in connection with the motion by the Committee in Bestwall to strike. So they have not had an opportunity to be heard with respect to this litigation.

We are concerned that what your Honor is going to hear and, and what was argued in Bestwall, to some extent with respect to these subpoenas, is that there should be transparency. There should be transparency with respect to what information is known about these claimants. Our concern is that the debtors have come into these cases and the debtors are supposed to be transparent. It is the debtors that are normally supposed to open themselves up to the scrutiny of creditors. And here, the debtor has completely reversed the roles and is seeking, instead, to look into the transparency of their creditors, but not their present creditors only, but also their past creditors. And again, the, the process and the use of bankruptcy here seems to be consistent with some of the legislative efforts that were taken with respect to the trusts

outside of bankruptcy and we believe that bankruptcy is not supposed to be either an alternative to the tort system or an alternative to the laws of this country and legislation.

We are also very concerned that as we start to move into this process, that we are going to find that, if the Court grants this discovery, the Committee and, perhaps, the FCR are going to need even more discovery. This is an argument that was raised before Judge Beyer, but with respect to these cases the same argument applies. The debtor is targeting certain types of information that the debtor is targeting because it will provide the debtor with, potentially, an argument that supports its view of the world and its history. If this discovery is permitted, the Committee is going to need to understand even greater information in order to respond to those allegations.

So as we get into this process the potential for just exponential discovery and, really, an out-of-control process gets much higher and we are hopeful that, perhaps, the estimation process in these cases can be more streamlined than, than what we have seen thus far demonstrated in the Bestwall case.

With respect to the, the, the legal standard, your Honor, the, these cases are, are fundamentally different factors that would apply and different burdens of proof with respect to whether the Court is going to grant the motion to

quash. One of the things the Court heard before was a reference to the Barton doctrine. The Barton doctrine and the, the automatic stay, we believe again, both apply here and both required that the debtor have come before this Court, at least should have come before this Court before serving these subpoenas and we have raised and do press that objection. It is not, by any means, a throwaway.

Our biggest concern, as I said, is that the discovery is unprecedented. In no other bankruptcy case ever are we aware of one debtor soliciting discovery from another debtor and particularly in the asbestos context this type of discovery has never been sought before. One of the distinguishing arguments made in Bestwall was the inability of the Bestwall debtor to obtain certain trust discovery and the potential for, I'll call it a workaround --

THE COURT: Right.

MS. RAMSEY: -- by obtaining the information from other sources. We don't have those facts here. The trust discovery has not been served yet. It has not been received or quashed or altered in any way as yet.

So to the extent that that was a justification that made the court in the Bestwall case believe that this discovery was appropriate, again we don't have that here and at a minimum, we would ask that the Court consider deferring any decision with respect to permitting this discovery to, to take

place. Because we are, we are worried that what we are going to see here is a dramatic expansion of, of the discovery and a, I'll say, a slippery slope. Because this is the first step and what we've seen in the other cases is that there, these cases build on one another and as soon as this discovery, if it's permitted, goes forward, our fear is there are going to be five more columns of information the next time or maybe even later in the case this time, but that this is the first small step that is going to open the way for a complete absence of protection of very sensitive information.

One of the arguments we heard the debtor make in, in Bestwall is, "Well, but this information is typically given to other parties. It's given to insurance companies and when we file for bankruptcy it's given to the other case parties." And our argument would be, your Honor, well, those, with respect to at least insurance, it's being generally shared for purposes of reimbursement and that is provided for and agreed to by all parties, known by all parties. With respect to bankruptcy, it's being shared with the other case parties for purposes of the bankruptcy case. That is not the case when Bestwall comes into the DBMP case and asks for this information. It's not to use it in DBMP. It is to use it in its own case. And again, that opens a very, a very unique and concerning precedent.

One of the arguments our insurance counsel has also asked us to raise is that the subpoenas jeopardize or could

jeopardize insurance coverage, that with respect to the sharing of this information that it could violate cooperative obligations in those contracts and to the extent that that potential exists, that is another reason, at least in the Aldrich case, to deny these, this discovery or to quash this discovery.

And again, your Honor, I made this argument earlier so I'm not going to belabor it again. But the consolidation of the information is of significant concern. The more information that is located in one place that has the entire history of individuals who long ago settled their claims, the more risk to these individuals.

Finally, your Honor, we would argue that the debtor is fundamentally a fiduciary to its creditors once it's in bankruptcy and we do not believe that by volunteering, by showing up as DBMP did in the Bestwall case to provide this information affirmatively saying that it was not burdensome, affirmatively saying that they were prepared to turn it over, that, that the debtor is not acting as a proper fiduciary and, therefore, it left no option but for the Committee to fill those shoes to try to protect the creditors and the information of those creditors.

And with that, your Honor, I think that I will finish up and rely for the rest of our argument on the papers that we have filed.

Thank you.

THE COURT: All right.

All right.

MR. EVERT: Your Honor, Michael Evert on behalf of debtors, Aldrich and Murray.

It, it made sense to us since the proponent's subpoena is making the most substantive responses to the arguments, that the --

THE COURT: That Bestwall --

MR. EVERT: -- proponent's subpoena would go first. So we're going to let Bestwall go first and then DBMP and the debtors, Aldrich and Murray, will reserve comments at the end if necessary.

THE COURT: Okay.

MR. EVERT: Thank you, your Honor.

THE COURT: And I'm trying to remember which attorney now is wearing the Bestwall hat.

MR. WORF: Thank you, your Honor.

THE COURT: Mr. Worf, okay.

MR. WORF: Richard Worf for Bestwall.

I do have a presentation if I might approach.

THE COURT: You may.

(Slide presentation handed to the Court)

THE COURT: Thank you.

MR. WORF: Good morning, your Honor. Richard Worf

from Robinson Bradshaw for Bestwall.

The DBMP and Aldrich/Murray ACCs have brought these motions to quash three subpoenas directed to those debtors by Bestwall. It's important to note that the, the Paddock subpoena is not before your Honor today. That subpoena will be the subject of a meet and confer between Bestwall and Paddock following Judge Beyer's ruling from last week which was put off until after that ruling.

But Bestwall is seeking limited and non-sensitive data fields related to claims against these three debtors as well as exposures to their products and those fields are relevant to the estimation of Bestwall's liability for mesothelioma claims. These debtors that are before your Honor today do not object to the subpoenas and Bestwall understands that they intend to produce the data requested.

Last week, as your Honor has heard, Judge Beyer, who presides over the Bestwall estimation proceeding, upheld these three subpoenas as well as the Paddock subpoena in response to a motion to strike filed by the Bestwall ACC and that, the Bestwall ACC was purporting there to represent the very same claimants whom the DBMP and Aldrich/Murray ACCs purport to represent before your Honor today. They were actually representing a larger group of claimants. They were representing all the claimants whose data is potentially implicated by the subpoenas, all four subpoenas. The ACCs

before you today are representing those claimants in the DBMP and Aldrich and Murray cases whose data is implicated, which is necessarily a subset of the claimants who were at issue before Judge Beyer.

And Judge Beyer made findings about the subpoenas. She found that they don't seek highly personal, sensitive, confidential, or privileged data, that most of the information sought pursuant to the subpoenas could be found in complaints and other public court filings. The subpoenas don't raise a concern about identity theft because Bestwall already has the personal identifying information about the claimants and they don't seek any medical information. Notice was sufficient and was not required to be served on the claimants. The discovery the debtor seeks is consistent with the discovery the Court previously found was relevant, ordered from the trusts, and through the personal injury questionnaires. And then Judge Beyer found that the discovery was proportional to the needs of the Bestwall case as modified and your Honor heard that she did cut back the subpoenas to include approximately 2700 resolved claims that had been the subject of discovery in the Bestwall case, already, plus the approximately 6,000 potentially pending claims against Bestwall as of the date of its petition. So it now covers approximately 8700 claimants, instead of the approximately 30,000 claimants that it originally covered.

And just as Judge Beyer declined to strike the

subpoenas -- and she, she made these findings under Rule 45 which was what was invoked by the Bestwall ACC -- your Honor should not quash the subpoenas and Bestwall believes that the issues before your Honor today are actually fairly narrow because he Aldrich and Murray and DBMP ACCs are precluded from relitigating the matters that the Bestwall ACC litigated before Judge Beyer that Judge Beyer actually ruled on and that the Bestwall ACC lost on behalf of the very same claimants who are, whose interests are championed before your Honor today.

We believe that your Honor does have before you the issues of whether the automatic stay was violated and we believe it's clear it, it was not under the applicable precedent as, as well as the debtor's experience in this court and the subpoenas also do not violate the Barton doctrine. That matter is also before your Honor, was not litigated before Judge Beyer. And if your Honor were to go to the merits of the Rule 45 analysis, for all the reasons that Judge Beyer already found the subpoenas are proper and should not be quashed. They seek clearly relevant, non-sensitive information that's not privileged and do not present any of the risks that the ACCs argue that they do.

So to start, I want to be very clear about the nature of the data that, that Bestwall has requested. It's requested from four debtors, three of whom are before your Honor, approximately 8700 claimants and the impression given by the,

the motions is that Bestwall is requesting highly sensitive medical and personal data that, for which there is a, a great risk if it's turned over to Bestwall and that's simply not the case. These are the fields that are requested in the subpoena. They'll be familiar to your Honor because they are the same fields of information that your Honor ordered disclosed in the DBMP trust discovery and then this morning in the Aldrich and Murray trust discovery, information about the claims, where they were filed, the law firm that represented the party, the status of the claims, the date of resolution, the dates on which settlements or judgments were paid, if applicable, and then exposure-related data about when exposures began and ended, the manner of exposure, occupation and industry, and, and products to which the claimants were exposed, if that information is in the database. The subpoenas don't go beyond the database. They're restricted to the, the --

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

MR. WORF: -- database fields.

And Bestwall is not seeking any personally identifiable information from the claimants. Bestwall already has that information. Bestwall knows who these claimants are and is just adding on the information about claims and exposures to the information that Bestwall already has. And Bestwall is not seeking information about claimants' addresses,

their Social Security numbers, no medical information, or financial data, and also no settlement amounts. The subpoenas only request information about when, whether there was a settlement and when it was entered into, not the actual settlement amounts.

So with that background, let me move on to issue preclusion and the elements of, of issue preclusion or collateral estoppel are very familiar, requires the identical issue or fact that was previously litigated, requires that that issue or fact was actually resolved, requires that it was critical to the judgment in the prior proceeding, that the judgment is final and valid for purposes of issue preclusion, and that the party to be foreclosed had a full and fair opportunity to litigate the issue or fact in the prior proceeding. And all of these factors are present here. The, the issues, by and large, that the ACCs here are raising are the same and, in fact, if you look at the, the motions in Bestwall and the motions here, in many cases they use identical language and invoke the same legal standards. For instance, the Bestwall motion to strike relied on Rule 45(b)(3)(A)(iii). The DBMP motion does as well. The Aldrich motion does as well, although it's not on this slide.

The motions all invoke concerns about confidentiality and alleged privilege, specifically focusing on settlement information that's requested in the subpoenas. They make

arguments about proportionality and proportionality given the needs of the Bestwall case. And they all argue that the claimants have a right to notice before the data is produced and should have the opportunity to come in and challenge the subpoenas. And all these issues, as, as I showed your Honor, were decided by Judge Beyer and resolved against the Bestwall ACC, actually decided. Essential to Judge Beyer's judgment, they were her, her judgment and they are the same issues.

The main argument the ACCs here appear to be making against preclusion is that the DBMP ACC and the Aldrich ACC and, and Murray ACC are not the Bestwall ACC and, of course, that's true. They are different entities, different committees, but the relevant fact is that all of the Committees have been representing with respect to this matter and have been, in fact, relying in establishing their standing with respect to this matter on their alleged representation of the claimants' interests in this data.

And it's important to note that under Rule 45 a party who, from whom the data is sought or from whom the data is not sought, as certainly is the case here with those three ACCs, for them to have standing to move to quash or strike under Rule 45 they have to be representing the personal right that someone allegedly has in the data and these ACCs do not have a personal right in the data. The claimants whose data is requested, it is their personal right that the ACCs in all three, in all four

cases have been advocating and relying on to maintain their standing. The Bestwall ACC was. They were relying on Rule 45 and they weren't just coming in and saying that, "We oppose production of the data for the fewer than a dozen claimants who serve on our committee." They were asserting the rights of all of the claimants, both pending and resolved, with respect to which Bestwall sought the data and they asserted that they were the appropriate representative of those claimants in the bankruptcy case and were the appropriate party to represent their interests.

And here, too, the DBMP and Aldrich ACCs are not simply seeking to quash the subpoenas with respect to the individual claimants who serve on those committees. They are seeking to quash the subpoenas with respect to all of the claimants who match to the DBMP, Aldrich, and Murray data. They're asserting their interest. All of those claimants are necessarily a subset of the claimants who were at issue in the Bestwall case before Judge Beyer. Because the Bestwall case involved all the claimants because, by definition, for the discovery to be triggered the person has to be in the Bestwall database and the Bestwall ACC was asserting their, their rights.

And if these ACCs had not represented the claimants in this way, they have a standing problem under Rule 45 and they don't have standing to move to quash before your Honor today

because they would not be asserting anyone's personal right in the data and they wouldn't have standing to move to quash.

THE COURT: So to the extent that there is overlap among claimants -- and there's quite a bit in, in these cases given the way that claimants sue multiple defendants in the tort system -- would you then say that the FCR positions taken in, in DBMP and Bestwall would then bind the FCR in Aldrich?

MR. WORF: Well, your Honor, that's an interesting question and one that I think Mr. Guy might have an opinion on.

MR. GUY: I do, your Honor.

MR. WORF: It's a very interesting question. I remember back in the Garlock case --

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

MR. WORF: -- issues being raised by the ACC in that case against some of the positions that Mr. Grier and Mr. Guy took on the ground that they had, somehow had duties to claimants that extended beyond that bankruptcy case and extended more --

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

MR. WORF: -- broadly to the future interests of the claimants in their overall tort litigation. I, I think, your Honor, that what Mr. Guy would say -- and I don't want to put words in his mouth -- is that the FCR is appointed in a case to

represent the interests of the claimants in that case --

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

MR. WORF: -- the future claimants in that case and that those positions would not necessarily be preclusive for issue preclusion purposes with respect to those claimants in a different case where those claimants have a different FCR.

But that's an interesting question that I, I'd like to hear the answer to from the experts.

THE COURT: All right. I interrupted you. Go ahead.

MR. WORF: Here, your Honor, though, the, the ACCs were representing the very same claimants and, and asserting the very same interests and asserting the same arguments. So it's not an issue where there, there is some sort of delimitation between the cases.

It's well recognized that adequate representation in this sense amounts to privity for issue preclusion purposes. The ACC in their reply mentions the, the class action and argues that the fact that it's difficult to maintain a class action for asbestos personal injury claimants means that there can't be preclusion here, but a class action is merely one example of a representative device that can lead to issue preclusion. It's not the only one and, in fact, the authorities that we cited and, and the, the ACC cited in their reply acknowledge that another basis for preclusion is a

fiduciary duty and, in fact, the Committee doesn't recognize the inconsistency in their argument. They, they rely on their "fiduciary" duty to the Committee's constituents -- that's Page 4 of their reply -- in, in maintaining their standing here.

So it's one or the other. Either they have standing and are precluded or they don't have standing and they don't have standing. Either way, the motion to quash should be denied.

There's also an argument that somehow the, the issues in Bestwall and, and the issues before your Honor are different. In fact, they're not different at all. They're, they rely on the same legal authorities sometimes making the very same arguments and citing the same cases, but what matters, as some of the cases the ACC cites in its reply shows, is not the legal vehicle because sometimes there can be preclusion even when a different statute is implicated if the issue or fact was decided and was relevant to the previous litigation. They cite cases where, for example, a, there's preclusion in a trademark infringement action when there was a trademark registration proceeding in front of the PTO that resolved the same issue, such as likelihood of confusion.

So there, there can be preclusion even in situations like that. Certainly, there is here where it is the very same issues and the very same sources of legal authority.

So to move on to the issues that, I believe, are

before your Honor today, the automatic stay. And I heard your Honor this morning on the automatic stay. I want to assure your Honor that, that the debtors here or that Bestwall reviewed the available authority before serving these subpoenas and was convinced that the automatic stay does not apply to subpoenas issued to non-party debtors and, in fact, that's consistent with our experience in these cases and, and how the, how debtors operate in these cases where Bestwall, for instance, has received a number of non-party subpoenas during its bankruptcy case and has, has not argued that the automatic stay applies. In fact, has treated those subpoenas on their merits and, and has responded to them. And the weight of authority is in favor of that rule. We cited the Miller case to your Honor which said that information is information and that discovery of it as part of the development of a case against non-debtor parties is permissible even if that information can later be used against the party protected by the automatic stay.

Now here, we think we have an easier situation than in Miller where there was some potential for the information developed in the discovery from the debtor to eventually be used against the debtor. We don't have that potential here for a number of reasons. First of all, the proceeding in the Bestwall case, DBMP, Aldrich, and Murray are not parties to that proceeding. That proceeding will not adjudicate those

debtors' liability for asbestos claims. The information is, instead, sought because it is relevant and important to determining Bestwall's liability which is an issue in Bestwall's bankruptcy case. And furthermore, the evidence that is obtained through these subpoenas will be produced pursuant to the Bestwall protective order which restricts the use of the information to the Bestwall case and requires its destruction at the end of the Bestwall case.

So there is no prospect that this information, if it even could be used against these debtors, ever will be.

The ACC cited the Lewis case in its reply and that is a very different situation. That involved discovery in an environmental contamination case, one of these big cases where a number of parties are brought in allegedly responsible for contributing to the cleanup costs for an environmental issue.

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

MR. WORF: And that was a case where the debtors had been and still were parties to the case and the rationale for the, for the decision in that case was that it wasn't really a stay discovery case. The rationale was that it was impossible to sever those defendants, the debtors, from that case because the whole point of the case was to divvy up responsibility among all the potentially responsible parties and without the debtors there it would have been, effectively, impossible to do

that or the debtors' liability necessarily would have been established in the course of that proceeding. And so the court not only found that the discovery could not proceed from the debtors, but stayed the entire case while the debtors' bankruptcy case was resolved because it could not proceed without the debtors.

Very different situation here where DBMP, Aldrich, and Murray are not parties to the Bestwall estimation proceeding. They are true nonparties and they are not necessary to the Bestwall proceeding and, in fact, the logic of this case would have Judge Beyer required to stay the Bestwall case and the estimation proceeding until these cases are over. It would also, presumably, require your Honor to stay these cases until Bestwall is over and that's just a headache I can't even get my head around and would put us all in a sort of purgatory for all time, which is not something any of us would --

THE COURT: Staying all three cases? I think Judge Beyer and I might be able to get around that.

Go ahead. Just kidding.

MR. WORF: The ACCs also rely on 362(a)(3) and allege that the discovery seeks to obtain possession of property of the estate or exercise control over property of the estate and the subpoenas do no such thing. They don't seek to wrest away the, the debtors' claims databases. They seek copies of the information in the databases and to hold that -- and, and

further, Bestwall is going to reimburse the debtors for their reasonable costs. The notion that this violates (a)(3) or the stay would lead to a stay violation for literally anything that a debtor in possession does in the world during the course of its bankruptcy case and would prove far too much. And the Miller case specifically rejected an argument that (a)(3) applies to a post-petition subpoena to a debtor. Even in that case said it was permissible to seek sanctions against the debtor who didn't comply without stay relief because it relates to post-petition conduct. That will not be necessary here. The discovery is consensual as, as to Bestwall and the debtors, but that just shows that what's happened here doesn't come close to falling under (a)(3).

The Barton doctrine. So the Fourth Circuit in the McDaniel case explained that the Supreme Court established in Barton that before another court may obtain subject matter jurisdiction over a suit filed against the receiver for acts committed in his official capacity the plaintiff must obtain leave of the court that obtained, that appointed the receiver. Neither the Fourth Circuit nor any North Carolina court has held that the Barton doctrine applies to subpoenas to non-party debtors and this Court should not be the first.

The, the Media Group case from the Ninth Circuit Appellate Panel put it well that expansion of the doctrine to subpoenas is not supported by a plain reading of either Barton

or the Crown Vantage case, the relevant Ninth Circuit case. Both are limited to the commencement of legal action against a court appointee. And that holding made sense because it doesn't make sense to apply the Barton doctrine to subpoenas. As the Fourth Circuit explained in McDaniel, the purpose of the doctrine is to prevent claims against court-appointed trustees for a number of good reasons, including that the trustee is an appointee of the court, is, in effect, identified in some sense with the court, and that claims against trustees increase the cost of being a trustee. They increase malpractice premiums and suits in other jurisdictions, prevent the bankruptcy court from monitoring the performance of trustees and knowing when they may have done something wrong. None of those policies apply to non-party discovery. It doesn't even involve, by definition it doesn't involve, because it's non-party discovery, the conduct of the trustee or acts committed in the trustee's official capacity. It, it has to do simply with information that the debtor may possess.

And the consequence of the Barton doctrine also shows why it doesn't make much sense in this context because the consequence is that the other court doesn't get subject matter jurisdiction over the suit against the trustee and the effect of it, as occurs in many of these cases, is that the trustee has a successful motion to dismiss in the other court for lack of subject matter jurisdiction, but with a non-party subpoena

clearly the court that issued it has subject matter jurisdiction for some other reason and it doesn't make sense to hold that that court is deprived of subject matter jurisdiction when a subpoena is issued to a debtor.

And the consequence if, if the Barton doctrine did apply is that debtors in this court would have to come to your Honor every time or, or a party seeking discovery from a debtor would have to come to this Court every time a subpoena is served on a debtor for any reason. It would be a broad-brush rule that, in the analogous context of the automatic stay. The Peter Rosenbaum case that we cited noted that the bankruptcy court would likely be inundated with motions to lift the automatic stay for every discovery request even if unrelated to any action against the debtor.

The two cases that the ACC relies on, the Avenatti case and the Circuit City case, both of those involved pretty onerous subpoenas to the debtors in those cases, or the liquidating trust in the Circuit City case, and although they applied the Barton doctrine, clearly the, the motivation of those decisions was the onerous nature of the subpoenas. For instance, in the Avenatti case, which involved Michael Avenatti's law firm which was in bankruptcy, the trustee was served with process from the criminal case in New York against Michael Avenatti and sought more than three terabytes of data from the trustee and was going to require the trustee to travel

across the country to testify in the criminal case, all at the cost of the estate.

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

MR. WORF: And that, understandably, was going to present a, a problem in the bankruptcy case both because of the cost and also because of its interference with the administration of that case.

In the Circuit City case there was a liquidating trust that was established under a confirmed plan to liquidate assets and the liquidating trust was served with burdensome discovery in an anti-trust case that it had previously been a party to but had settled out of from one of the parties in that case seeking extensive discovery that that party had already obtained from Circuit City previously, would have been extremely burdensome, would have required the liquidating trust to retain professionals to testify on its behalf in response to that discovery after they had already been dismissed upon the resolution of Circuit City's part in that case, again another extraordinary burden on the administration of that bankruptcy case.

And although those cases invoked the Barton doctrine, I believe they did so in error because it is too broad of a brush for the courts to have painted with. The logic of the Barton doctrine would require preclearance for every subpoena

to a debtor from the bankruptcy court when most such subpoenas are relatively ordinary matters that do not require the attention of the court and if they do require the attention of the court, as happened in Circuit City and the Avenatti case, the debtor or the trustee or whatever successor to those entities is in the bankruptcy case can bring those matters to the court's attention and there are ample sources of authority for the bankruptcy court to restrain discovery efforts that threaten to impede the administration of the case or threaten to dissipate property of the estate without just cause.

For instance, in Circuit City there was a confirmed plan that pretty clearly prohibited the discovery that the former co-defendant was attempting to take there and in that case and the Avenatti case the bankruptcy court would have had authority under Section 105 as well as other sources of authority under the Code to restrain those actions as, as they affected the property of the estate that was before the bankruptcy court.

Here, those factors are not present. The discovery with respect to these debtors is consensual. It would have been relatively cost free if there had not been these motions, these multiple motions to strike and quash which have both delayed and increased the expense of the discovery for all parties, but there is no threat to the administration of the case and Bestwall will be reimbursing the reasonable cost of

complying with the discovery.

So going to the merits -- and I won't belabor this both because the, Judge Beyer has decided these, these matters and also because your Honor has heard a great deal of argument with respect to them in, other contexts -- but the data sought here is clearly relevant to Bestwall's estimation proceeding because it deals with claims against other parties and exposures to the products of other parties on behalf of the same individuals who asserted claims against Bestwall and as the Court remember, will remember, in the Garlock case the, the court adopted a, an estimation that relied directly on claimants' claims against other parties and their exposures to the products of other companies.

These facts are relevant under the law of every state, as, as would apply in estimation. In several or proportional liability jurisdictions it's directly relevant to the apportionment of, of the total liability and, therefore, Bestwall's share of that liability. In a joint and several liability jurisdiction it's also relevant to the apportionment of that liability. And in jurisdictions like California where there is a hybrid approach it's, it's relevant to both halves of the hybrid approach.

The discovery is also relevant to the evidence suppression issue and whether historical claimants did not disclose their claims against and exposures to the products of

other companies. And the nature of the discovery is the same that the Bestwall court as well as your Honor have approved in these cases through both the questionnaire and the trust discovery where there are specific sections that deal with claims against other parties, exposures to the products of other parties, and in the trust discovery the very same requests that Bestwall is making to the debtors here through the subpoenas. The information is not privileged or, or even sensitive. Most of it is the kind of information that's found in complaints. This is a complaint from the, the Western District where Georgia-Pacific had been named and it included allegations about occupation and industry and exposures as well as the identity of the plaintiff.

The facts about settlement, about the fact of settlement or when it occurred, also not privileged. In fact, settlement amounts themselves would not be privileged because there is no privilege for those matters in the Fourth Circuit as this case recognized when, when it said that courts within the Fourth Circuit have generally declined to recognize a federal settlement privilege. So it's not possible for a confidentiality agreement to immunize that information from discovery.

DBMP, in particular, filed a statement in the Bestwall bankruptcy case where it stated that DBMP does not consider any of the information sought by the subpoena to be privileged or

confidential nor could it so contend. And Aldrich and Murray likewise have not raised objections on this basis. Pursuant to Judge Beyer's ruling that the data will be produced pursuant to the Bestwall protective order, the data will be kept confidential, it will be used only in the bankruptcy case, and it will be destroyed at the end of the case.

The argument that claimants are entitled to notice before a production occurs, there's no authority cited for this notion and the notion that claimants have a personal right in the data of their litigation adversaries is a concept that has no support in the case law and, and none is cited. And, in fact, a finding that the claimants are entitled to notice would, quite literally, triple the management of mass tort litigation because defendants have to share their data for a variety of purposes, including to obtain insurance coverage. They have to share it with insurers. They have to share it with experts such as Bates White and, and other experts who prepare financial statement expenditure analyses. They have to share it with claimant representatives within bankruptcy cases, as all of the debtors in this Court have with their Committees and FCRs, and --

THE COURT: Can you cite me to an instance where outside of bankruptcy, though, that defendants have shared such information between one another in the tort system?

MR. WORF: Well, your Honor, it happens, I don't

think, on a wholesale basis where they share all of the information because it's not --

THE COURT: But they talk.

MR. WORF: -- particularly relevant --

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

MR. WORF: -- but they're talking all the time --

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

MR. WORF: -- and, for instance, in an individual case an attorney will call up an attorney for a co-defendant and ask --

THE COURT: Right.

MR. WORF: -- "Have you settled out of the case," and, of course, they will often share that information because that's how the, that's how the litigation proceeds on a daily basis. It's, it's information that is shared in countless instances outside of bankruptcy because it's not sensitive.

Now with respect to settlement amounts, that's rare to be shared outside of bankruptcy and we're not seeking that data here because that does have other implications for those defendants and --

THE COURT: Would you say the same if the, the request had been for personal identifiers, that, that the claimants would then have an interest in that?

MR. WORF: I think if you're talking about a Social Security number, for instance --

THE COURT: Right.

MR. WORF: -- I think you get closer.

THE COURT: Addresses, medical information, all that sort of thing.

MR. WORF: I think you get closer in that situation. I still, I still think that it would be a pretty tough haul for a claimant to say that they have a personal right in information that they shared with a litigation adversary. I think, instead, what would happen is the, if that information were requested, I think the defendants would take great care if they were sharing that information --

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

MR. WORF: -- to make sure that it's protected and not, and not subject to public disclosure because there could, for instance, be implications for that defendant if they released a Social Security number and --

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

MR. WORF: -- and somehow injured a claimant.

THE COURT: Okay.

MR. WORF: But here, the information is, is not of that nature and to think that a claimant would have a personal

right in information about litigation, about claims, about when the claims are resolved is not something that has any support and would have all of these adverse consequences because in all of these contexts where defendants have to share this data with other parties they would be required to provide some form of notice. It happened in these cases where the debtors shared their, large extracts of their databases with the Committee and FCR and there was never any notion that notice had to be provided to the claimants before that sharing occurred. That kind of sharing often takes place before bankruptcy with claimant representatives in a negotiation of a pre-packaged --

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

MR. WORF: -- plan of reorganization where that sharing has to take place for the claimant representatives to be able to assess the, the liability.

And so for this reason, too, the claimants that the Committees purport to represent should not have standing to object to this discovery because they don't have a personal right in the information and no court has so held and, in fact, we cited the example of the bank record cases because that's a rather surprising result. A bank keeps information for a customer, you know, for a person, that these cases hold that the customer does not have a personal right in that information sufficient to support standing with respect to a motion to

quash.

Here, we're talking about data that is far less sensitive than bank records or financial information, but moreover, is held by an entity that is not a fiduciary for the claimants, is, in fact, their, their litigation adversary and there, there can't be a personal right in this situation.

The protective orders in this case. The protective orders simply don't apply by their terms. The protective orders apply to the parties who receive confidential information from a disclosing party and they prevent those parties, for instance, the ACC and the FCR, who received the claims databases, they prevent those parties from disseminating the databases or disclosing them. They don't have an impact on the debtor whose database it is and, in fact, the orders expressly recognize that. The debtor maintains control over its confidential information. And so the protective orders simply don't apply. The citation to the professional eyes only restrictions in the protective orders that apply to the claims databases, those provisions are typically in there to protect the settlement amounts, to provide that when the ACC, for instance, receives the claims database, that the database in its entirety is not shared with the plaintiff attorneys who are representing individuals on the Committee and my understanding is that the, the plaintiff attorneys support that restriction because they don't want information about their settlements

shared with other plaintiff firms.

And so the information is kept professional eyes only. The professionals at Robinson & Cole and Caplin & Drysdale and the counsel for the FCRs are able to see it and able to represent their clients' interest, but there's neither a need for and there would be some harm if the claimants themselves or their attorneys receive that information and so that restriction is found. Its rationale doesn't apply to the data that Bestwall is seeking and, if it did, the debtors would have raised that objection, I am confident, and they have not.

The argument about insurance coverage in the Aldrich and Murray cases, still haven't seen any authority for any risk to coverage that is posed by these subpoenas and, and I've never heard of, of such a risk. Not even any provision in the policies has been cited that would implicate any risk here. It is, Bestwall believes, a, a pretext to attempt to block discovery that the ACCs don't like. It, it is not a legitimate risk and, and no authority has been cited on that point.

A good deal of, of the argument that your Honor heard this morning from the ACCs seem to shade into arguing that this discovery should not be appropriate if the debtors in the DBMP, Aldrich, and Murray cases attempt to take this discovery and I believe that issue is not before your Honor. We are here today on a motion to quash the subpoenas that Bestwall served. It was a judgment that Judge Beyer made that the discovery sought

through the subpoena was proportional to the needs of the Bestwall case and that judgment is both binding on the ACC, but also is entitled to considerable deference because Judge Beyer is the judge presiding over the Bestwall estimation proceeding and she did tailor her judgment to the facts of the Bestwall case. She carved back the subpoenas determining that they needed to be limited to the 8700 claimants instead of the 30,000 because the initial request was disproportionate. She tailored it to the needs of that case and your Honor will have full authority, if a motion is brought before you, to tailor any discovery that these debtors seek in their cases. It is not a matter of once decided, it is decided for all time. These are discovery matters that are decided on a case-by-case basis.

And so the parade of horribles that the ACCs cite about debtors habitually becoming targets of this discovery should be discounted because there, that is not necessarily true and moreover, each of the future requests for discovery of this nature will have to be evaluated on their own terms and I'm confident they will be.

One factor in Bestwall that the court found important was that the discovery, to some extent, will help to fill gaps that had been left by noncompliance with the questionnaire as well as by the difficulties that Bestwall has had in getting the trust discovery. And so that's another consideration that

Judge Beyer had before her that, that weighed into the proportionality calculus.

And then the somewhat vague arguments about the common professionals among the debtors that are before your Honor today. I think that that argument, to a large degree, conflates the professionals for those debtors with the debtors themselves.

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

MR. WORF: And attorneys are not their clients, as we all know well, and moreover, all of these clients are not represented solely by the law firms that have multiple representations. They all have counsel, both inhouse and outside counsel, who are only involved in that case and who are perfectly well equipped to advise their clients and for their clients to understand what their interests are.

So that should not be a consideration. There is no conflict from a professional standpoint here because none of the three debtors before your Honor today have objected to the discovery and moreover, they have all expressed some interest in seeking similar discovery in the future and believe that it is relevant, lawful, and is not prejudicial to their interests and your Honor should, should credit that determination.

For all these reasons, your Honor, Bestwall respectfully requests that your Honor deny the motions to quash

and allow the discovery to proceed that Judge Beyer determined should proceed.

Thank you.

THE COURT: Very good.

Are we ready to move on to the other debtors' arguments?

MR. EVERT: We are, your Honor. I know I'm going to be very brief, so. And I, and I think that's also true for DBMP. So I think we ought to be able to get this done relatively quickly.

So Michael Evert for Aldrich and Murray, your Honor.

As your Honor alluded to, we're in a bit of an odd procedural posture, I mean, for a hearing where you can't tell the players without a score card kind of thing. You can tell it's a little unusual and I think what, what's atypical here is it's somewhat atypical for the target of a subpoena to actually have its own action pending so that you get some sort of motions practice filed in that action. We, as indicated in our paper that we filed, as Mr. Worf outlined, really think the appropriate challenges should have been in front of Judge Beyer. There were challenges made in front of her, as you, as, as you've heard in great detail, but I did just want to cover a couple of things.

The first is is given the fact that we're seeking similar types of information from other entities is really no

surprise that we have no objection to the subpoena. We don't see it burdensome to comply. The -- Bestwall has indicated they'll pay our costs. It's going to be governed by the confidentiality order.

So all the things that we would see as appropriate in the case and are similar to the same things we are doing in our case appear here. We don't see any risk to our insurance coverage and are not quite sure where that argument comes from, but I will note, as the Court knows, the insurers have appeared repeatedly in our case. They're well aware of the case and, and no objections have been filed by the insurers related to, to these subpoenas.

At the request of the ACC, we have not produced any information to this point and are ready to do so depending upon, obviously, on the Court's ruling. We'll maintain that posture until the Court rules because that, obviously, seems to be the appropriate thing to do, but other than that, we're, we're prepared to comply if that's consistent with the Court's ruling.

THE COURT: Okay.

MR. EVERT: Thanks, your Honor.

THE COURT: Thank you.

All right.

MS. GEISE: Good morning, your Honor. My name is Elizabeth Geise and I'm from the Arent Fox Schiff firm and I

represent DBMP. And I, again I have three very brief points.

First, DBMP has no objection to the subpoena and intends to produce the data if the Court so rules. We've held off doing it with agreement of the ACC until there was a ruling on these decisions. The discovery's not burdensome, it'll be subject to a protective order, and I don't think that, contrary to Ms. Ramsey, that it's really exponential or out-of-control discovery, basically seeks seven datapoints by a small subset of people who sued DBMP in the tort system, not information we would consider confidential at all, not PII, not medical information, not employment records, basic information about the lawsuits. That's Point 1.

Point 2, as we explain in our papers, we do not believe that the Court's the appropriate court for the ACCs' motion under Rule 45. It's not the place of compliance. But moreover, you know, Judge Beyer, who's the issuing court, ruled last week. She ruled on relevance, she ruled on whether the, the information was confidential or privileged, and, and she ruled on whether the claimants needed notice and all of those things she held that the subpoenas should go forward and, in our view, this Court should defer to her in that situation. It is a Bestwall case subpoena.

And then our final point, your Honor, is that the DBMP committee lacks standing here. In the DBMP case they are authorized to represent pending claimants against DBMP. This

subpoena is not in the DBMP bankruptcy case. It is outside the DBMP bankruptcy case. And Ms. Ramsey argued, "Well, who else is going to represent these claimants?" Every one of these claimants, your Honor, was represented before Judge Beyer last week in the Bestwall proceeding. The, the DBMP committee doesn't have a roving mandate, your Honor, to go into any other bankruptcy court and try to protect its constituency for things that are outside the DBMP bankruptcy and every one, as I said before, every one of their constituents was represented in front of Judge Beyer. Their actions here were unnecessary and, in our view, fall outside their authority under 11 U.S.C. 1103(c)(5) so that because they have no standing their activities in seeking to quash the subpoena in this Court, not in Bestwall, but in this Court should not be properly charged to DBMP.

The other arguments were all set forth in our brief, your Honor. The no notice issue, it doesn't violate the protective order in the DBMP case, doesn't violate the automatic stay, as, as Mr. Worf pointed out. As a debtor in bankruptcy, we have complied with third-party subpoenas when appropriate during the past two years and we do not believe under the In re Miller case that that violates the automatic stay.

And finally, there's nothing untoward here that there's overlapping counsel between Bestwall and DBMP. DBMP is

independently represented both by my firm and in-house counsel. We reviewed the subpoena, thought that the information sought was minimal, not burdensome, and would be, and we fully intend to comply.

Thank you.

THE COURT: Thank you.

All right. We gotten everyone that is on the, if you will, the multiple debtors' side of this?

(No response)

THE COURT: Okay. Ready to hear rebuttal.

MS. RAMSEY: Thank you, your Honor. I don't have a lot, your Honor, but I think there are some points that were made during my opening that I'd just like to, I'd like to revisit based on the arguments made by our opposition.

The first is with respect to who we represent and the nature of that representation. Each of the Committees represent the interests of the claimants and the interests of the claimants against those entities include the interests in the conduct of the bankruptcy case, the information that is sought and obtained, and how it is used in the bankruptcy case, and each of those claimants in this very unique context are individuals who are likely to have some settlements with some entities and also some pending claims and the nature of their litigation makes them highly interested in the use that will be made of their personal information in the future by others as

well as their interests in their own current information.

So in our -- our belief is that the Committees have done what was not only expected of them, but required of them in seeking to intervene because, as you heard the, the various debtors say, they all agree that this information should be exchanged among each of them and there was no one in the void to step in and protect this information other than the respective Committees.

And while I'm sort of addressing that point, there, there obviously is in the DBMP briefing a suggestion that the DBMP estate should disallow the fees that are associated with the effort that has been made here to oppose the discovery and that is, we think, both telling and concerning because it is an effort, we contend, to control the opposition and the positions they are appropriately taking in the case and we would ask that the, the Court not permit the debtors to exercise that type of control over their adversary, having affirmatively sought out this process and jurisdiction.

With respect to the issues of the automatic stay and the Barton doctrine, the arguments that were made by Bestwall, in particular, today we think demonstrate why it would have been more appropriate for this to have come to the Court on a motion for relief from stay and to some extent, there's sort of a, maybe a no harm no foul. We're here now. The Court's hearing the issues. The Court will make the decision that the

Court makes, but we still believe that this is extremely important. The very fact that the only, the only issue in this case is asbestos. The only information that is at issue in this case is the information concerning asbestos liability. I imagine that you would hear a far different cry from the debtors if there were discovery being served on them looking for, say, a site list.

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

MS. RAMSEY: And yet, they're perfectly happy to exchange the claimant information because that is part of the agenda that each of these debtors have laid out and, and we do think that there is a lack of independence with respect to this position because even the debtors have told us that they contend that there is a common interest in, between them, among them with respect to certain of the litigation that they are pursuing in these cases and, and that itself is, is, again, concerning and, and creates a burden on the claimants to be hypervigilant with respect to what is being done with respect to the information and the litigation in these cases.

And unlike the other subpoenas that Bestwall referred to and referred to in the argument before Judge Beyer, I don't, I'm not aware, anyway, that each of those subpoenas sought the entire information from the entire database. I believe those were one-off subpoenas for information and in those contexts

if, if there was a requirement, say, for Bestwall to respond to them by showing up in a different jurisdiction, I have no doubt that, that they would have brought that issue before this Court, but the concern that, with, with the procedural posture is, again, it reverses the burden. The burden ought to be on the entity that is coming in and seeking to obtain information from this bankruptcy and not on the party that is opposing that in the first instance.

So we do believe and continue to argue that, that both the automatic stay and Barton required the debtor to come back here.

With respect to the sensitivity of the information, there's been a lot of argument about the fact that the fields of information that are requested aren't the PII because that information's already known by Bestwall. They are, they know who they are. They have their Socials. They have their home addresses. So this is -- I think that the word was like to "fill" out or to, the information that is to add to the information that Bestwall always has. And that is our concern and there are a number of cases that we cite in our objection that stand for the proposition that there is a big difference between information that could be determined in different contexts and information that is aggregated. For example, in one of the cases we cite the quote is from the court there:

"There's a vast difference between the public records

that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information."

That's the U. S. Department of Justice v. Reporters Commission of Freedom to the Press case.

In another case cited in our materials the court said: "In an organized society there are few facts that are not at one time or another divulged to another, but that does not mean that there is no interest in saving them from further disclosure."

And that's Austrin (phonetic) case cited in our materials.

These are important concepts and the more that this information is aggregated, again the more risk to the claimants.

The question of whether the claimants have a personal right to the information and whether that interest is one that can be properly raised, it is hard to believe that the claimants don't have a right to this very sensitive information. While there may be case law that says that the fact of a settlement is not confidential, there is information that is being requested as part of this that is not public, generally. For example, the date of somebody's settlement, the status of a claim that hasn't been settled, those are, are

fields of information that the debtor might not be able to obtain even through a public search and it does raise the question, again -- and we raised this before -- of if this is such public information and if the, and if the debtors are talking all the time, anyway, the companies' co-defendants in litigation and they already have this information, why are they seeking to obtain it in the way they are?

I just wanted to respond with respect to the confidential nature of this information and the restrictions. We have never seen a circumstance in these cases where the database is not treated with absolute confidentiality. In fact, in the beginning of the Specialty Products case the debtor there was reluctant and resistant to even turning over the database to the case parties. And it is entirely common, as the Court heard from the Paddock debtor, that defendants in litigation enter into settlement agreements almost universally, require confidentiality, and they also almost universally require that if the information is subpoenaed or become sought by another, that those claimants are to be notified and have an opportunity to be heard. Again, that is a matter of, of law. And, and Mr. Worf cited a Fourth Circuit case for the proposition that, that there's no federal settlement privilege, but that all comes down to the documents themselves and the choice of law and the law that's applicable in the respective jurisdiction. That case may apply to a few cases here, but not

the totality of them.

And finally, your Honor, with respect to deference to Judge Beyer, we, we don't contest here today that the Court should not be deferential to the court's decision in that case regarding the relevance. What we're here advocating on behalf of, the DBMP and the Aldrich Committee, is the interests of the Committee, the interests of the Court are different in these cases and that is to protect the information to make sure it is used appropriately given the context of these bankruptcy cases and the fact that it may be relevant to another case, another circumstance does not create, we believe, a requirement that this Court be deferential to that to the exclusion of a determination about the information over which it is presiding.

Thank you, your Honor.

THE COURT: All right. Thank you.

That got it? No premium paid to being the last speaker.

(No response)

THE COURT: All right. Split decision on this one. I generally agree with the ACC when it comes to the, the preliminary arguments that you, are addressed in the joint reply that they filed here. I think this is an appropriate court to hear this motion. I think it is somewhat akin to what we're seeing in the other motions where the first shot comes to

the bankruptcy court that has the case. The second goes to the compliance court. In this circumstance, Judge Beyer's got her issues and I've got mine and we have to decide them both, but the bottom line is if you are asking for relief that involves tasking the principals of a company and its professionals and its data, then I think it's appropriate to put it here. So I agree with that.

As to standing, I believe that the Committees have standing here. Not to put too fine a point on it, but the fact of the matter is, as we noted when we were trying to figure out who is representing the debtors, these cases ebb and flow and, between one another. They go back and forth and I have found it a challenge to stay up because I not only have to know what's been filed in my cases, but also need to have some clue as to what Judge Beyer has done in hers, what Judge Silverstein has done in hers, and what Judge Kaplan has done in his.

So putting too fine a point on who has standing in which case I think would belie the nature of the cases themselves. Yes, the, you're supposed to be working for the interests of the claimants in your case, but here for those reasons.

Issue preclusion. That is an interesting question and that's why I tried to pin Mr. Worf down as to how he felt about FCRs in the various cases and for the most part, it would be easy to say issue preclusion, but I'm just not sure that case-

to-case and in the circumstance that we have everyone represented in privity with one another and the like when we have independent Committees and could have independent representatives. We know we have very independently mind FCRs in the various cases because they take opposing viewpoints in a couple of them.

So I don't want to decide it on issue preclusion. We might get there, but no one wants to hang their hat on that. I'm, I'm treating the current motion on my own.

362 and Barton doctrine. As I said with regard to the last motion, I think it depends. There's a split in the courts on when discovery is or is not stayed. There is an even, somewhat of a difference of opinion on where the Barton doctrine applies. It is a judicial doctrine after all and it's too close. The fact of the matter, though, is that if those are issues, those are issues I can resolve here and, and deal with and I see no need to either rely on the stay or the Barton doctrine to preclude a hearing on the merits of this, these particular motions.

So the bottom line is, to the extent the stay might apply, then I am either annulling or granting relief from stay to that point and to the extent, the Barton doctrine also.

But that said, the remainder of the motion, I agree with Bestwall and believe that the discovery is appropriate under the circumstances.

Now the thing to remember here is that good for the goose is good for the gander. It is certainly an expansion of discovery over where it's gone before, but I went through and read Judge Beyer's notes and I tend to agree with her analysis. I don't see the discovery requested here being, having PII. I don't think that we have a real threat of identity theft or anything of that nature under the circumstances. The most -- if there is a threat, that information is already out. I do appreciate the view that, that somebody should have some say in this and that's one of the reasons I'm leaning the way I am on standing. Because I believe that the claimants do not legally have a, a right to be heard on, with regard to this information which was gathered largely by the corporations themselves and, generally, from public information.

So my belief is that to the extent there would be an interest there, it has been adequately represented by the Committees themselves.

I've looked through the protective orders and don't see that responding to a subpoena would violate any provision of the protective orders. The wording of the protected orders almost implies that the debtor has, or the party that is disclosing the information has some control over its disclosure on its own. So I don't see that as being a problem.

I can't explain or anticipate even after the Kaiser case where all things insurance related can be litigated. I

don't see a risk of non-cooperation type issues or, or the like there that has been articulated or any authority established in regard to that. But, if there were, the reality is -- and as the ACC has argued in, in both Aldrich and DBMP -- the other company, the one that has all the assets, has the wherewithal. These have been described as full-pay cases. They have the wherewithal to pay the claims. So if they lose the insurance, it's really them that would suffer at the end of the day, not the claim, the claimants themselves.

I don't know that it's, again, a misuse of the bankruptcy to, to allow this type of information. It's certainly unique, but like Judge Beyer, I don't see a reason there not to do it.

And finally, with regard to the professional fees and the request to disallow, because I have not found that this is entirely out of the realm of, of the interests of the claimants in the DBMP and Aldrich cases, I'm not inclined to, to categorically exclude fees. We'll look at them for reasonableness and necessity when they are applied for, but the bottom line is I think it's, while it may be on the edges of the representation there, for the reasons I've said earlier and have been argued, I believe that it is appropriate.

So that's the ruling. I am effectively denying the motion with some *caveats* and exceptions.

So for the clerk's benefit it is granted slightly with

regard to a few of the arguments, as to the request for denial of fees, but otherwise, denied, all right?

With that being the case, I'll call upon, I think Bestwall had the, the biggest oar in the water here on that. So I'll ask you for a proposed order, run it by opposing counsel.

Okay. Where does that lead us? Anything else we need to discuss today?

(No response)

THE COURT: Well, for those of you who have late flights, the ACC Baseball Championship's going on across the street and you might want to kill some time there.

But otherwise, travel safely. And I, I thank you for your work, all right?

Court's in recess.

(Proceedings concluded at 12:36 p.m.)

CERTIFICATE

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

/s/ *Janice Russell* May 30, 2022

Janice Russell, Transcriber Date