

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

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

2 (Call to Order of the Court)

3 THE COURT: Have a seat, everyone. Good afternoon.

4 (Counsel greet the Court)

5 THE COURT: By way of preamble, if anyone's concerned,
6 no, I'm not in a bad mood. My dermatologist thought this would
7 be a good look to have on Valentine's and has been smearing the
8 Etofex around. So my apologies for having to deal with the
9 gruesome massage, worse than even normal.

10 Back in the Aldrich Pump and Murray Boiler cases and
11 related adversaries.

12 Let's start with appearances and then we'll see what
13 we have to talk about.

14 MR. ERENS: Thank you, your Honor. Brad Erens,
15 E-R-E-N-S, of Jones Day on behalf of the debtors. I also have
16 Morgan Hirst from Jones Day; Michael Evert from the Evert
17 Weathersby firm; Jack Miller from Rayburn Cooper; Rob Sands
18 from the company; and Matt Tomsic also from Rayburn Cooper.

19 THE COURT: Okay, very good.

20 MR. MASCITTI: Greg Mascitti, McCarter & English, on
21 behalf of Trane Technologies Company LLC and Trane U.S. Inc.

22 THE COURT: All right.

23 ACC?

24 MS. RAMSEY: Good afternoon, your Honor. Natalie
25 Ramsey, Robinson & Cole, on behalf of the Asbestos Committee,

1 along with Davis Lee Wright, Katherine Fix, Jim Wehner, Jonah
2 Recordscosky (phonetic), and Rob Cox.

3 THE COURT: Okay, very good.

4 MS. RAMSEY: Thank you.

5 THE COURT: FCR, Mr. Guy.

6 MR. GUY: Good afternoon, your Honor. You have my
7 every sympathies 'cause I go through that treatment every like
8 five years and I hide myself in a cave.

9 THE COURT: A lot of fun.

10 MR. GUY: I'm here with Cotten Wright, your Honor, my
11 co-counsel.

12 THE COURT: Very good.

13 MR. GUY: Thank you.

14 THE COURT: Mr. Parrish?

15 MR. PARRISH: Yeah. Good morning or afternoon, your
16 Honor. Felton Parrish, Alexander Ricks, on behalf of the
17 Delaware Claims Processing Facility. On the phone is Kevin
18 Guerke with Young Conaway.

19 THE COURT: All right, very good.

20 Mr. Roten?

21 MR. ROTEN: Good afternoon, your Honor. Russell
22 Roten, Duane Morris, for Certain Insurers.

23 THE COURT: Okay.

24 Anyone else in the courtroom announcing?

25 (No response)

1 THE COURT: Do we have any other telephonic
2 appearances that haven't been noted?

3 MS. SIEG: Good afternoon, your Honor. This is Beth
4 Sieg of McGuireWoods, co-counsel for the Non-Debtor Affiliates,
5 along with McCarter & English and Greg Mascitti.

6 THE COURT: All right, very good.

7 Others?

8 (No response)

9 THE COURT: If you're trying to get through, Star 6
10 gets you amplification.

11 MR. BURNS: Good afternoon, your Honor. Tyler Burns
12 of Ballard Spahr LLP on behalf of the DCPF Trusts.

13 THE COURT: All right, very good.

14 Anyone else? That got it?

15 MR. HOGAN: Your Honor, Daniel Hogan on behalf of the
16 Matching Claimants. I'm here telephonically as well.

17 THE COURT: All right.

18 Anyone else? Last time?

19 MR. TAYLOR: Good afternoon, your Honor. Joshua
20 Taylor from Steptoe & Johnson on behalf of the Travelers
21 Insurance Companies.

22 THE COURT: Anyone else needing to announce?

23 (No response)

24 THE COURT: All right, very good.

25 Okay. Any updates? Any state-of-the-union

1 announcements or, or otherwise?

2 MR. ERENS: Yes, your Honor.

3 THE COURT: Mr. Erens.

4 MR. ERENS: Just a couple of quick updates. I'll give
5 one and I'll Mr. Hirst give the rest.

6 Just on mediation, you may recall you entered the
7 mediation order, I think, last week.

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

10 MR. ERENS: That order provides for mediation to
11 commence no later than May 31st. We're beginning discussions
12 with the parties to start setting actual dates and then -- when
13 I say "parties," parties and the mediator -- set actual dates
14 and then start creating a structure for mediation. We haven't
15 really started those, but I'm hopeful to do that soon and we
16 will report back probably at the next omnibus as to, you know,
17 more details. Next omnibus is not until the end of March. You
18 may recall --

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

21 MR. ERENS: -- you accommodated our schedule to do a
22 mid-February rather than late February hearing.

23 So we've got quite a bit of time before the March
24 omnibus, but we're hoping to have --

25 THE COURT: Right.

1 MR. ERENS: -- much more details on mediation when we
2 get to that point.

3 Otherwise, I've got, I'll turn it over to Mr. Hirst
4 for some litigation updates.

5 THE COURT: Mr. Hirst?

6 MR. HIRST: Good afternoon, your Honor. Morgan Hirst
7 for the debtors. Just some updates on things not on the agenda
8 on the discovery side vis-à-vis party estimation discovery.

9 We've been working, Mr. Wright and I in particular,
10 have been work to try and narrow some things down. We've
11 already produced, as I think you know, about 200,000 pages of
12 documents vis-à-vis estimation. We've been regularly meeting
13 and conferring about trying to narrow down issues. We owe them
14 a few updated request responses. They owe us a response to
15 some proposals on search terms on the ESI collection. We're
16 obviously eager to get going on reviewing the ESI since,
17 obviously, that's a, a large chunk of time and will take a
18 large chunk of time, and I, I anticipate we will have an
19 agreement on that soon. I think we're pretty close with the
20 Committee on that.

21 Quickly on POCs and PIQs, your Honor might recall the
22 PIQs came in December.

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

25 MR. HIRST: We've been in the process of evaluating

1 those at this point for compliance and kind of next step there
2 is reaching out to any claimants' counsel on anything we see as
3 an issue on noncompliance certainly well in advance of bringing
4 anything before your Honor and hoping to get those cleaned up
5 in that fashion.

6 On the POC side, we found a number of claims we think
7 were likely submitted in error, claims that we think were
8 already released or dismissed. We'll reach out again and start
9 the process of meeting and conferring with those counsel in the
10 hope of cleaning that up as well.

11 And that actually segues, unless one of the other
12 parties has something on a status, that actually segues into
13 the first agenda item, which Mr. Miller will take care of, but
14 I'll see if --

15 THE COURT: Right.

16 MR. HIRST: -- anybody has anything on an update,
17 first.

18 THE COURT: Anyone?

19 (No response)

20 MR. HIRST: Okay.

21 THE COURT: Go ahead.

22 MR. HIRST: With that, we can go to Agenda Item 1 and
23 I'll turn it over to Mr. Miller.

24 THE COURT: Thank you.

25 MR. MILLER: Afternoon, your Honor.

1 THE COURT: Mr. Miller.

2 MR. MILLER: Jack Miller, Rayburn Cooper & Durham, on
3 here to deal with the debtors' motion to establish claims
4 procedures. I'll just do -- I'll go over here since I, get me
5 in front of a microphone.

6 So your Honor, the, the name for this motion kind of
7 does a lot of the work for me. Essentially, this is, the
8 debtors are anticipating having several hundred claims that
9 have been filed that are potentially subject to objection. All
10 of the objections that we anticipate bringing are on non-
11 substantive grounds, the grounds that are covered in, in
12 Bankruptcy Rule 3007(d) with the exception of one and that is,
13 as Mr. Hirst previewed, on the basis that those claims had been
14 either, you know, settled, paid, and released or dismissed
15 prepetition. And interestingly, Rule 3007(d) comes close to
16 dealing with that type of situation, but it, it talks about
17 claims that have been satisfied during the case as opposed to
18 before the case.

19 So I guess you could argue that this is outside of
20 that. And so we filed, filed this motion asking to establish
21 uniform form of notice, meet and confer, briefing, and hearing
22 process in the hopes that that would make things easier for the
23 claimants to kind, and their counsel, to kind of understand
24 what's going on and hopefully, easier to get these claims
25 resolved without your Honor ever having to deal with them,

1 hopefully.

2 The substantive relief that we're asking for is to
3 include those pre-petition satisfied or released claims as
4 among those for which we can include in omnibus objections of
5 no more than, than a hundred claims per objection. In the
6 procedures, we propose that we would only -- only file -- only
7 object to claims on one basis per objection.

8 So for example, one objection with only duplicate
9 claims as the basis, one objection with only, you know, paid or
10 satisfied claims as the basis and we think that the process
11 makes sense and, and will help, will help expedite things along
12 and doesn't, doesn't prejudice anyone.

13 After filing the motion, the debtors met and conferred
14 and communicated with the Committee on the relief that was
15 requested. The Committee made some proposals which the debtor
16 incorporated and I think we had sent your Honor a blackline
17 that shows the, the differences between what the debtors and
18 the Committee agreed to versus what was in the original motion.

19 I've got, I've got some copies --

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

22 MR. MILLER: -- if your Honor would like one.

23 THE COURT: If you sent it, I haven't seen it, so.

24 MR. MILLER: Okay. I thought we had, but --

25 THE COURT: It may well, may have not gotten to me,

1 though.

2 MR. MILLER: I mean, the paper's riveting.

3 (Document handed to the Court)

4 MR. MILLER: So your Honor, I'll just take a couple of
5 minutes and, and walk through kind of the, the high points of,
6 of the changes --

7 THE COURT: Okay.

8 MR. MILLER: -- starting with the procedures
9 themselves.

10 In, in Paragraphs 1 and 2, we added, we changed things
11 up to, to have a meet and confer with claimants or their
12 counsel, if represented, prior to actually filing the
13 objections so that we could see if the issues could be resolved
14 and the claims get, claims either withdrawn or get our
15 understanding of the situation corrected, as appropriate,
16 without ever even having to file an objection. So we've built
17 that in.

18 In Paragraphs 5, 7, and 10 of the procedures, there
19 was the addition of some specificity regarding what documentary
20 evidence the debtors would provide, along with any claims
21 objections that are filed as well as information and evidence
22 that's to be provided to the claimant prior to the claimants'
23 response deadline for the objection.

24 And I'll pause. I know your Honor -- if your Honor's
25 seeing this for the first time, it may, if you have any

1 questions, feel free to jump in and interrupt me.

2 And, and by the way, I -- I may -- Mr. Cody, I believe
3 is on the phone. So if you do have questions, I may have to
4 defer to Mr. Cody 'cause he was really in the middle of
5 negotiating this.

6 THE COURT: All right, very good.

7 MR. MILLER: On Page 3, we modified the deadlines for,
8 for claimants to respond to the objections. So I think
9 originally we had said 60 days after the objection is filed
10 would be the minimum time period. We changed that since
11 there's a meet and confer process before filing the objection.
12 We tightened that down to 30 days unless (a) claimants' counsel
13 has to respond to 20 or more claims in any one objection and
14 then it's, the period is at least 45 days.

15 THE COURT: Okay.

16 MR. MILLER: And then on Page 4, subsection (c), we
17 clarified that these claim objections are not objections on the
18 merits of any claim and that the responses are not required to
19 support the merits of the claim. We're really limited to just,
20 for example, is this a duplicate claim or is it not a duplicate
21 claim? Has this claim actually been paid and released before
22 the petition date --

23 THE COURT: Right.

24 MR. MILLER: -- or has it not?

25 And then on Page 5, we added a reservation of rights

1 language just clarifying that disallowed claimants may seek
2 reconsideration if, if permitted under any applicable Rule or
3 the, or the Bankruptcy Code.

4 And then just two things to note on the form of
5 notice, which is behind the procedures themselves. On Page 1,
6 we moved some of the language regarding why the, sort of the
7 bold and, and --

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

10 MR. MILLER: -- all caps language up to the front
11 regarding why the claimants are receiving the notice and the
12 consequences of not responding, I guess move that upfront to
13 make it a little easier to see.

14 And then on Page 3, we added --

15 THE COURT: See if not read?

16 MR. MILLER: I'm sorry? See if not read --

17 THE COURT: See if not read.

18 MR. MILLER: -- yes.

19 THE COURT: This looks --

20 MR. MILLER: It's there if they want to see --

21 THE COURT: -- Al Durham might have been involved in
22 it.

23 MR. MILLER: With, with the caps and bold and, he
24 would have said it three times, though, so.

25 THE COURT: He wouldn't --

1 MR. MILLER: And then on --

2 THE COURT: -- add the second paragraph, either.

3 MR. MILLER: Right.

4 THE COURT: For those who don't know, Mr. Miller's
5 former partner, Mr. Durham, and I, he was also my former
6 partner long, long ago, and he didn't believe in paragraphs,
7 single spacing on the other hand, but so.

8 Go ahead.

9 MR. MILLER: Then on Page 3, we just added the
10 sentence that, that says, "Disallowance of the claim may
11 extinguish the claimant's right to seek payment from the
12 debtors or their affiliates or their right to participate in
13 this, in the case," I guess, really, to just drive home that
14 they really should read the objection and, and respond to it,
15 if, if there's a reason to respond to it.

16 THE COURT: Okay.

17 MR. MILLER: And otherwise, it's really just
18 conforming changes to the changes that were in the procedures.

19 THE COURT: Okay.

20 MR. MILLER: Not to put words in the Committee's
21 mouth, but we understand that with these changes the, the
22 Committee doesn't have any objection to the relief requested
23 and no other parties have, have filed objections. And so we
24 think it's unopposed as modified.

25 So we'd ask that your Honor approve it.

1 THE COURT: Anyone else want to speak with regard to
2 No. 1?

3 Ms. Ramsey?

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

6 Your Honor, we appreciate the, the good faith with
7 which the debtors worked with us and making the changes to the
8 omnibus objection procedures.

9 The principal changes that we thought were important
10 was the advance meet and confer process to provide an
11 opportunity for folks not to have to retain local counsel and
12 go through a, a formal litigation process if, in fact, it could
13 be worked out informally.

14 THE COURT: Sure.

15 MS. RAMSEY: To ensure that the way that this, that
16 the process would work is that the debtors would provide the
17 evidence they had that would support their objection upfront
18 and that would not be subject to a discovery process within
19 litigation later, that, to clarify, that there would be no
20 merits objections, and to clarify the importance of the process
21 to folks who are receiving the notice.

22 And with those primary goals and the language that the
23 debtors have agreed to, we have no objection to the entry of
24 the order.

25 THE COURT: Anyone else?

1 MR. GUY: No objection, your Honor.

2 THE COURT: Anyone?

3 (No response)

4 THE COURT: Okay. Excellent. I'm glad you were able
5 to arrive at terms. If you'll upload the order, I'll sign it.

6 MR. MILLER: Thank you, your Honor.

7 THE COURT: Okay.

8 All right. Ready to go on to No. 2?

9 MR. EVERT: Yes, sir. Michael --

10 THE COURT: Okay.

11 MR. EVERT: -- Evert for the debtors, your Honor.

12 This is a status on the FCR's motion for a sampling
13 methodology for the claims files, claims file discovery.

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

16 MR. EVERT: So this is technically the FCR's motion,
17 but the discussions that have been ongoing are really between,
18 been between us and the ACC. So I don't want to overstep, but
19 I think it might be easier for me to just give the status
20 unless the, if that's okay.

21 THE COURT: Mr. Guy, your motion.

22 MR. GUY: Thank you, your Honor.

23 Yes, Mr. Evert is correct. Your gentle encouragement
24 seems to have reaped dividends and I don't want to characterize
25 what the agreement was. I do know it, but they'll be better to

1 explain it.

2 I would like an opportunity to very quickly talk about
3 the LTL decision, your Honor, because that came up in DBMP.
4 And we can do it now or we can do it later, whenever's
5 appropriate for the Court.

6 THE COURT: Let's hold off on that.

7 MR. GUY: Thank you, your Honor.

8 THE COURT: Let's stick to the cases I actually have.

9 And along the same lines -- I'm sure most of you know
10 it, but if not -- the Fourth Circuit ruled today in Kaiser
11 Gypsum, so.

12 All right. Mr. Evert.

13 MR. EVERT: Thank you, your Honor.

14 I, I guess I will beg the Court's deference and, and
15 digress for one minute and thank Ms. Ramsey for, as I
16 understand, these are, these are Valentine's Day, I don't know,
17 stress balls, which I think we, I think we could all probably
18 use. And I don't know if you got yours, but I do want to say
19 the debtors have no objection to the ACC providing --

20 THE COURT: I think I'm fine.

21 MR. EVERT: -- one to, to the Court, but very nice.

22 So yes, your Honor, we, we've been engaged in
23 extensive dialogue with the, with the ACC in regard to the
24 FCR's motion for sampling of the claims files and a methodology
25 for that. Based on an exchange we had last Friday afternoon,

1 we, late on this past Friday, we appear to be in agreement on a
2 sampling methodology. And when I, when I say that what we're
3 really talking about is we've reached agreement on the, on the
4 number of claims that will be sampled, on the time period
5 covered by the sample of the claims files, and the four strata
6 that will be used from which to draw the random stratified
7 sample, and the parameters of sampling of the so-called high-
8 value claims which, obviously, is where a lot of the dollars
9 are aggregated. So they're sampled at a higher rate than other
10 strata. We haven't yet discussed exactly how the ran, and the
11 strata where random sampling occurs, exactly how that's going
12 to occur, but that shouldn't be a big barrier. That's, that's
13 a randomization process that I think we'll be able to work out.

14 Where we are still sticking is when the, when we got
15 the communication from the ACC on Friday they proposed a
16 condition that we had not previously discussed in the
17 negotiations that doesn't go to the methodology, but goes to
18 another issue and I don't, I don't think it's appropriate. I'm
19 not -- I don't -- I don't want to try to get the Court in the
20 middle of our negotiations. I don't want to --

21 THE COURT: Okay.

22 MR. EVERT: But the, the point, it's a material term
23 that we've got to, we've got to understand and evaluate. So
24 the ball's in our court to get back to them on that.

25 But, but I will say, your Honor, that, I mean, the

1 discussions have been very productive. The parties have worked
2 very well together. Maybe, maybe, which has not been a, a
3 hallmark of this particular case. So maybe that's a, a reason
4 for some optimism and, and we'll try to work through this last
5 issue, but we'll, we'll continue to do that.

6 So that's really, from the debtors' perspective,
7 that's where we are.

8 THE COURT: Ms. Ramsey.

9 MS. RAMSEY: Thank you, your Honor. Natalie Ramsey
10 for the Committee.

11 I agree with Mr. Evert's presentation and have nothing
12 to add today.

13 THE COURT: Okay.

14 Anyone else?

15 MR. GUY: Your Honor, so technically, the motion has
16 been continued. We've been involved in these discussions not
17 taking a lead, but monitoring it. We're very much appreciative
18 that Ms. Ramsey and Evert have been able to get 99 percent of
19 the way there, but I would ask that we just sort of keep it
20 open until we're a hundred percent there.

21 THE COURT: Okay.

22 So that March 30th date, you want it?

23 MR. GUY: Yes, your Honor.

24 THE COURT: Everyone good there?

25 MR. GUY: And the -- and your Honor --

1 MR. EVERT: Yes, your Honor.

2 MS. RAMSEY: Yes, your Honor.

3 THE COURT: Okay.

4 MR. GUY: And your Honor, I've got you beat on how
5 long I've been married to my wife, 39 years. So I've got
6 something to take back home with me now. I really appreciate
7 that.

8 Thank you.

9 THE COURT: And since you're likely going to be late
10 for the Valentine's dinner --

11 MR. GUY: Yes, your Honor. I hope not.

12 THE COURT: -- peace offerings may be in order.

13 All right. Mr. Evert?

14 MR. EVERT: Thank you, your Honor.

15 That brings us to Item 3 on the agenda. And Items 3
16 through 9, as the Court is aware, all relate to discovery in
17 regard to the Trusts as opposed to the claims file discovery we
18 were just discussing.

19 THE COURT: Right.

20 MR. EVERT: If, if I may, your Honor, Item 9, I can
21 tackle relatively quickly because that is the motion that the
22 Court at our last hearing decided it was going to decide on the
23 papers.

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

1 MR. EVERT: So obviously, whatever direction the Court
2 has to the clerk on that is, is, is fine with us, but that's, I
3 have no more status on No. 9.

4 THE COURT: Right.

5 MR. EVERT: As to Items No. 3 through 8, we, we
6 reached out to the Trusts to ascertain whether they wanted to
7 participate in our discussions with the ACC over sampling and
8 they indicated that they did not have any new proposals that
9 they wanted to raise and they wanted to follow discussions and,
10 and reserve all rights.

11 So although the -- so the Trusts have not been
12 involved in those discussions.

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

15 MR. EVERT: And I -- and I -- I don't -- I don't know
16 how to characterize it beyond that other than there -- there
17 were --

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

20 MR. EVERT: I, I don't know if they're communicating
21 with the ACC or not.

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

24 MR. EVERT: As the, as the Court knows and as I
25 probably irritatingly made evident at our last hearing, we, we

1 disagree with the Court's ruling on, on sampling for the trust
2 discovery. We don't think it's appropriate. So we've, we've
3 continued to ponder it with our client, your Honor. And so
4 last Friday we, or Friday just a, Friday morning a few days
5 ago, we advised the ACC and the Trusts that our, our current
6 intention is to move for reconsideration of that particular
7 order. And I call it a motion for reconsideration. I guess
8 that's what it is. The Court --

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

11 MR. EVERT: -- ruled orally. No order has been
12 entered. So --

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

15 MR. EVERT: -- maybe we can talk about that in a
16 minute. But -- and, and obviously, I talked a little bit about
17 it at the last hearing and you don't want to hear it again. So
18 I'm not going to belabor where the, where the disagreement is.

19 But our intention would be to make that motion
20 according to the schedule for the March 30 hearing, which would
21 be filing the motion or whatever we call it and at the Court's
22 preference by March 9th. And we thought it important to, to
23 notify the ACC, in particular, that we were considering that
24 because obviously, we were in the midst of negotiations about a
25 sample and, and our goal, as we said at the time, has been to,

1 to try to hear the Court and try to work on sampling, although
2 we don't feel like it's appropriate in this particular
3 instance. And the ACC acknowledged that, that we'd let them
4 know and said they certainly reserve their right to oppose and
5 would oppose, in all likelihood, any, any motion for
6 reconsideration.

7 Now technically, and, and sort of going back to the
8 agenda, there are a number of New Jersey matters, which you'll
9 see starting at No. 6, that relate to Verus --

10 THE COURT: Right.

11 MR. EVERT: -- that are still pending, motions to
12 quash and related. And of course, these are highly similar
13 motions to quash that the Court heard and, and has already
14 heard in Items 3 through 5, which are the --

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

17 MR. EVERT: -- DCPF motions.

18 So we're talking about two different trust -- and I
19 know the Court knows this, but just to be clear -- we're
20 talking about two different trust claims facilities' highly
21 similar motions, one of which the Court has tentatively ruled
22 on or orally ruled on, I should say, denying the motion to
23 quash, but granting, with the exception of granting the 10
24 percent sample.

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. EVERT: And the others have not been ruled upon.
3 And so we, we would anticipate setting those remaining Verus
4 motions for hearing at the same time any reconsideration is
5 heard. So let me, let me come back to that in just a second.

6 When we advised the ACC and the Trusts that we were
7 considering this motion to reconsider, we also said at the time
8 and still believe that we should absolutely continue with great
9 vigor these discussions about sampling to be ready to report to
10 the Court on March 30. Because, for a number of reasons, not
11 the least of which is if we do reconsider and the Court denies
12 it, then we're going to need a sampling methodology and
13 likewise, I think we're all in agreement that claims files,
14 whether it's our claims files that are currently the subject of
15 some discovery from the ACC or whether it's the claimants'
16 claim files that the debtors may discover in the future or some
17 others, are clearly, in our view, right for sampling because of
18 the nature of the, the tens of thousands of documents
19 associated with those particular, with that particular
20 discovery.

21 So we will and, and do pledge to the Court to continue
22 our discussions to see if we can get to agreement on claims
23 file discovery and, and then, you know, the chips will fall
24 where they may on any motion for reconsideration.

25 So your Honor, I guess I'll stop there setting forth

1 the, I guess, saving a minute for not rebuttal, but just
2 further discussion about procedurally how the Court would like
3 to look at this for March 30, assuming we go forward. But I'll
4 stop in case others have comments about our statements.

5 THE COURT: Ms. Ramsey.

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

8 Your Honor, we're not going to preargue anything
9 today, but, sort of trying to keep the truce that has broken
10 out.

11 But, but I will just say for the record that our
12 general interest and goal with respect to a sample is to put
13 both parties on, I'll call it, a level playing field where
14 there's a discrete number of files that we're both looking to
15 and considering as part of estimation and clearly, if, if there
16 is a motion for reconsideration, those are issues that we're
17 going to have to evaluate how to respond to.

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

20 MS. RAMSEY: Thank you.

21 THE COURT: Understood.

22 MR. GUY: Nothing to add, your Honor.

23 THE COURT: Mr. Parrish.

24 MR. PARRISH: Thank you, your Honor. Again, Felton
25 Parrish for the DCPF.

1 And again, you know, no motion has been filed yet. So
2 nothing really to be said on that.

3 But as I mentioned, Mr. Guerke, who was lead counsel
4 for DCPF at the prior hearing, he is on the phone. I believe
5 he has a conflict for March 30th if that hearing, if the motion
6 is to get filed for that date. And I can let him speak to that
7 only if there's anything more to be said. There is a
8 scheduling issue --

9 THE COURT: Okay.

10 MR. PARRISH: -- from that standpoint.

11 THE COURT: Mr. Guerke, do you wish to weigh in?

12 MR. GUERKE: Yes, your Honor. Good afternoon, your
13 Honor. Kevin Guerke from Young Conaway on behalf of DCPF.

14 We obviously will oppose any motion for
15 reconsideration, but I wanted to make the, the Court aware that
16 I have a scheduling conflict and I'm currently unavailable on
17 March 30th.

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

20 MR. GUERKE: So the procedures or the timing that's
21 being discussed doesn't work for us. Perhaps the following
22 week or -- or -- I'm not sure when the next omnibus hearing is,
23 but March 30th is a, is an issue.

24 THE COURT: Uh-huh (indicating an affirmative
25 response). That'd be the end of April, the 27th.

1 Is there no one else at your firm who could handle
2 the, the argument or Mr. Parrish, either one?

3 MR. GUERKE: I don't think so, your Honor, but I'd be,
4 be happy to look into it.

5 THE COURT: Okay.

6 Well, the, the problems we run into, folks, in these
7 cases are that there's so many of you and so many attorneys
8 working on the files that if we start picking out and changing
9 hearing dates based on one person, well, there'll be no end of
10 it. I'll just refer you since I mentioned the Kaiser case of
11 all the efforts that were made by the parties to schedule a
12 hearing with the Fourth Circuit and how many conflicts were,
13 were noted there. I just don't think on a retail level doing
14 these cases month to month that I can do anything, but say
15 we've got local counsel for a reason and it's not just to, to
16 earn a *pro hac vice* fee for the, for the District Court's
17 coffers. It's basically so that if there is a need to stand
18 in.

19 So I would suggest that you -- you've got plenty of
20 time to prepare. If there's going to be a rehearing motion --
21 and that's sort of what I think it is since I announced a
22 ruling, but nothing written has been entered. So I, I would
23 view it as a rehearing motion -- let's go ahead and do that on
24 the 30th and just send who you can, all right? Okay.

25 MR. GUERKE: Understood. Thank you, your Honor.

1 THE COURT: Mr. Evert?

2 MR. EVERT: Thank you, your Honor.

3 So picking up on the Court's comment, I think what I'm
4 hearing is style that as a motion for rehearing. The -- I
5 mean, the, the, the real issue is sampling and the
6 appropriateness of it. And so I, I think that probably what
7 the Court would like to hear is why we believe sampling is
8 inappropriate for that and -- and -- but we, we also have this
9 issue of the, of the Verus motions which sort of cover the
10 whole panoply.

11 THE COURT: Right.

12 MR. EVERT: Those papers are already on file, of
13 course, because they were filed in New Jersey.

14 THE COURT: Right.

15 MR. EVERT: So does the Court just want to hear it all
16 on the 30th? Does the Court want to rule on the papers on the,
17 on the Verus motions? I'm, I'm trying to be -- look --

18 THE COURT: Let me ask a question.

19 MR. EVERT: Sure.

20 THE COURT: 'Cause I thought there was a consent order
21 entered in New Jersey that basically said these motions would
22 stand or fall based on the way that they had been handled in
23 the earlier DCPF hearing.

24 Is it -- can anyone clue me in there? Was it January
25 5th?

1 MR. EVERT: I -- I -- I think I can --

2 THE COURT: Or --

3 MR. EVERT: -- clue you in, your Honor. And, and that
4 is that I, I'm not sure. We have that -- that's our view. I'm
5 not sure that Verus agrees because they've --

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

8 MR. EVERT: -- continued to be sure that they could
9 reserve all of their rights.

10 THE COURT: Okay.

11 MR. EVERT: And so I, it may not be appropriate for me
12 to speak for them. That was our intent in our discussions with
13 them, but I'm, I'm not certain that all the parties would agree
14 on that. I don't know if there's anybody from Verus on the
15 phone or not.

16 THE COURT: Anyone?

17 (No response)

18 THE COURT: Okay. We don't want to talk too much
19 about it, then.

20 But the bottom line is that I was under that
21 impression, just having seen the order, that, that the parties
22 had, had agreed to that. I'll go back and study the order in
23 greater detail.

24 But why don't we put everything on the 30th, then, and
25 just go ahead and knock it out and try to get us moving again.

1 MR. EVERT: Yeah. That's certainly fine with us, your
2 Honor. I'm -- I'm -- I'm trying to be sensitive to the Court.
3 You've now heard these motions a number of times. And so, in
4 various cases and various, at various times. So whatever the
5 Court prefers. We'll, we'll put them all on. We'll move to
6 rehear focused on the sampling issue.

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

9 MR. EVERT: And then the Verus papers are there and
10 the Court can, can seek whatever information from us that would
11 be helpful for the Court.

12 THE COURT: Okay.

13 Anyone else got a view? That work?

14 MR. BURNS: Your Honor, Tyler Burns.

15 THE COURT: Yes, sir.

16 MR. BURNS: Your Honor, Tyler Burns on behalf of the
17 DCPF Trusts.

18 Just, just for the record and, you know, for the
19 benefit of the Court, I just wanted to note that the DCPF
20 Trusts, if the debtors move for a rehearing, we'll be filing an
21 objection to it and would oppose any such motion.

22 THE COURT: Okay. Not a problem.

23 MR. GUY: Your Honor?

24 THE COURT: Mr. Guy.

25 MR. GUY: The, the only concern we have here is we

1 don't want the whale to swallow the, the minnow that is the
2 sampling protocol that everybody's been working on. We see the
3 trust discovery as a separate issue. That's obvious from DBMP.
4 They have the trust discovery and they also are going to need a
5 sample. That's true in Bestwall as well.

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

8 MR. GUY: So we just gently encourage the parties to
9 close the sample issue off before the 30th.

10 Thank you, your Honor.

11 MR. EVERT: Gentle nudge accepted, your Honor, and,
12 and we'll, we'll, we'll certainly continue to, I mean, we made
13 progress. We're going to continue to try to do so.

14 THE COURT: Okay, very good.

15 One of the -- as to the, having heard this several
16 times before, I have, but at the same time one of the things
17 you learn quickly in this job is that the arguments you may be
18 hearing in a case one day, it may have been the 20th time
19 you've heard it, but for the lawyers arguing it is not and
20 Verus is new to this game.

21 So we'll, we'll give them a, a full listening to at
22 that event and I'll try to keep an open mind based on where we
23 are as opposed to where we've been, okay?

24 Anything else on those --

25 MR. EVERT: No, sir.

1 THE COURT: -- 3 through 8?

2 MR. EVERT: I think -- I -- I think with the exception
3 of Mr. Guy's request for an audience on LTL, I think that's,
4 that's it for the agenda.

5 THE COURT: Okay.

6 3 through 8, we're talking about continuances to March
7 30th.

8 And No. 9, I've got to make an announcement, but let's
9 go ahead and let me listen to y'all before I start talking.

10 Mr. Guy, you wanted to say something about the LTL
11 case?

12 MR. GUY: Your Honor, I heard you loud and clear when
13 you said "I want to hear the case before me, not one that
14 isn't." So I will wait in case there's a motion to dismiss and
15 we'll respond then, your Honor.

16 THE COURT: Okay --

17 MR. GUY: Thank you.

18 THE COURT: -- very good.

19 All right. As to the last matter on the docket, No.
20 9, the motion of, the Certain Matching Claimants' Motion to
21 Proceed Anonymously, I owe you a decision for that. I don't
22 think there'll be a great deal of suspense in this, given that
23 we've addressed this previously in this case and in the DBMP
24 case.

25 The bottom line is I'm denying the motion on the same

1 terms that I have twice now with a 30-day stay just in case the
2 District Court thinks there's an error there. That gives you
3 enough time to, to file a Notice of Appeal and, and seek an
4 emergency stay. No need to ask for one here. Because I just
5 don't think the grounds are made for, for proceeding
6 anonymously under these circumstances. The ruling is very
7 similar to my prior ruling in the, the February 6th order that
8 we dealt with with the motion by, in the Delaware subpoenas and
9 it is the same essential ruling as what has been argued by the
10 debtor in its briefs in, in the current matter.

11 I was trying to find the date on that brief. We've
12 got so many stamps since it's come down from New Jersey to
13 here, I can hardly read it, but the one I'm looking at is the
14 September 26, '22 ruling or -- excuse me -- submission, the
15 brief submission, if I'm -- I think I've got that right. Yeah.

16 So the bottom line is I, I just don't think there's a
17 ground, a grounded basis to, to proceed anonymously in this
18 case. The -- the -- certainly the order that I entered in this
19 case for the, as I've explained previously, we were talking
20 about what you could use or take, if you will, from these trust
21 subpoenas in our case, not saying that you couldn't identify
22 yourself by name, and then all of the, the factors that are
23 applicable here, I think weigh in, in the debtors' favor as to
24 whether you should proceed anonymously. I understand the
25 parties would rather not, but we need to know who's here and

1 that's only gotten heightened, in my opinion, in addition to
2 the normal legal criteria that, under the Megless test.

3 I'm just not sure who I'm talking to in this case and
4 as, what we have gotten ourselves involved in is a case that,
5 cases, that are not just cases on the merits, but effectively,
6 a surrogate for how mass tort liabilities should be addressed
7 in America, whether they, they should be in bankruptcy trusts
8 or whether they should be in state court. There is a series of
9 incentives there that you don't normally see. I'm not accusing
10 anybody of anything. I, I know you're all doing your best for
11 your clients, but I am concerned and feel a heightened need to
12 know who I'm talking to and whether this is asbestos claimants
13 and we need to know who is participating and who is complying
14 and who isn't and we didn't need to know if the, if for some
15 reason there are other things at issue here.

16 That's as far as I'll go with that because I don't
17 know it to be warranted. I'm just saying that's another
18 concern of mine that there is a game within a game here, if you
19 will. And I'm not accusing anyone of bad faith. I'm simply
20 saying that there are case-specific agendas and then there are
21 industry-wide agendas and whenever we get that situation it
22 makes me even more com -- com -- excuse me -- careful than I
23 would normally be about this.

24 So I think we're going to stick with the generally
25 expressed public policy that litigants are required to, to

1 identify themselves if they're going to participate. Got a 30-
2 day stay on that, so. All right?

3 Mr. Evert?

4 MR. EVERT: Your Honor, would you want us to prepare
5 an order on that or would the Court?

6 THE COURT: No. I think it, for continuity sake since
7 you did the last one, you --

8 MR. EVERT: Okay.

9 THE COURT: -- try this one as well and --

10 MR. EVERT: We, we will do so.

11 THE COURT: -- run it by opposing counsel for their
12 comments. And effectively, I'm, I'm ruling straight down the
13 line with your brief, okay?

14 MR. EVERT: Thank you, your Honor.

15 THE COURT: All right. Anything else for today?

16 MR. EVERT: No, sir.

17 THE COURT: Anyone?

18 MR. GUY: No, sir.

19 THE COURT: Okay, very good.

20 Short day. I would have been happy to accommodate you
21 virtually if you had, had desired. So if you see days where
22 you think things are going to be short, let us know in advance.
23 We'll save some travel money, okay?

24 MR. EVERT: Thank you, your Honor.

25 MS. RAMSEY: Thank you.

1 THE COURT: Thank you all.

2 (Proceedings concluded at 1:39 p.m.)

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7 CERTIFICATE

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

12 /s/ Janice Russell

February 17, 2023

13 Janice Russell, Transcriber

Date

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