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
Debtors.	(Jointly Administered)
ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, *et al.*	Miscellaneous Proceeding
	No. 22-00303 (JCW)
Plaintiffs,	(Transferred from District of Delaware)
v.	
ALDRICH PUMP LLC, *et al.*	
Defendants.	
AC&S ASBESTOS SETTLEMENT TRUST, COMBUSTION ENGINEERING 524(G) ASBESTOS PI TRUST, GI HOLDINGS INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST, GST SETTLEMENT FACILITY, KAISER ALUMINUM & CHEMICAL CORPORATION ASBESTOS PERSONAL INJURY TRUST, QUIGLEY COMPANY, INC. ASBESTOS PI TRUST, T H AGRICULTURE & NUTRITION, L.L.C. ASBESTOS PERSONAL INJURY TRUST, and YARWAY ASBESTOS PERSONAL INJURY TRUST,	Miscellaneous Proceeding
	No. 23-00300 (JCW)
Petitioners,	(Transferred from District of New Jersey)
v.	
ALDRICH PUMP LLC, *et al.*	

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[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.

Respondents,

VERUS CLAIM SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING CLAIMANTS,

Interested Party.

DECLARATION OF MORGAN R. HIRST

I, Morgan R. Hirst, hereby declare under penalty of perjury:

1.　　I am a partner of the law firm of Jones Day; my office is located at 110 North Wacker Drive, Suite 4800, Chicago, Illinois 60606. I am a member in good standing of the Bar of the State of Illinois. There are no disciplinary proceedings pending against me.

2.　　I submit this declaration in connection with *Debtors' Consolidated Reply Brief in Support of Their Motion for Rehearing*, filed contemporaneously herewith. I have personal knowledge of the matters set forth herein.

3.　　Attached hereto as **Exhibit A** is a true and correct copy of the transcript from the May 17, 2023 deposition of Dr. Abraham Wyner.

4.　　Attached hereto as **Exhibit B** is a true and correct copy of the transcript from the May 8, 2023 deposition of Dr. Charles Mullin.

5.　　Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the transcript of the April 13, 2023 hearing in In re DBMP LLC, No. 20-30080 (JCW) (Bankr. W.D.N.C.).

6.　　Attached hereto as **Exhibit D** is a true and correct copy of the Declaration of Jorge Gallardo-Garcia, Ph.D., In re Bestwall LLC, No. 17-31795 [Dkt. 2183, Ex. B] (W.D.N.C. Oct. 28, 2021).

7.　　Attached hereto as **Exhibit E** is a true and correct copy of excerpts of the transcript

of the February 9, 2023 hearing in <u>In re DBMP LLC</u>, No. 20-30080 (JCW) (Bankr. W.D.N.C.).

8.   Attached hereto as **<u>Exhibit F</u>** is a true and correct copy of the transcript from the May 16, 2023 deposition of Mark T. Eveland.

9.   Attached hereto as **<u>Exhibit G</u>** is a true and correct copy of the transcript from the May 16, 2023 deposition of Richard Winner.

10.   Attached hereto as **<u>Exhibit H</u>** is a true and correct copy of excerpts of the transcript of the January 6, 2023 hearing in <u>In re Paddock Enterprises LLC</u>, No. 20-10028 (LSS) (Bankr. D. Del.).

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

Dated: May 26, 2023   Respectfully submitted,
Chicago, IL

/s/ *Morgan R Hirst*
Morgan R. Hirst

EXHIBIT A

ABRAHAM J. WYNER, PH.D.   May 17, 2023
ARMSTRONG WORLD INDUSTRIES vs ALDRICH PUMP   1

1   UNITED STATES BANKRUPTCY COURT

2   WESTERN DISTRICT OF NORTH CAROLINA

3   CHARLOTTE DIVISION

4   ARMSTRONG WORLD   ) Miscellaneous Proceeding

5   INDUSTRIES, INC.   ) NO. 22-303(JCW)

6   ASBESTOS PERSONAL   )(Transferred from the

7   INJURY SETTLEMENT   )District of Delaware)

8   TRUST, et al   )

9   - vs -   )

10   ALDRICH PUMP, LLC,   )

11   et al   )

12   - - - - - - - - - - -)

13   IN RE:) Chapter 11

14   ALDRICH PUMP, LLC,   ) No. 20-30608(JCW)

15   et al   )

16   Oral Deposition of ABRAHAM J. WYNER,

17   Ph.D., held on May 17, 2023, at 1:01 p.m., before

18   Dolores M. Horne, Professional Reporter and Notary

19   Public, in and for the Commonwealth of

20   Pennsylvania.

21   ESQUIRE DEPOSITION SOLUTIONS

22   1835 Market Street, Suite 555

23   Philadelphia, Pennsylvania 19103

24   215-988-9191

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 1    APPEARANCES:

 2            ROBINSON & COLE

 3            BY:  AMANDA PHILLIPS, ESQUIRE

 4                 LAURIE KREPTO, ESQUIRE

 5            One Boston Place, 26th Floor

 6            Boston Massachusetts, 02108

 7            aphillisp@rc.com

 8            lkrepto@rc.com

 9            Representing ACC

10

11

12            BALLARD SPAHR

13            BY:  BETH MOSKOW-SCHNOLL, ESQUIRE

14                 BRIAN N. KEARNEY, ESQUIRE

15            919 North Market Street

16            Eleventh Floor

17            Wilmington, Delaware  19801

18            moscowb@ballardsphar.com

19            kearneyb@ballardsphar.com

20            Representing DCPF Trusts

21

22

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 1    APPEARANCES:  (Continued)

 2

 3

 4         YOUNG CONWAY STARGATT & TAYLOR

 5         BY:  KEVIN A. GUERKE, ESQUIRE

 6         Rodney Square

 7         1000 North King Street

 8         Wilmington, Delaware  19801

 9         kguerke@cst.com

10         Representing DCFP

11

12

13         HOGAN & MCDANIEL

14         BY:  DANIEL K. HOGAN, ESQUIRE

15         1311 Delaware Avenue

16         Wilmington, Delaware  19806

17         dkhogan@dkhogan.com

18         Representing Certain Matching

19         Claims

20

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 1    APPEARANCES:   (Continued)

 2

 3

 4           ANSELMI & CARVELLI

 5           BY:  ANDREW E. ANSELMI, ESQUIRE

 6           56 Headquarters Plaza

 7           West Tower, 5th Floor

 8           Morristown, New Jersey   07960

 9           aanselmi@acllp.com

10           Representing Verus, LLC

11

12

13

14           EVERT WEATHERSBY HOUFF

15           BY:  C. MICHAEL EVERT, JR.

16                CLARE M. MAISANO, ESQUIRE

17           3455 Peachtree Road, NE

18           Suite 1550

19           Atlanta, Georgia   30326

20           cmevert@ewhlaw.com

21           cmmaisano@ewhlaw.com

22

23

24
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 3   ABRAHAM J. WYNER, Ph.D.

 4

 5             By:  Mr. Evert        8

 6

 7

 8                E X H I B I T S

 9   NO.           DESCRIPTION          PAGE

10                  (NONE)

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 1                         MR. EVERT:  Andrew Wyner --

 2                         MS. MOSCOW-SCHNOLL:  Abraham

 3    Wyner.

 4                         MR. EVERT:  Abraham.  I'm sorry.

 5    It won't be the deposition of Dr. Andrew Wyner.

 6    It will be the deposition of Dr. Abraham Wyner

 7    taken pursuant to notice.  And in agreement of

 8    counsel all objections except those as to form of

 9    the question or responsive to answers will be

10    preserved until the time of trial or in the use of

11    the deposition.  And the witness would like to

12    reserve or waive signature?

13                         MS. MOSKOW-SCHNOLL:  We want to

14    sign.

15                         MR. EVERT:  Witness would like to

16    read and sign.  Any other stips from anybody?

17                         MS. PHILLIPS:  Yes.  The ACC

18    would like to join in any and all objections by

19    Verus or the Trusts.

20                         MR. EVERT:  So stipulated.

21                         ABRAHAM J. WYNER, Ph.D., after

22    having been first duly sworn, was examined and

23    testified as follows:

24                              * * *
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1   EXAMINATION

2   * * *

3   BY MR. EVERT:

4   Q.   Dr. Wyner, I should start by apologizing

5   for mispronouncing or misstating your name in the

6   stipulation. I apologize for that. Hopefully the

7   court reporter will cure it and no one will ever

8   know but us. Could you state your full name for

9   the record, please?

10   A.   Abraham Wyner.

11   Q.   And you are at Wharton; is that right?

12   A.   Yes.

13   Q.   In Philadelphia?

14   A.   Yes.

15   Q.   How long have you been there?

16   A.   Twenty-four years.

17   Q.   And your current title?

18   A.   Professor of statistics and data

19   science.

20   Q.   Your educational background is?

21   A.   Ph.D. from Stanford, bachelor's from

22   Yale.

23   Q.   I was looking at some of the syllabi for

24   some of your courses in statistics and I saw some

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 1   of the texts that you use.  They would include

 2   Keller on statistics for management in economics;

 3   is that right?

 4   A.        I don't use that.

 5   Q.        Do you use Cochran on sampling

 6   techniques?

 7   A.        I don't.

 8   Q.        Stein and Foster, statistics for

 9   business?

10   A.        Yes.

11   Q.        So, if the Keller text and the Cochran

12   text were on one of your syllabuses or syllabi,

13   I'm not sure which is right, then that would be --

14   that would have been inaccurate?

15   A.        I'm not sure.  It could have been a long

16   time ago.

17   Q.        Would you consider those texts to be

18   ones that are reliable in your field?

19   A.        Yes.

20   Q.        Did you come to Wilmington this

21   morning?

22   A.        I did.

23   Q.        Did you meet with anybody to present for

24   your deposition?
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 1    A.        I talked with lawyers.

 2    Q.        Everybody here or just some of them?

 3    A.        Just some of them.

 4    Q.        Which ones?

 5    A.        Raise your hand.

 6    Q.        Fair enough.  How long were you here.

 7    A.        I got here around 9 o'clock.

 8    Q.        Was that your first preparation for this

 9    deposition?

10    A.        No.

11    Q.        What was your first preparation for this

12    deposition?

13    A.        We talked by phone on Monday

14    afternoon.

15    Q.        For about how long?

16    A.        Hour, hour and one-half.

17    Q.        So, your preparation in total for the

18    deposition has been this morning from 9:00 to now

19    and another hour and one-half on the telephone, at

20    least with counsel; is that right?

21    A.        Yes.

22    Q.        Have you done other preparation for the

23    deposition?

24    A.        I read my own report.  I read
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1   Dr. Mullen's report. I read Dr. Mullen's

2   deposition.

3   Q.   Great. How do you bill for your time?

4   A.   Hourly.

5   Q.   So, on a day like today you drove down

6   from Philadelphia, I presume?

7   A.   (The witness indicates.)

8   Q.   Is that a yes?

9   A.   I drove from Wynnewood. It's separate.

10   Q.   Of Philadelphia?

11   A.   Yes.

12   Q.   Close enough?

13   A.   Yes.

14   Q.   Do you bill $1000 an hour for travel

15   time as well?

16   A.   Yes.

17   Q.   And that is still your current rate,

18   $1000?

19   A.   Yes.

20   Q.   Have you sent a bill for your work yet

21   in this particular case?

22   A.   No.

23   Q.   Can you tell me approximately how much

24   time you have spent thus far in total on this

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1   particular case?

2   A.   Somewhere between 25 and 40 hours I

3   would guess.

4   Q.   So, your current fees up to this moment

5   will be somewhere in the range of twenty-five to

6   $40,000; is that fair?

7   A.   Approximately.

8   Q.   Okay. It's not a memory test.

9   When were you originally contacted for your expert

10 report generally? I'm not looking for a date and

11 time. A week before you did it, two weeks before

12 you did it?

13 A.   Two weeks, a week and one-half.

14 Q.   And who contacted you; do you recall?

15 A.   No.

16 Q.   Some lawyer?

17 A.   I don't want to make you feel bad but

18 yes.

19 Q.   Pejorative is fine, some lawyer, that's

20 fine.

21 A.   I mean, I've worked with asbestos

22 trusts, so I was recommended.

23 Q.   Had you worked with this particular

24 lawyer before?

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 1    A.       No.

 2    Q.       You mentioned your work with asbestos

 3    trusts.  I know you have done work with the NARCO

 4    Trust; is that correct?

 5    A.       Yes.

 6    Q.       Are there other asbestos trusts you have

 7    done work with?

 8    A.       Yes.

 9    Q.       What would those be?

10    A.       I've worked with the DII and then I

11    worked on some legal cases that involved

12    consortiums and trusts.

13    Q.       I'll come back to that in just a minute.

14    So, I think, if I have got this right, when the

15    lawyers raised their hands for who you met with,

16    there were counsel for the Asbestos Claims

17    Committee, Counsel for Verus and counsel for

18    DCPF --

19    A.       Yes.

20    Q.       -- do I have that right?

21    A.       Yes.

22    Q.       And that's who you have worked with over

23    the course of preparation for this testimony; is

24    that right?
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1   A.   Approximately, right.

2   Q.   Fair enough.

3   MS. PHILLIPS: I want to state

4   for the record, we were in the room this morning

5   for five minutes and we did not work with Dr.

6   Wyner.

7   MS. MOSKOW-SCHNOLL: That was it,

8   yes.

9   MR. EVERT: So, the ACC showed up

10   but they didn't contribute; is that basically what

11   the statement is?

12   MS. PHILLIPS: Yes, just to make

13   sure that was clear for the record.

14   MR. EVERT: Thank you.

15   BY MR. EVERT:

16   Q.   So, I saw in your -- in both your

17   declaration and your CV that you've published

18   across a number of methods like applied

19   probability, right?

20   A.   Yes.

21   Q.   Information theory, correct?

22   A.   Yes.

23   Q.   Mathematics analysis of algorithms?

24   A.   Yes.

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 1    Q.        Machine learning?

 2    A.        Yes.

 3    Q.        Applied statistical analysis?

 4    A.        Yes.

 5    Q.        All right.  And I presume you consider

 6    yourself an expert in each of those fields?

 7    A.        Yes.

 8    Q.        Do you have any specialized training or

 9    knowledge in the field of data privacy?

10    A.        No.

11    Q.        Your fees that you make for litigation

12    consulting, do they go to you or to the

13    university?

14    A.        Me.

15    Q.        This is not part of your role at work;

16    is that correct?

17    A.        Yes.

18    Q.        So, like today, for example, you would

19    take a vacation day, for lack of a better term; is

20    that right?

21    A.        I don't have to take a vacation day but

22    yes.

23    Q.        How much would you say you work on

24    non-academic -- let me rephrase that.  How much
```

1   litigation consulting do you do on an annual

2   basis?

3   A.   A couple of days a month.

4   Q.   So, approximately what would be your

5   litigation consulting income on an average annual

6   basis over the last two or three years?

7   A.   Litigation consulting.

8   Q.   Litigation consulting.

9   A.   Fifty to $75,000, $75,000 to $100,000,

10 somewhere in that range.

11 Q.   And then do you do other non-litigation

12 consulting outside of your university work?

13 A.   Sometimes.

14 Q.   You included a list of publications and

15 testimony in exhibits to your report. Are they up

16 to date and accurate?

17 A.   To the best of my knowledge.

18 Q.   Your --

19 A.   We got a paper accepted this morning.

20 Q.   Congratulations.

21 A.   Thank you.

22 Q.   To what journal?

23 A.   Journal of Quantitative Analysis in

24 Sports, just proud of my students.

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 1    Q.        You should be.  That's always a big

 2    deal.  I presume this is a peer reviewed journal

 3    that is well respected in the field?

 4    A.        It is, tops.

 5    Q.        Your list of publications in your

 6    exhibit, not all of them were scholarly journals;

 7    is that right?

 8    A.        No.

 9    Q.        What I said was correct?

10    A.        Yes.

11    Q.        Have you -- and your list in Exhibit B

12    of litigations you've been involved, it included

13    Grayson versus GE.  Do you remember that case?

14    A.        A while ago but yes.

15    Q.        US Ex Rel. Scott versus Arizona

16    Hematology?

17    A.        Yes.

18    Q.        R. Wood versus Broadtree Partners?

19    A.        Yes.

20    Q.        Mann versus National Review?

21    A.        Yes.

22    Q.        And Honeywell versus NARCO?

23    A.        Yes.

24    Q.        Are those the only four pieces of
```

1   litigation that you have been involved in in the

2   past?

3   A.   Litigation -- those are depositions.

4   Q.   Those are the only depositions you've

5   given in the past?

6   A.   Yes.

7   Q.   Is it depositions for trial testimony?

8   A.   For trial testimony.

9   Q.   And you have been involved in other

10 pieces of litigation in your consulting work?

11 A.   Recently just maybe one or two.

12 Q.   What would those have been?

13 A.   There's one with the asbestos trusts

14 where I produced an expert report but there was no

15 deposition and it was thrown out, so.

16 Q.   That's the consortium of trusts that you

17 were speaking of?

18 A.   Yes.

19 Q.   Can you tell me a little bit about that?

20 What was that about?

21 A.   It was a sampling case. There was a

22 doctor whose expertise was essentially

23 disqualified by the consortium of trusts, and he

24 sued them for wrongful termination or for -- for

1   some legal problem. And the evidence against him

2   was based on a sample. And I was evaluating the

3   quality of the evidence.

4   Q.   As I recall it arose out of Mississippi.

5   Does that ring a bell?

6   A.   It does.

7   Q.   Do you remember the doctor's name?

8   A.   (The witness indicates.)

9   Q.   I don't, either, right.

10 A.   No.

11 Q.   But it will come to me. And that case

12 has been dismissed; is that your understanding?

13 A.   It's my understanding, yes.

14 Q.   You were never deposed in that case?

15 A.   Never.

16 Q.   Likewise, in your declaration you

17 attached an Exhibit A, which listed the materials

18 that you have reviewed for your work in this case.

19 Do you remember that?

20 A.   I do.

21 Q.   And I presume it was complete at the

22 time?

23 A.   Yes.

24 Q.   That has now been supplemented, I take

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1   it, by your testimony of just now of Dr. -- by

2   your testimony just now of the deposition of Dr.

3   Mullen?

4   A.   Yes.

5   Q.   Is there anything else that should be

6   added to that list?

7   A.   Not that I'm aware of.

8   Q.   You make a statement in paragraph seven

9   of your declaration, which I'm glad to show you if

10   you want to see a copy, that says, if called to

11   testify, I may also explain principles and

12   terminology referred and alluded to in this

13   report. Can you tell me what that means?

14   A.   If extra elucidation of some of the

15   terms I used are required, I would be happy to

16   explain.

17   Q.   So, would it be fair to say in short

18   what you're saying is if you have to use different

19   words that are in your words to explain what is in

20   your report, you don't want me to hold it against

21   you; is that --

22   A.   Yes.

23   Q.   Is that a simpleton's way of saying it?

24   I'm from Georgia, Dr. Wyner, so things come slow

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1   to me?

2   A.   I don't believe that.

3   Q.   But what I said is correct, my summary

4   is essentially right?

5   A.   Approximately, yes.

6   Q.   Okay. Fair enough. Let me go back for

7   a second to the litigation that you've been

8   involved in. I presume some or all of them

9   involved, they certainly involved statistics; is

10   that right?

11   A.   All of them.

12   Q.   Did they all involve sampling?

13   A.   No.

14   Q.   Which ones of them involved sampling, if

15   you can remember? If you want me to go through

16   the list again I'm glad to do that because, again,

17   it's not a blind memory test.

18   A.   Certainly R. Wood, certainly the

19   hematology one, that was where sampling was

20   fundamental, certainly the non-deposition we

21   talked about with the doctor. That was all about

22   sampling. Grayson maybe, I don't remember. That

23   was the GE case. And the one that certainly did

24   not was NARCO and neither did Mann versus National

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1   Review, et cetera, et cetera.

2   Q.   In the claims that involved sampling,

3   was there litigation over the reliability of the

4   sample?

5   A.   Yes.

6   Q.   So, I presume that that was typically a

7   part of your testimony, a sampling case, is your

8   opinions regarding the reliability of the sample;

9   is that a fair statement?

10 A.   Yes.

11 Q.   Did that litigation involve a Daubert

12 motions, if you know what those are?

13 A.   Almost every litigation is a Daubert

14 motion. So, yes, I'm sure they do.

15 Q.   Yes, probably --

16 A.   Yes.

17 Q.   -- is that a fair recitation?

18 A.   Yes.

19 Q.   What else -- hearings, court hearings

20 over the quality of the sample or the reliability

21 of the sample?

22 A.   Generally not.

23 Q.   Any testimony at trial over the quality

24 of the sample or in depositions, in these

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1   depositions that you have?

2   A.   Certainly not at trial. The ones that

3   have gone to trial were not about the sampling.

4   Well, maybe. I'm not sure.

5   Q.   But I take it from your comments just

6   now that the litigation over sampling in those

7   cases that involved sampling from your perspective

8   was extensive?

9   A.   Oh, yes, yes.

10   Q.   Your raised eyebrows tell me you were

11   deluged with lawyers who litigated endlessly over

12   the reliability of the sample; is that a fair

13   statement?

14   A.   Yes. None of those that were listed

15   were particularly complicated. I've done years

16   back other ones which were much more complex for

17   which there can be a big fight over the value of

18   the sample.

19   Q.   But notwithstanding the simplicity, of

20   what appears to you to be the simplicity of the

21   sampling issues in the case, they were heavily

22   litigated; is that fair to say?

23   A.   They were heavily litigated, yes.

24   Q.   So, coming back to your experience in

1   litigation. I think I have it right that you have

2   done two -- you have been involved in two pieces

3   of litigation that involve asbestos; is that

4   correct?

5   A.   Actual litigation, yes.

6   Q.   So, the NARCO Trust litigation, correct,

7   and the litigation in Mississippi over the

8   doctor?

9   A.   Yes.

10   Q.   Did you perform any work -- strike that.

11   In the consortium of trust cases

12   involving the Mississippi doctor, was your

13   testimony related to the quality of the sample

14   that the trust had taken in regard to the doctor's

15   submitted diagnoses?

16   A.   I'm sorry. Can you repeat that?

17   Q.   Probably not but I'll try.

18   Was your testimony in that case, that is the

19   consortium of trust involving the doctor in

20   Mississippi, was your testimony related to the

21   quality or the reliability of the sample of the

22   diagnoses that had been reviewed by the trust from

23   this particular doctor?

24   MR. ANSELMI: Objection to form.

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 1   BY MR. EVERT:

 2   Q.        Let me rephrase the question.

 3   When you worked in the consortium of trust case in

 4   Mississippi, what did your testimony entail?

 5   A.        Well, my expert report.  I didn't give

 6   testimony.

 7   Q.        You only gave a report.  Thank you very

 8   much.  What was the crux of your expert report?

 9   A.        That the conclusion that the trust had

10   come to regarding the doctor's work was

11   substantially supported by the samples that they

12   had generated and checked and evaluated.

13   Q.        Would it be fair to say that you

14   concluded that the trust sample was reliable?

15   A.        Yes.

16   Q.        In the NARCO case, did you do any work

17   other than developing the individual review

18   model?

19   A.        Yes.

20   Q.        What else did you do?

21   A.        I tracked the individual review model

22   results over time.  I discussed with them many,

23   many issues that would come up that they would

24   consider of a statistical nature and they would
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1   just like my opinion.

2   Q.   So, probably a poorly phrased question

3   on my part. Let me give it another shot.

4   Did you do any work in the NARCO litigation that

5   was not associated with the individual review of

6   cases.

7   A.   Nothing -- I didn't do any work that

8   ended up in a report or in testimony.

9   Q.   I see. So, as I understand it, you are

10 saying that you did some other work with the NARCO

11 Trust when they sought your opinion on various

12 sampling issues; is that a fair statement?

13 A.   Not only sampling but any issue they

14 conceived that was statistical in nature,

15 mathematical --

16 Q.   Got it.

17 A.   -- they often asked for my opinion.

18 Q.   Would it be fair to say the primary work

19 that you did with the NARCO Trust was associated

20 with the individual review model?

21 A.   Yes.

22 Q.   Are you still doing work with the NARCO

23 Trust?

24 A.   Yes.

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1   Q.   And this -- the work you're still doing

2   for the NARCO Trust is not about the individual

3   review model but is instead related to these other

4   issues that you're describing; is that fair?

5   A.   It's fair to describe it that way.

6   Q.   As I understand it, the goal of the

7   individual review model was to arrive at a value

8   of each individual review claim; is that right?

9   A.   Well, the goal of the IR model is to

10   come up with a valuation that approximated what

11   would be the liquidated value of the -- the full

12   liquidated value of the claim under the trust

13   distribution procedures.

14   Q.   So, the goal of the individual review

15   model was to value the claim pursuant to the NARCO

16   Trust distribution procedures?

17   A.   Yes.

18   Q.   As I understand it, you based that model

19   on various factors that affect the severity of

20   damages in valuing a claim; is that right?

21   A.   Yes.

22   Q.   So, in building that model you, for

23   example, had inputs for an injured party's

24   industry; is that right?

1   A.   Yes.

2   Q.   And you had inputs for an injured

3   party's occupation; is that right?

4   A.   Yes.

5   Q.   You also had inputs for an injured

6   party's age; is that correct?

7   A.   Yes.

8   Q.   You also had inputs for an injured

9   party's law firm; is that correct?

10   A.   Yes.

11   Q.   And I believe you also had inputs for an

12   injured party's gender; is that right?

13   A.   It's hard to say because it's not in the

14   model.

15   Q.   It's not in the model?

16   A.   Not that I recall at any level.

17   Q.   Did I miss anything in particular --

18   A.   Sure.

19   Q.   -- factor?

20   A.   You missed a lot of factors.

21   Q.   Let me hear some more?

22   A.   Well, these are things in the TDP, so I

23   guess anybody can read them, economic loss,

24   dependency, whether the claimant is alive. These

1   are just a couple of examples.

2   Q.   Sure. Okay.

3   A.   Smoking, that's a big one.

4   Q.   In your work in the NARCO matter and in

5   building the individual review model, did you have

6   access to the entire claims database for the NARCO

7   Trust?

8   A.   At some point, yes.

9   Q.   So, in that particular instance, you did

10   not constrain your analysis to a sample; is that

11   fair?

12   A.   I mean, we used -- I used the data that

13   was provided. So I didn't need the sample. They

14   gave me the data.

15   Q.   They gave you the entire population; is

16   that correct?

17   A.   They gave me what they had. I'm -- I

18   can't elaborate where that came from because I

19   don't know.

20   Q.   As far as you know, they gave you

21   everything they had?

22   A.   Yes.

23   Q.   And you did not design a sample for your

24   purpose in that particular --

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 1   A.        In this particular exercise for the

 2   building of an IR model, no.  But for other things

 3   you do samples.

 4   Q.        When you do work like that, when you're

 5   working with a large database, where do you

 6   perform the work physically?

 7   A.        On my computer.

 8   Q.        That's a fair answer.  At your office?

 9   A.        No.  Usually in my home.

10   Q.        And how would that data be transferred

11   to your home computer?

12   A.        Oh, generally it comes in a file.

13   Q.        So, in this instance, let's just talk

14   specifically about the Honeywell and NARCO claims

15   database that you worked with to build the

16   individual review model.  Did they share with you

17   the database in a secure link; is that how you got

18   it?

19   A.        Well, I got the data.  Some of the data

20   came over the years, at least ten years ago now.

21   So I can't remember.  Sometimes I get big

22   envelopes.  Sometimes it would be -- here's a word

23   from the past, disk.

24   Q.        Wow.
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1   A.   Sometimes it just gets mailed, emailed.

2   Things have gotten much better recently.

3   Q.   So, it's been long enough ago that it

4   may have been a hard drive of some type; is that

5   right?

6   A.   Yes.

7   Q.   And it's -- some of it has been recent

8   enough that it may have been sent via the

9   internet; is that right?

10 A.   Yes.

11 Q.   You would maintain this data on a

12 personal computer?

13 A.   Yes.

14 Q.   A laptop probably?

15 A.   Yes.

16 Q.   And that laptop I presume is routinely

17 connected to the internet?

18 A.   Yes.

19 Q.   I'm going to illustrate my ignorance

20 with statistics and ask you some basic questions.

21 Would you agree with me that sampling error refers

22 to differences between the sample and the

23 population that exists only because of the

24 observations that happened to be selected for the

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1   sample?

2   A.   Can you repeat the first part of that?

3   Q.   I can. Sampling error refers to

4   differences between the sampling and the

5   population that exists only because of the

6   observations that happened to be selected from the

7   sample?

8   A.   Yes, that sounds about right. I even

9   said something similar in my report.

10   Q.   Would you agree with me that sampling

11   error is an error that we expect to occur when we

12   make a statement about population that is based

13   only on the observations contained in a sample

14   taken from the population?

15   A.   Sounds about right.

16   Q.   Would you agree with me that even when

17   the statistics practitioner performs experiments

18   properly, a certain proportion of the experiments

19   will produce incorrect estimates by random

20   chance?

21   A.   That's very ill defined.

22   Q.   I'm sorry. I didn't understand.

23   A.   That's not a very well defined question

24   because when you use the word incorrect, that has

1 to be defined. What does it mean to be incorrect?

2 Q.   Okay. Let me try again. Even when the

3 statistics practitioner performs experiments

4 properly, a certain proportion of the experiments

5 will produce estimates inconsistent with the total

6 population by random chance.

7 A.   Now I'll ask you what does it mean to be

8 inconsistent?

9 Q.   All right. I'll give up. Would you

10 agree that the difference between the true value

11 of the parameter you're measuring in the

12 population and its estimate is the sampling error?

13 A.   Yes.

14 Q.   Would you agree that the size of the

15 deviation, that is the sampling error, may be

16 large simply because of bad luck, bad luck that a

17 particularly unrepresented sample happened to be

18 selected?

19 A.   Well, it would have to be -- what do you

20 mean by large? So that has to be defined.

21 Q.   All right. You used the word, I

22 believe, large in your expert report and I can

23 find it for you, I think, or I could ask you how

24 would you define large?

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1   MR. ANSELMI: Objection to form.

2   BY MR. EVERT:

3   Q.   You may answer.

4   A.   I'd have to know what problem I'm

5   solving.

6   Q.   Fair enough. Would you agree with the

7   statement that the only way we can reduce the

8   expected size of the sampling error is to take a

9   larger sample?

10   A.   I would disagree with that.

11   Q.   Would you agree with the statement that

12   if we are willing to accept less than 100 percent

13   accuracy we can use statistical inference to

14   obtain an estimate?

15   A.   It's very hard to answer a question that

16   is vaguely phrased. So if you want to try a

17   different question.

18   Q.   Well, I'm reading from statistical

19   textbooks. So, you know, I get it.

20   A.   They have a paragraph that preceeded the

21   question.

22   Q.   Fair enough. So, you're unable to tell

23   me whether you're able to agree that if we are

24   willing to accept less than 100 percent accuracy

1   we can use statistical inference to obtain an

2   estimate?

3   A.   Yes.

4   Q.   Would you agree that the use of a sample

5   in place of the whole introduces sampling

6   variation, that is the results from one sample

7   will differ from those provided by another sample?

8   A.   Yes.

9   Q.   Would you agree that the presence of

10   sampling variation means that sample statistics

11   differ from sample to sample --

12   A.   Yes.

13   Q.   -- and that is the price we pay for

14   working with a sample rather that the population?

15   MR. ANSELMI Objection to form.

16   BY MR. EVERT:

17   Q.   I'll ask it again. Would you agree that

18   the presence of sampling variation means that

19   sample statistics differ from sample to sample and

20   sampling variation is the price we pay for working

21   with a sample rather than the population?

22   MR. ANSELMI: Same objection.

23   BY MR. EVERT:

24   Q.   You may answer.

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1   A.   There is sample to sample variation and

2   it is inherent in the idea of sampling. And the

3   consequence of the sampling is something you have

4   to attempt when you're dealing with sampling.

5   Q.   Would you agree that the results of

6   sample surveys are always subject to some

7   uncertainty because only part of the population

8   has been measured?

9   A.   Yes.

10   Q.   Would you agree that if you analyze the

11   entire data set rather than a sample, by

12   definition there is no sampling error?

13   A.   Yes.

14   Q.   Would you agree that the chief motive

15   for examining a sample rather than a population is

16   cost?

17   MR. ANSELMI: Objection to form.

18   BY MR. EVERT:

19   Q.   You may answer.

20   A.   It's complicated because usually

21   examination of the complete population is

22   impossible. So even when it's cost, cost can be

23   infinite, you still can't get the full

24   population.

1   Q.   Well, let's -- I want you to assume for

2   me that we have a circumstance where you can get

3   the full population. Would you agree with me that

4   the chief motive for examining a sample rather

5   than population is cost?

6   A.   Yes.

7   Q.   As a result, would you agree that one

8   should undertake a cost benefit analysis as to

9   whether to use the sample or the entire

10   population?

11   A.   Yes.

12   Q.   I think in your expert report you

13   identify some of the costs associated with

14   sampling and some of the benefits; is that

15   right?

16   A.   I'm not sure exactly what you're

17   referring to, but.

18   Q.   All right. So, I think in your expert

19   report you say that one cost of sampling -- I'm

20   going to say cost is a very economic term to me,

21   so I'm going to say one -- one negative of

22   sampling is it's potential loss of accuracy; is

23   that fair?

24   A.   Yes. So sampling is -- does lead to

1   loss of accuracy.

2   Q.   And one potential negative of a sample

3   is the dollar cost of preparing the sample; is

4   that fair?

5   A.   Well, that's hard to quantify. The

6   dollar cost to preparing the sample depends on who

7   is doing it and how much they charge.

8   Q.   Will you agree with me that as your

9   experience in your litigation has borne out that

10 one of the negatives of sampling is the litigation

11 that ensues over the reliability of the sample; is

12 that a fair statement?

13 A.   I'm not sure it's the reliability of the

14 sample that is the issue in the litigation. I

15 think it more has to do with what the sample means

16 that people seem to fight about.

17 Q.   That's fair. So, you would agree with

18 me that one of the negatives of sampling is the

19 litigation that ensues over the meaning of the

20 sample; is that fair?

21 A.   Yes, because in most cases everyone

22 accepts that data is hard to get. And you have

23 the data but you have to understand what it's

24 telling you, right.

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 1    Q.      Okay.

 2    A.      So it's often someone has done some work

 3    to -- to contribute something to each observation

 4    in the sample and they argue about what it means.

 5    So there's so many things that people argue about

 6    in litigation, you know.

 7                     MR. ANSELMI:  Agreed.

 8    BY MR. EVERT:

 9    Q.      Would you agree with me that one of the

10    benefits of sampling is lowering the

11    administrative costs to the provider of the

12    sample?

13    A.      That's common.

14    Q.      And are you aware that in this

15    particular instance the debtor has agreed to pay

16    those administrative costs?

17    A.      No, I wasn't aware of that.

18    Q.      So, if I were to tell that you in this

19    case the debtor has been ordered by the court to

20    pay those administrative costs, would you agree

21    with me that at least from the proprietor's

22    perspective, that's no longer a negative?

23    A.      That's complicated to know because from

24    the proprietor's perspective, it may not be easy
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1   for them to articulate what their costs are. I've

2   been in that situation before where people offer

3   you to pay for something. And you're like, well,

4   that doesn't capture really what I'm going to do

5   here. So I can't put a dollar value on it because

6   what -- what it's requiring me is much more

7   complicated than that. I just have no opinion on

8   what that means.

9   Q.   Are you aware that a full population of

10 similar data has been produced by the DCPF in

11 another case?

12 A.   I'm vaguely aware that there's been

13 other data produced. I don't know exactly what it

14 is or what it's similar to. So I don't really

15 know how to answer that question precisely. I do

16 know that other data has been produced.

17 Q.   You know generally that other data has

18 been produced?

19 A.   Yes.

20 Q.   Are you aware that as a result of the

21 production of that data pursuant to the court's

22 order, that the debtor pay the cost for that, that

23 DCPF submitted a bill for their cost. Has that

24 been made apparent to you at all?

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1   A.   There was some discussion about how much

2   it costs, but I don't know details or what that

3   represents or what the full costs are or anything

4   of that nature.

5   Q.   So, that's just not been part of what

6   you have been educated about in your work in this

7   case?

8   A.   Yes. I don't know much about it, and I

9   certainly wasn't asked to offer an opinion on

10   that.

11   Q.   I presume that likewise you were not

12   informed about the process that DCPF had to go

13   through or did go through in order to produce the

14   data that they produced?

15   MS. MOSKOW-SCHNOLL: Objection to

16   form.

17   THE WITNESS: What I'm aware of

18   is -- I've read lots of stuff in the list.

19   There's a lot of discussion about what it takes to

20   produce the sample.

21   BY MR. EVERT:

22   Q.   My question is more current. That is,

23   have you had discussions at all with your clients,

24   DCPF or Verus, about productions of similar data

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1   that have been made recently?

2   A.   No.

3   Q.   So, if I were to tell you that in a case

4   called DB&P, the Delaware claims processing

5   facility responded to a very similar subpoena and

6   produced the entire population of data, you have

7   no knowledge about that?

8   MS. MOSKOW-SCHNOLL: Objection.

9   THE WITNESS: No.

10 BY MR. EVERT:

11 Q.   Okay. In your expert report one of the

12 other benefits of sampling that you talk about is

13 a reduction in privacy risk; is that right?

14 A.   Yes.

15 Q.   So, the benefits that we just talked

16 about that I saw listed in your expert report --

17 strike that.

18   The benefits of sampling that we just

19 talked about, that at least I saw listed in your

20 expert report, were reduction of privacy risk and

21 the reduction of administrative costs to the

22 provider of the sample. Were there any more in

23 your report or do you have any more benefits of

24 sampling in this instance in your opinion?

1   A.   So, my expert report was not about

2   the -- what I consider the cost side of the

3   equation. So, the trusts have to put or has to

4   provide the data. They have costs associated with

5   that. And I did talk in my report about two of

6   them. If there are other costs that are out

7   there, I'm not -- I don't have an opinion about

8   whether they're more. There may be and there may

9   be many more. That was not the scope of my

10   opinion. My opinion was much more on the other

11   side of the equation, what would be the benefit to

12   having the full population compared to the

13   sample.

14   Q.   That was not what you were asked to do

15   is what you're saying?

16   A.   I'm not on what I would call the cost

17   side of the equation.

18   Q.   So, in your declaration I think you say

19   that your ultimate opinion is that a random 10

20   percent sample of 1200 claimants would fulfill all

21   of the debtors reasonable needs or reasonable

22   purposes. Do I have that right?

23   A.   Yes.

24   Q.   How do you define reasonable needs or

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1   reasonable purpose?

2   A.   So, basically where I looked was in Dr.

3   Mullen's report where he explains what he wants to

4   do with the data. It was just very, very limited.

5   But he did indicate a couple places where he wants

6   to look at the data. I evaluated those

7   specifically. And then I also have substantial

8   knowledge about what gets done in these asbestos

9   cases, and I also know how big a sample of 1200 is

10 and I know the things at issue here. And what I

11 could imagine the reasonable things you would want

12 to do, I couldn't come up with something that

13 requires -- would require more than 1200 data --

14 1200 observations at a cost that was

15 significant.

16 Q.   Let me ask a little more granularly.

17 Are reasonable purpose and reasonable need the

18 same thing as used in your expert report?

19 A.   I'm not sure what you're asking. Is

20 there something --

21 Q.   Yes. So, in your expert report, which

22 here is a copy if you would like to look at it

23 while your -- we don't need to mark it. There's

24 plenty in this case. You in a number of

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1   paragraphs use the words, quote, reasonable

2   purpose, unquote and, quote, reasonable need,

3   unquote.

4   A.   I'm probably using them

5   interchangeably.

6   Q.   That's what I figured. I'm just trying

7   to clarify. Those are not statistical terms. I

8   mean, I couldn't look them up -- I tried to look

9   them up, and I couldn't look them up in a

10   statistics textbook; is that fair?

11   A.   That's fair.

12   Q.   So, there's no authoritative text I

13   could go to to define what a reasonable purpose or

14   a reasonable need is; is that right?

15   A.   No. A reasonable need depends on the

16   problem that you're solving specifically.

17   Q.   So, help me understand what you mean by

18   reasonable need or reasonable purpose?

19   Can you explain it for me any better?

20   A.   Well, yeah. There's a couple of

21   examples where I gave and -- but, so, one example,

22   reasonable need would be to estimate the

23   proportion of the settled claims in the

24   population, which you just called the 12,000

1   mesothelioma, what fraction of them have a

2   disclosure of their exposure that is different in

3   the trust data than was in the data that Bates and

4   White already has. A discrepancy in the exposure

5   record to figure that number out, that seems to be

6   a very important and very reasonable need. In

7   fact, it seems to be the driving purpose of this.

8   And then a few other things that were discussed in

9   Dr. Mullen's report that explains why he wants

10 this data and what -- what it will be used for.

11 So, reasonable things are things -- are what I

12 call reasonable are attributes of the population

13 and the sample, which would be used to estimate,

14 it would have an impact on something that is

15 currently at issue.

16 Q.   So, by employing the term reasonable,

17 are you effectively doing the cost benefit

18 analysis that we talked about a minute ago?

19   MR. ANSELMI: Objection to form.

20   THE WITNESS: No. I'm only on

21 the benefit side of the equation.

22 BY MR. EVERT:

23 Q.   I see. So, in this particular instance

24 employing the word reasonable would mean that in

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1   your opinion for the parameters you identified in

2   your expert report, a 10 percent sample is as good

3   as the entire population; is that --

4   A.   I'm going to have to -- maybe you want

5   to rephrase it because when you say as good, you

6   have to -- what are you talking about? Again, I'm

7   doing this again. What does it mean to be as

8   good. So do you want to re-ask or --

9   Q.   We have already agreed, correct, that by

10   definition when we sample, you bring in sampling

11   error, correct?

12   A.   That's right.

13   Q.   I think we're in agreement -- strike

14   that.

15   As you use the term in your expert

16   report, are the reasonable needs of the debtors

17   the two parameters of study that you identified in

18   your expert report that were from Dr. Mullen's

19   declaration?

20   MR. ANSELMI: Objection to form.

21   THE WITNESS: Dr. Mullen indicated

22   two. From there you can kind of understand what

23   the purpose of this data is. What you clearly

24   quickly understand is that this has -- the data

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 1   has a particular role to play in a much, much

 2   larger problem.  And the much larger problem has

 3   to do with -- which isn't articulated in Dr.

 4   Mullen's report at all, but it is talked about in

 5   his deposition testimony, has to do with much

 6   bigger questions that are hugely uncertain and

 7   very difficult to answer accurately.  And there's

 8   no expectation that it does get answered

 9   particularly accurate.  You just try to do as best

10   as you can.  This particular data set is there to

11   provide a gloss, a little bit of depth and perhaps

12   some changes into those estimates.  But you could

13   do it with all the data, all 12,000 or you can do

14   it with a sample of 1200.  And my basic opinion is

15   that if you had 1200, you're going to get --

16   you're going to use it in a way that will be

17   almost exactly the same way in terms of the

18   overall result at the end of the line, which is

19   doing things like forecasting what the total of

20   the trust liability would be.

21   BY MR. EVERT:

22   Q.      You have not reviewed the debtor's

23   claims database; is that correct?

24   A.      No.
```

1   Q.   You have not spoken with the debtor or

2   their counsel about the estimation proceedings; is

3   that correct?

4   A.   No.

5   Q.   You have not read the order in this case

6   ordering that an estimation proceeding be held

7   before the court; is that right?

8   A.   I'm not sure. I read a lot.

9   Q.   It's not on your Exhibit A.

10 A.   Okay.

11 Q.   So does that mean I'm correct, you have

12 not read it; is that right?

13 A.   Right.

14 Q.   Have you ever rendered an expert opinion

15 on the value of current and future asbestos claims

16 pending against a company?

17 A.   So, I have never written an expert

18 report but I have certainly discussed this with

19 trusts at length.

20 Q.   Well, do you purport to be an expert on

21 the estimation of current future asbestos

22 claims?

23 A.   If I were asked to be an expert and

24 comment on how this has been done, I would

1   absolutely do so.

2   Q.   You would accept the obligation; is that

3   what you're saying? You would accept the task?

4   A.   Yes, because I'm an expert in statistics

5   and most of these tasks are fundamentally

6   statistical tasks.

7   Q.   You've never done it before?

8   A.   No. They usually are done by consulting

9   firms.

10   Q.   Have you ever rendered an opinion on the

11   forecasting of the number of future asbestos

12   claims?

13   A.   Not for a court.

14   Q.   And for whom have you rendered that

15   opinion?

16   A.   For trusts.

17   Q.   For the NARCO Trust?

18   A.   And the DII Trust.

19   Q.   But it's never been published in any

20   form?

21   A.   No.

22   Q.   Have you ever wrote an opinion on the

23   likely incidence of mesothelioma in the future?

24   A.   I've never written an opinion on it but

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 1    I've looked at this data enormously.

 2    Q.        You have a view is your point?

 3    A.        I know what goes into this.

 4    Q.        You say you know what goes into it.  How

 5    do you know?

 6    A.        Because I've read lots and lots of

 7    reports on how it's done.

 8    Q.        And those reports have surrounded your

 9    work for the trusts?

10    A.        Yes.

11    Q.        How much of that work has surrounded

12    tort litigation?

13    A.        The only one that was litigated was

14    NARCO.

15    Q.        I think my question was poorly phrased.

16    When you looked at this information in regard to

17    future claiming practices, they're all in relation

18    to trust claiming; are they not?

19    A.        I'm sorry.  Can you repeat --

20                    MS. MOSKOW-SCHNOLL:  Objection.

21    BY MR. EVERT:

22    Q.        When you have looked at these issues of

23    future asbestos claiming, they're all in relation

24    to claims made against a trust; is that correct?
```

1   A.   Yes.

2   Q.   And a defined TDP; is that correct?

3   A.   Yes.

4   Q.   Have you ever looked at the issue for a

5   company involved in the tort litigation, not in a

6   trust?

7   A.   No.

8   MR. ANSELMI: Can we take a

9   break?

10   MR. EVERT: Anybody can take a

11   break at any time.

12   THE WITNESS: Can we go on for

13   five more minutes? Round it out to 2:00.

14   MR. EVERT: Absolutely. I should

15   have said it at the beginning. All you have to do

16   is say, hey, I need a break. I apologize for not

17   laying that out.

18   BY MR. EVERT:

19   Q.   In ordering that the debtors could

20   pursue this subpoena, pursue the information that

21   the debtors were seeking, the court found that the

22   information was relevant and necessary to the

23   negotiation of a plan of reorganization. Do you

24   have any expertise in that area?

1   MR. ANSELMI: Objection to form.

2   MS. MOSKOW-SCHNOLL: Objection.

3   THE WITNESS: I mean, I certainly

4   know what has happened in other trusts and what

5   they use. So I do have some expertise. I have no

6   reason to doubt the judge -- the court's opinion.

7   BY MR. EVERT:

8   Q.   When you say you know what other trusts

9   use, you're talking about trust distribution

10   procedures?

11   A.   Yes.

12   Q.   So, you've never been involved in any

13   form in the negotiations of a plan of

14   reorganization?

15   A.   No.

16   Q.   Even as an expert, not as a lawyer?

17   A.   I've never been at that level.

18   Q.   The court also found that this trust

19   data was relevant and necessary to the

20   confirmation of a plan of reorganization. I

21   presume you've never been involved in the process

22   of confirming a plan for reorganization as an

23   expert; is that fair?

24   MS. MOSKOW-SCHNOLL: Objection.

1   THE WITNESS: I'm still -- I

2   still haven't worked with a company at the level

3   of reorganization, not in the time period that

4   you're asking me this question.

5   BY MR. EVERT:

6   Q.   Have you ever been involved in the

7   negotiation and formulation of trust distribution

8   procedures?

9   A.   I probably have to say yes to that

10   because the NARCO ones have just been redone, and

11   I was certainly involved in that.

12   Q.   So, you were involved in the negotiation

13   of those trust distribution procedures or you were

14   involved in their revisions by the trust?

15   A.   The revision, not the original one but

16   they were revised, so.

17   Q.   The latter, you were involved in the

18   revisions that were done by the NARCO Trust; is

19   that right?

20   A.   Yes.

21   Q.   In ordering the subpoenas that are at

22   issue here today, the court found that this trust

23   data was relevant and necessary to the estimation

24   of the debtor's asbestos liability. Do you have

1 any reason to disagree with that?

2   MR. ANSELMI: Objection to form.

3   THE WITNESS: I don't have any

4 reason to disagree, but I have no reason to

5 affirm, either.

6   MR. EVERT: Let's go ahead and

7 break because the next line is going to take a

8 little while.

9   (Whereupon a break was taken.)

10   MR. EVERT: Counsel for DCPF

11 wants to know if Dr. Mullen is on the phone.

12 Dr. Mullen, if you're on the phone, would you say

13 present.

14   MR. GUERKE: Thank you.

15   MR. EVERT: No response was

16 given.

17 BY MR. EVERT:

18 Q.   Dr. Wyner, before we broke, you had said

19 that you had rendered some opinions in your

20 consulting practice for the trusts in regard to

21 the future incidences of mesothelioma. Did I

22 understand you correctly?

23 A.   Yes.

24 Q.   What do you base those opinions on?

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 1    A.        Data that consulting firms have

 2    provided.

 3    Q.        I see.  So, what incidence model do you

 4    use?

 5    A.        Well, I haven't built the models.  I

 6    just read the models that others have used.

 7    Q.        And --

 8    A.        I'm happy to build them.

 9    Q.        I'm sorry.  I didn't mean to interrupt

10    you.

11    A.        I haven't actually been asked to build a

12    model.  I'm more asked to sort of opine on the

13    results and what they mean and how accurate they

14    might be and things of that nature.

15    Q.        What models in that opinion have you

16    relied upon?

17    A.        Just general statistical knowledge.

18    I've done lots of things.  There's nothing

19    specific as an issue.  I won't be able to be

20    specific about what I did.

21    Q.        So, specifically when you have rendered

22    an opinion about the expected future incidence of

23    mesothelioma, what incidence model have you relied

24    on to render that opinion?
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 1   A.        I've just reviewed the ones that are

 2   there and I've just discussed them.  And I don't

 3   have a memory of exactly the ones that were

 4   used.

 5   Q.        So, let me make sure because I want to

 6   make sure I understand your expertise in this

 7   area.  You have reviewed more than one, I don't

 8   know how many actuarial or other consulting

 9   reports that have made estimates as to the future

10   incidence of mesothelioma; do I understand that

11   correctly?

12   A.        Yes.

13   Q.        Those same or similar reports have made

14   estimates about the future claiming rates against

15   the trust for which you are consulting; is that

16   fair?

17   A.        Yes.

18   Q.        And what I think I hear you saying is

19   that you have provided to your clients, the trust

20   in that instance, your critique of those estimates

21   based on your expertise in statistics; is that

22   fair?

23   A.        Yes.

24   Q.        So, I want to make the distinction
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1   between you having expertise in actually making

2   those estimate versus you having expertise in

3   being able to analyze statistical assumptions or

4   inferences made in those types of reports.

5   MS. MOSKOW-SCHNOLL: Objection.

6   MR. EVERT: I haven't gotten to

7   the question yet.

8   MS. MOSKOW-SCHNOLL: That was my

9   objection.

10 BY MR. EVERT:

11 Q.   So, your expertise is used in this

12 instance to evaluate forecasts made by others; is

13 that fair?

14 A.   One of the things. A statistician is

15 different from the actuary or an economist or an

16 accountant in the sense that those experts rely on

17 statistical tools and they apply them. A

18 statistician, particularly an academic one, we

19 make them. I build the tools, and I typically

20 know what they're good for and where they are

21 inappropriate. But you don't build a tool unless

22 you are asked to fundamentally work on the problem

23 from scratch. So I have not actually built one of

24 those and had a trust rely on my actual

1   construction or my estimate. I've only reviewed

2   the ones that have been given to me and I've

3   examined them. Sometimes the review is very

4   simple because they made the forecasts in the past

5   and the question is, well, how did you do. And

6   that's often very straight forward. And that's a

7   fundamental statistical question I'm asked, things

8   like, well, were we within the margin of error in

9   what we've predicted or were we not. Some things

10   are more general. Here is what they're

11   forecasting. What do you think about that. And

12   generally one of the things I look at, questions

13   like what are the assumptions that are here and

14   are they valid. You can't really build a model

15   without assumptions but you really have to

16   understand what assumptions mean and how they

17   ramify and what they do to your forecasts. And

18   that's what kind of like a fundamental builder of

19   methodology does. That's what I do for a living.

20   I build methods.

21   Q.   When you build those statistical

22   methods, I presume the process is iterative; is

23   that fair?

24   A.   Well, it depends on the -- that's

1   probably usually more in the application, when you

2   actually apply it then it becomes iterative. But

3   usually when you build a method it starts with an

4   idea. And I don't think anyone wants me to go on

5   and talk about how research in statistics takes

6   place.

7   Q.   What I'm trying to get to is that you've

8   not built such a model for forecasting future

9   claims, correct?

10 A.   I haven't done it from scratch.

11 Q.   And if you were to do it from scratch, I

12 presume that process would have certain stress

13 tests, certain changes through the course of

14 building the model so that you would improve its

15 reliability; is that accurate?

16 A.   I would say that things like that are

17 done, of course, to get a sense of what the --

18 what we call sensitivity to assumptions are and

19 estimate parameters and what -- what causes things

20 to be uncertain.

21 Q.   So, if you started from scratch, that

22 would be part of your learning process to build

23 your model; is that correct?

24 A.   It would be but it's also part of the

1   review process. It's actually one of the most

2   important things, what stresses have been used,

3   what are the assumptions that were made, how did

4   they -- how -- if you used different values, what

5   did that do to the criteria. A lot of things --

6   you know, there's what we call -- in statistics we

7   often are concerned with what we call known

8   unknowns. But the bigger question is the unknown

9   unknowns. And that's where you have to be open

10 to, you know, real, real poor forecasts. That's

11 one of the things that generally comes up that is

12 ignored, this idea, well, things can go really

13 badly wrong in the ways you aren't anticipating.

14 Q.   And none of your clients has asked you

15 to build that model from ground up, correct?

16 A.   No. I don't think I'm in a position to

17 do that. That's a full-time job.

18 Q.   Okay. Are you aware that the 1200

19 claims sample that is being discussed in your

20 expert report in this case is less than .3 percent

21 of the debtor's total historical asbestos claims?

22 A.   That wasn't in the expert report of Dr.

23 Mullen. I saw that he raised that in the

24 beginning and I don't know why that -- what is the

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1   point. So I'm aware of that but I don't know how

2   that is relevant.

3   Q.   You're now aware but it's not relevant

4   to you; is that right?

5   A.   No. Because we're talking about the

6   difference between getting 12,000 versus getting

7   1200. The fact that the 12,000 came from 400,000

8   in some mysterious process is not something that I

9   opined on.

10 Q.   So, would you agree with me that the

11 1200 is an extremely small sample of the debtor's

12 overall historical asbestos claims regardless of

13 its import to you?

14 A.   I categorically disagree. The sample

15 size is dependent on the -- the utility of the

16 sample is dependent on the size, not the size of

17 the population it's drawn from. I'm now lecturing

18 you, I know. That's my job as a professor and you

19 just earned a failing grade, sir.

20 Q.   I've clearly asked my question poorly to

21 gain my failing grade. Let me try it again.

22 Would you agree with me that the 1200 claims

23 samples being discussed in this case is a very

24 small percentage of the debtor's overall

```
 1   historical asbestos claims?

 2                    MR. ANSELMI:  Objection to form.

 3                    THE WITNESS:  Again, it's going

 4   to sound like a broken record.  What does it mean

 5   to be very small.  If you want to say that it is

 6   less than 1 percent, the answer is it is.

 7   BY MR. EVERT:

 8   Q.        In your opinion, would a 600 claim

 9   sample be enough for the debtor's purposes?

10   A.        Again, it depends on what the purpose is

11   and what the additional uncertainty would mean.  I

12   would probably guess that 600 would offer a lot of

13   value and probably solve most of their questions

14   at issue.  But I would have to know what those

15   questions are and I'd have to do a calculation.

16   And, so, ultimately my answer would be it depends.

17   But my intuition would suggest that it would

18   probably be sufficient.

19   Q.        Well, now, I don't mean to sound like

20   I'm lecturing you --

21   A.        Please don't.

22   Q.        -- but in your expert declaration you

23   opine that 1200 claims was enough for the debtor's

24   needs?
```

1   A.   Yes.

2   Q.   I'm asking you, would 600 claims be

3   enough for the debtor's needs, in your opinion?

4   A.   I didn't do a calculation. I did some

5   calculations of the 1200. I haven't done any with

6   600.

7   Q.   So, you would have to study that is your

8   answer?

9   A.   Yes.

10   Q.   Now that you've read Dr. Mullen's

11   deposition, is there anything in there that

12   changed your view about the debtor's needs?

13   A.   Dr. Mullen brought up a whole new set of

14   things that he's -- I don't know -- interested in

15   is probably the best word, that he cares about.

16   But, unfortunately, I wasn't really able to

17   understand the connection between those interests

18   and the 1200 versus 12,000. That wasn't done in a

19   way that was easily for me to understand.

20   MR. EVERT: Can you read that

21   back to me.

22   (The court reporter read back the

23   record as requested.)

24   BY MR. EVERT:

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1   Q.   Dr. Wyner, not on your Exhibit A list of

2   documents you reviewed for this case was the

3   actual subpoena that was issued to the trust. Do

4   you recall if you ever reviewed the subpoena

5   issued to the trust?

6   A.   I'm curious. I thought I've asked for

7   that. You have to forgive my lack of knowledge of

8   the difference between the subpoena and a response

9   and things like that. I mean, I think that was

10   something I wanted but I don't recall what it

11   was.

12   Q.   I'm not trying to catch you in something

13   that is not fair. Will you agree with me it's not

14   listed in your Exhibit A? And you're welcome to

15   look at it if you want.

16   A.   I'm not sure I would even be able to

17   know how a subpoena would be described in this

18   list.

19   Q.   Okay.

20   A.   So, I just have to take your word for

21   it.

22   Q.   So, the subpoena says, among other

23   things, the following. The subpoena seeks

24   evidence that is relevant and necessary to

1   specific purposes in connection with the

2   estimation of the debtor's liability for current

3   and future asbestos related claims. Were you

4   aware of that at the time you did your expert

5   report?

6   A.   I mean, I understand what this data is

7   for in a broad sense. But it's not -- I don't

8   believe that it's -- this data is here to answer

9   all of those questions. My understanding was that

10 it was really only a very small sub set of the way

11 that this data is supposed to interact with those

12 big questions.

13 Q.   Where did you get that understanding?

14 A.   From my conversations with the lawyers,

15 from reading the various different things that

16 I've read, from the introduction and discussion of

17 Garlock which kept coming up and the idea that a

18 particular issue here -- and, also, you look at

19 the fields that they provided. And there's a lot

20 of discussion about the alternative exposures and

21 exposures that don't match to what was presented

22 and then what -- in the cases against Aldrich and

23 Murray. The debtors have some understanding of

24 what the claimants claimed and that the same

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1   claimants went to trusts and may have said

2   something different. So the -- my understanding

3   is that what is at issue is the difference between

4   these alternate exposure records and how those

5   might have an impact on these bigger questions.

6   Q.   So, is it fair to say, Dr. Wyner, that

7   your opinion in regard to the 1200 claims sample

8   and its reliability is limited to the question of

9   evident suppression?

10   MR. ANSELMI: Objection to form.

11   THE WITNESS: So, my understanding

12 comes from Dr. Mullen. Dr. Mullen, who I was

13 asked to respond to, indicated this is what he's

14 interested in. I pulled it out in my own report,

15 if I don't mind. Specifically, the data -- and

16 I'm quoting, specifically the data would allow us

17 to compare exposure allegations to the products of

18 the reorganized entities for which the trusts were

19 established with the exposures the same claimants

20 disclosed in their tort litigation against the

21 debtors. This would enable us to quantify the

22 proportion of alternative exposures disclosed to

23 the debtor at the time of the settlement. So,

24 first thing he talked about.

1 BY MR. EVERT:

2 Q.   If I could read to you the sentence

3 before what you just quoted out of Dr. Mullen's

4 report, which is in paragraph 16 of his report.

5 It says, the trust data are also needed to assess

6 whether the debtors entered into settlements aware

7 of the totality of alternative exposures. And

8 then it continues, specifically, which is the data

9 -- which is the quote which you have in your

10 report. Did it occur to you that Dr. Mullen's use

11 of the word also meant that there were other uses

12 for the data as well?

13 A.   I think the word was still about

14 exposures and the impact on his calculations. So,

15 I mean, the question is what is this about. And

16 from everything I could tell, it's all about

17 exposure allegations.

18 Q.   I guess what I'm trying to get to,

19 Dr. Wyner is, what Dr. Mullen said, Dr. Mullen

20 said. Your report, am I correct, is focused on

21 the two parameters that you identified; is that

22 correct?

23 A.   Well, let me step back. Dr. Mullen

24 writes extensively that there's a benefit. I

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1   don't think he uses the word benefit but that's

2   really what it is. There's a benefit to the

3   debtors to get 12,000 as opposed to 1200. But he

4   never explains what that benefit is or how he

5   calculated it. So, I was in a position to try to

6   respond and say, well, if there is a benefit, it's

7   very, very small. So I have to focus on the

8   things that were actually described. This is what

9   I'm going to do with this data. And those were

10   the ones I did. Then I, of course, I can't know

11   everything that someone is going to do but I have

12   to sort of use my imagination, my experience, my

13   history, my understanding of the way things work

14   to -- to sort of think about what you might be

15   doing. And I thought about that. And I sort of

16   tried to generalize that. But I concentrated on

17   the two that he gave me because those were the two

18   he gave me.

19   Q.   Now that you have reviewed his

20   deposition, you now understand that he is

21   interested in more parameters; is that a fair

22   statement?

23   A.   It's not -- when you say he's interested

24   in more parameters, I'm going to have to followup

1   by saying more parameters for what and what is its

2   connection to this data set.

3   Q.   So, in his declaration, Dr. Mullen said,

4   the relationship of exposures alleged to the

5   various occupations and trades of the debtor's

6   historical claimants and the extent to which the

7   full range of alleged exposures is changing over

8   time are important to estimating the defendant's

9   legal liability share. Does that assist you in

10 telling you the kinds of things Dr. Mullen is

11 interested in from this data?

12 A.   Do you mind, could I read that?

13 Q.   Sure.

14 A.   Just tell me where it was.

15 Q.   Paragraph 15.

16   MR. ANSELMI: This is from Dr.

17 Mullen's declaration.

18 BY MR. EVERT:

19 Q.   The pending question is does that

20 language from Dr. Mullen assist you in

21 understanding the additional parameters in which

22 he is interested besides the ones identified in

23 your report?

24 A.   So, what they don't do is connect to the

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1   data that he already has, which you indicate it

2   was vast, 400,000 observations and how that will

3   be used in the major -- the big questions that

4   he's faced with. He also doesn't address how 1200

5   won't be sufficient to do those.

6   Q.   We talked about earlier how in your

7   construction of the individual review model in

8   NARCO you relied on a number of factors that

9   affect the valuation of an asbestos claim; is that

10   right?

11   A.   Yes.

12   Q.   And you'll agree with me that what

13   Dr. Mullen is trying to estimate here is the

14   overall value of the asbestos claims against the

15   debtors; is that fair?

16   A.   That seems to be what is going on. Some

17   of the questions he answered in his deposition

18   indicated that that is a major issue, the overall

19   liability. That is certainly front and center, a

20   big problem.

21   Q.   The overall liability is merely

22   amalgamation of all the individual liabilities; is

23   that fair?

24   A.   It is.

1   Q.   And, so, for example, if Dr. Mullen

2   wanted to analyze some of the parameters that you

3   used in your individual review model in NARCO like

4   law firm or jurisdiction, then right now we don't

5   know the sample size of the claims that would fit

6   within -- strike that.

7   If we do a 1200 claims sample, we don't

8   know how many law firms that 1200 claims sample

9   will encompass; is that correct?

10   A.   Well, it depends on how you design it.

11   If you design it stratified, you can stratify on

12   the law firm and you know exactly how many are in

13   the sample.

14   Q.   And then the same answer would be true

15   for jurisdiction; is that right?

16   A.   It is if you deem that important to

17   sample over.

18   Q.   And all of the other factors that we

19   talked about earlier, age; is that right?

20   A.   Yeah. There are lots of factors that

21   matter to the IR model. But this has to do with

22   exposure allegations. And I don't think that the

23   debtors are unaware of their industries and

24   occupations and they're not unaware of their ages.

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1   I think they know all of that already.

2   Q.   You base that on what?

3   A.   Well that's based on my -- the

4   information that I've gotten from the lawyers who

5   discussed this. Of course, they have the claims.

6   They know -- see, none of the data -- we're not

7   talking about -- we're talking they're going to

8   make their model based on what the claims were and

9   the settled claims and paid claims to the debtors.

10   And they have that information. That's what my

11   understanding is. They already have that.

12   They're not -- in fact, he talks about how we have

13   all of their information, the personal information

14   you might call it. That is all known. The only

15   field that we're missing here is the alternative

16   exposure allegations. They know everything about

17   these claimants, all 400,000 presumably, although

18   I don't know that for sure. I'm under the

19   assumption that they do know that for all 12,000

20   as well. The purpose of this is to figure out if

21   you built, say, an IR model, right, based on

22   those, say, 12,000, you might use -- you probably

23   would do much more than that, you might ask, well,

24   how would -- how would any individual claim value

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1   change if you had a different exposure allegation.

2   That would be an interesting question that you

3   could answer with the data you have. That's --

4   you wouldn't use the 12,000 for that. You would

5   use the data you already have to answer that, how

6   exposure allegations and the extent of exposure

7   allegations would change the amount. That would

8   be the data. You wouldn't need this data for

9   that. You would work on that. What you would use

10 this data for, and this is my understanding why

11 it's here, is to figure out, well, if a certain

12 fraction of my 400,000 that I've already settled

13 and understand deeply have alternative exposures

14 that are -- don't match what actually happened in

15 the litigation or the settlement or whatever it

16 is, what is the impact of that on the overall

17 dollar amount. And that's the purpose. And you

18 could do that very well with 1200. You don't need

19 all 12,000 for that. I guess the point I'm making

20 is if we took Dr. Mullen and we made a

21 doppleganger and put him in the same room, a copy

22 of him, it's not really feasible. I don't have

23 that technology. And said here, Dr. Mullen, here

24 is 12,000, go do your work. Here, Dr. Mullen,

1   here is 1200, go do your work. The big question

2   is like how much liability and what the models

3   are. They won't be materially different.

4   Q.   Let me try to unpack a lot of that and

5   see if I have got it right. I think I understand

6   your opinion to be that for these two issues that

7   you identified in your expert report you believe

8   in a sample of 1200 is not materially different

9   than an analysis of the entire population; is that

10 fair?

11 A.   Where 12,000 is the population.

12 Q.   Where 12,000 is the population; is that

13 fair?

14 A.   Yes, that's fair.

15 Q.   In giving that opinion, you are assuming

16 that those are the purposes, that is those two

17 issues identified in your report, are the purposes

18 for which the debtor wants the data?

19   MR. ANSELMI: Objection to form.

20   THE WITNESS: I'm not assuming

21 that's the only purpose. I began with those two

22 because those are the ones that are explained.

23 And there's just a general feeling that the most

24 important ones come first. And, again, I'm

1   familiar with this exercise. I know what this is

2   about. And I've thought about it. And I don't --

3   it hasn't occurred to me that there's anything

4   that can't be done with the 1200 that -- that

5   would require the 12,000, that would have a

6   material impact on these big questions, which

7   weren't really discussed fully in Dr. Mullen's

8   report but did come out in his deposition.

9   BY MR. EVERT:

10 Q.   So, the additional questions that

11 Dr. Mullen talked about in his deposition that are

12 in addition to the two identified in your expert

13 report, I'm trying to understand, is your view

14 different about those particular questions or you

15 don't have enough information?

16 A.   No. Dr. Mullen talked about his -- he

17 made this big task what -- what he's here to do in

18 a broad sense in the deposition he doesn't talk

19 about in his report. That's really what I'm

20 describing. He talks about building test -- test

21 distribution procedures or at least he responds to

22 a question about that. He talks about estimating

23 liabilities, things that have big whopping, 100

24 million dollar price tags. I mean it's

1   uncertainty zone. That's what gets talked about

2   in his deposition that isn't described in his

3   report. But that was implicit. I understood what

4   was going on because I've done this. But he

5   didn't make it explicit. But he also talked about

6   how somehow getting 12,000 would make that task --

7   sorry -- getting 1200 would make that task sort of

8   monumentally more uncertain. He used words like

9   three times more uncertain and he kind of imagined

10   applying that to the -- to this big huge 100

11   million dollar uncertainty bar that you get on

12   estimating total liability. That wasn't done with

13   any justification.

14   Q.   You've made the point that a -- for a

15   proportion with a known sample size you can

16   calculate the standard error, right?

17   A.   You can upper bound the standard error.

18   Q.   There's a formula for that, right?

19   A.   Yes.

20   Q.   And that's what you've used the 1200

21   claim sample in your assumption, you've calculated

22   what the standard error would be?

23   A.   I did three things. I calculated the

24   upper bound on the standard error and then I gave

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1   two more specific values for the standard error

2   under assumptions that are just -- just to show

3   that it could be a lot lower than the upper

4   bound.

5   Q.   If Dr. Mullen wanted to analyze within

6   that 1200 claim sample whether the actions of

7   individual law firms varied, we don't know the

8   number of law firms that would be within that 1200

9   claim sample; do we?

10 A.   Well, we could if we did a stratified

11 sample. I mean, if you did a random sample,

12 you'll get -- you get a lot of coverage of the law

13 firms that have a lot of observations. You may

14 not get coverage of the ones that are smaller.

15 But that's why you would do a stratification if

16 that was important.

17 Q.   So, assume for me that there are eight

18 different factors and parameters that Dr. Mullen

19 would like to analyze. Is it your position that

20 you could design a stratified random sample that

21 would provide a reasonable sample of all of those

22 eight different factors?

23 A.   Well, you can do it. You certainly can

24 stratify by eight different samples. The question

1 is what you're going to do with the result when it

2 comes out -- I'm sorry -- by doing different

3 attributes you can certainly stratify. That's

4 perfectly possible. When you build a model you

5 probably will have to start making assumptions

6 about interactions. But that's 100 percent going

7 to have to happen anyway, whether you have all

8 12,000 or just 1200. You're going to -- even with

9 12,000, once you drill down to claimants that have

10 more than two attributes, you're going to find

11 yourself in very rare territory. So all modeling

12 has to do what we call borrowed strength in

13 statistics. We have to assume that all the data

14 points have something to tell us about every other

15 data point That's what we mean by borrowing

16 strength. That's how statistical modeling works.

17 And when you overdo that, that's when you get

18 yourself into unknown unknowns. It's kind of how

19 the activity of sampling and building a model

20 works. But I don't think there's any talk about

21 sampling by law firm because ultimately we're here

22 really probably drive by dollar value. I've read

23 a couple of samples that have been proposed,

24 particularly for this one, as well as the Bestwall

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1   case. All the sampling is done by size of

2   settlement. And that's generally the most

3   important. It may be a misdirection. But when it

4   comes to total impact, that's the thing that is

5   really at issue here. Sampling by size of

6   settlement tends to be the right thing to do.

7   Q.   But, again, in making that statement

8   you're assuming you know what the needs are?

9   A.   Well, I'm not making an assumption that

10   I know what the needs are. I'm assuming that the

11   needs that are described here are, at least two of

12   the needs, and I'm assuming that the ones that

13   were described in the deposition testimony are

14   also ones and those are also related to dollar

15   amounts. They're never talking about building an

16   individual review model and making sure that it

17   works for every person who does it. That does not

18   seem to be at issue here, at least not yet. It

19   certainly wouldn't be with this data. So, there's

20   of course lots and lots of things to do. But I

21   haven't -- you know, the task at hand is a very,

22   very big one. But what this data is here to

23   illuminate is just a small piece of a very

24   complicated problem that is loaded with

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1   uncertainty, loaded, very, very hard problem to

2   predict what future numbers of mesos a year are

3   going to be, let alone their attributes of the

4   individuals who have them, how old they are, where

5   they're coming from. We have a pretty good idea

6   of where they'll come from because they'll come

7   from the same places they've been coming from.

8   But things will change over time. We'll have a

9   hard time predicting that and known certainties

10 are just going to be enormous. No one is deluded

11 about that point. People really understand that

12 this is a very hard task.

13 Q.   And if we took a 1200 claim sample here

14 instead of the entire population of 12,000, we

15 would be adding one more uncertainty to those

16 large group of uncertainties that you've

17 described; is that not correct?

18 A.   But it would be irrelevant. This is one

19 of the classic misunderstandings of statistics.

20 It's like a chain linked fence, if I have a chain

21 that has, say, eight links in them, I don't really

22 care. The one that you need to strengthen is the

23 one that is weakest. Strengthening the others is

24 just not relevant. It certainly doesn't add and

1   it certainly doesn't multiply. The big ones drive

2   everything. That's a fundamental statistical fact

3   that I'm sure Dr. Mullen is aware of. Although in

4   his deposition, it didn't seem like he wanted to

5   fess up to that.

6   Q.   Without having any experience in the

7   negotiation formulation and confirmation of a plan

8   of reorganization in cases like this, it's your

9   view that adding additional error is irrelevant,

10   notwithstanding the fact you really don't know

11   what we're trying to measure?

12   MR. ANSELMI: Objection to form.

13   THE WITNESS: Okay. This is a

14   little bit of sampling error, 1200 versus 12,000

15   to an extremely complicated problem, which I'm

16   very familiar with certainly in general. So, I

17   would argue that the -- I would be prepared to

18   listen to Dr. Mullen if he were to explain why he

19   thinks this little bit of uncertainty is going to

20   have an impact. He didn't describe his

21   calculations. It doesn't appear anywhere in his

22   expert report. In his depositions he talked about

23   it. But, frankly, the things he said just were

24   either too vague to get a grip on or just flat out

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1   just seemingly not right.

2   BY MR. EVERT:

3   Q.   What if Dr. Mullen wanted to do

4   regression analysis of some of these parameters,

5   can you tell me what the standard error would

6   be?

7   A.   Well, you would have to tell me what the

8   parameter was and then what the source of

9   uncertainty is and you could figure out the

10 standard error. Standard errors also have --

11 typically follow the square root law like they did

12 in the ones I defined in my report.

13 Q.   If Dr. Mullen wanted to do regression

14 analysis that included explanatory variables like

15 law firm and jurisdiction and the proportion of

16 non-disclosure of exposure information you've

17 described, can you tell me now what the standard

18 error would be?

19 A.   Typically in a regression analysis

20 there's two parameters that we're interested in.

21 There's what we call the standard error on the

22 parameters of the regression and then there's what

23 we call the standard error of the predictions. In

24 other words, if I'm going to use a regression

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1   model for something, I want to know how accurate

2   it is. Let me give you an example. If I were to

3   try to predict how many wins a baseball team will

4   have next year, I can very accurately figure out

5   what the importance of starting pitching is and I

6   can get that very accurately. But damned if I can

7   predict you how many wins they're going to get you

8   next year. That's extremely uncertain. In other

9   words, I can use with regression analysis, I can

10   figure out how age affects torts, settlements,

11   sort of an average. But damn if I can figure out

12   what is going to happen in an individual case.

13   That is going to be incredibly, incredibly random.

14   That's what makes this problem so hard, is that

15   individual cases -- even if I were to tell you

16   that this person had a different exposure level

17   than they claimed, it would still be very hard to

18   predict what the jury would have done, and you

19   know that. So that's why -- that's why standard

20   error is not always the thing that you're

21   interested in, it's the purpose of the model, why

22   is it here. What is it here to tell us. And it's

23   here to give us a value. And uncertainty in that

24   value is the thing that generally matters, not the

1   uncertainty in the parameter that went into it.

2   It's the overall, what we call the residual

3   uncertainty. I know that was long winded, but.

4   Q.   If Dr. Mullen wanted to perform

5   regression analysis that included explanatory

6   variables of law firm, the jurisdiction and the

7   proportion of non-disclosure, can you tell me now

8   what would be the standard error?

9   A.   If you -- with a few more observations,

10 I could probably bound it pretty nicely,

11 particularly if you're familiar with the values

12 and you can pretty -- you can get a pretty nice

13 bound.

14 Q.   But we don't know the values until we

15 have the data?

16 A.   Well, they have the data from the --

17 they know the payment values. That's what we call

18 the regressor. They know what they are.

19 They're -- they want to know -- see, what they're

20 looking to do here, see, if you -- if he tries to

21 build a model to predict the value of a claim in,

22 say, the tort system and you want to manipulate

23 the value of exposure, he's going to need to know

24 what the payments were in the tort system. And he

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 1   has those.  So you can easily figure out what --

 2   what you're -- you're not trying to run a

 3   regression on that.  What you're really trying to

 4   do is understand how the changes in the -- the

 5   uncertainty in the percentage of people that have

 6   alternate exposures, how that is going to change

 7   your forecast at the end.  It's not really the

 8   regression parameters that are at issue here.

 9   It's going to be the regression inputs that are

10   going to be at issue.

11   Q.       Is it fair to say that when you began --

12   that when you began your answer with what they are

13   looking to do here means you are giving an opinion

14   about how the data will be used?

15   A.       Well, I'm certainly giving an opinion on

16   how having only 1200 observations would be

17   different from having 12,000 on what I seem to

18   understand are the possible ways that they're

19   going to use this data.  So, yes, I have a general

20   sense of what they're trying to do.

21   Q.       Your opinions are based on your general

22   sense of what they're trying to do; is that

23   fair?

24   A.       Well, my opinions are based on Dr.
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1   Mullen's report.

2   Q.   And his deposition?

3   A.   Well, my opinion in my expert report is

4   only on his expert --

5   Q.   Your opinion today includes your review

6   of his deposition; is that correct?

7   A.   Yes.

8   Q.   Let's assume that Dr. Mullen wants to

9   use the exposure data in the trust information to

10   predict how many pipe fitters might file claims in

11   the future, and he wanted to use regression

12   analysis in order to do that, can you tell me what

13   the standard error would be?

14   A.   He would want to use regression analysis

15   to predict how many pipe fitters will file claims

16   in the future. Well, I mean, if he built the

17   model and specified his assumptions and showed me

18   the data he was using, we could calculate the

19   regression parameter estimates. But I think we're

20   not interested in the regression parameters.

21   We're interested in knowing what the standard

22   error is or what we call the residual error on

23   that estimate. So if I try to predict how many

24   pipe fitters is going to be in a given year who

1   have mesothelioma, you're going to find that

2   uncertainty to be absolutely massive. So we could

3   bound it. We can roughly approximate that,

4   sure.

5   Q.   In order to bound it or approximate it,

6   would you not need to know the sample size?

7   A.   Yeah, except the fact that you certainly

8   would need to have some data, absolutely. But

9   it's -- it will be what we call the law of

10   diminishing returns. The first few observations

11   will give you so much. They'll tell you an

12   enormous amount. Once you get to have a certain

13   understanding, once you've seen a few pipe

14   fitters, you don't have to see very many, you're

15   going to have a pretty good sense of what is going

16   on. You won't need that many to do it. That's --

17   because what is fundamentally uncertain is this

18   number. You brought it up, the number of pipe

19   fitters in a given year, that's really hard to get

20   with any accuracy at all. And the uncertainty on

21   that would be massive and it will dwarf any

22   uncertainty that would be -- that would come from

23   any extra data that you would get from going from

24   having observed, say, 50 pipe fitters to 100 pipe

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1   fitters in this data set. That big thing at the

2   end wouldn't be very much more accurate.

3   Q.   So, you criticized me for using the term

4   large. I'm going to ask you about few. How many

5   is a few, you said you need just a few. How many

6   is a few? You said you need just a few.

7   A.   It depends on the value. So if the

8   value -- it could be -- if it's very, very rare,

9   so, for example pipe fitters with mesothelioma

10   come along very, very rarely. I won't need very

11   many at all because I just need to look at a bunch

12   a mesos and get a sense of whether it's 1 percent,

13   zero percent, 2 percent and 25 will be wonderful.

14   If I want to know -- say if it's a much bigger

15   value, say 25 percent in a particular profession,

16   say boiler makers, I don't know if that's at issue

17   here, then you can get that pretty accurately with

18   about 30, 50 or 100 as well. You really don't

19   need that much data to get pretty good estimates

20   of what is going on in the universe that you're

21   looking at.

22   Q.   Until we see the data, we don't know the

23   size of that population?

24   A.   Well, we know we're getting 1200

1   observations and we know what it's for. So you

2   have to show me -- I haven't been able to imagine

3   an application that I would be required -- that

4   there's something in here that would make a very

5   big impact on the overall -- on any big question

6   at all that won't be fully answered by having

7   1200. I mean, if there is something, if there's

8   something that Dr. Mullen has in mind, he should

9   be able to show it to me. In his deposition he

10 says I can't know until I look at the data. That

11 strikes me as a statistician to be very odd.

12 Because we statisticians, our job is to estimate

13 uncertainty before we actually have data because

14 it helps us figure out how much data to get. So

15 when we design an experiment, when we go on an

16 exposition to acquire new data, whether it's in

17 medical or business or advertising or sociology,

18 you have to be able to estimate what we call the

19 size of the affect before we start. And that's

20 what we often call power calculation. And

21 generally that proceeds by just sort of going

22 through all the things you're going to want to do

23 with this data. And then you make power

24 calculations, you go and you estimate, you

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1   determine if you have enough data. This always

2   can be done by looking at the data.

3   Q.   Can you do all of those estimates

4   without knowing the size of the sample?

5   A.   No. You estimate them -- you know what

6   the size of the sample is, 1200.

7   Q.   In our example that we're just using

8   it's not 1200 pipe fitters.

9   A.   Well, the question is is that -- so what

10   you do is you talk about, well the number of pipe

11   fitters that come in at all kinds of different

12   levels, right. So the way it works is that if

13   you -- you'll just make an assumption and you'll

14   calculate your uncertainty. If there's only this

15   number of pipe fitters, this will be the

16   implication. If there's only this number of pipe

17   fitters, then this will be the implication.

18   There's very few pipe fitters in the data set,

19   which may mean that it would be very hard for me

20   to figure out what is going on with pipe fitters.

21   It also won't matter in the overall liability

22   because there's very few of them. So the big

23   questions about trust distribution procedures and

24   overall liabilities won't really be affected by

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1   things that are very infrequent in this data set.

2   So, the big questions will be the ones that happen

3   a lot in this data set and they'll happen a lot in

4   1200 as well.

5   Q.   So, am I understanding you to say that

6   the sampling error that would by definition result

7   from taking a sample of 1200 in this case in your

8   view would be immaterial in light of the overall

9   estimate of liabilities?

10 A.   Yes, that's very much -- and that very

11 much contradicts what Mullen was saying in his

12 deposition. He seemed to be just disagreeing with

13 that. He seemed to indicate that this bound of

14 sampling error will vastly increase the

15 liabilities. He specifically talked about that.

16 Q.   And your opinion that the sampling error

17 that will be driven by this 1200 claim sample is

18 immaterial, is based on your understanding of what

19 would need to be done in order to make an

20 estimation of current -- of the value of current

21 and future asbestos claims?

22 A.   My experience, my opinion about how hard

23 it is to do those tasks and how uncertain they are

24 is in some meta level very important here because

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1   we're talking about a very specific task that

2   we're trying to get here, what is the effective

3   alternative exposure histories on the amounts. My

4   general -- my claim, my opinion, my essential

5   opinion is that 1200 is a lot and will do -- we'll

6   be able to make a lot -- get a lot of information

7   out of that. And the difference between 1200 and

8   12,000 would just be little wrinkles along the

9   edges. They won't have major impacts on anything,

10   anything certainly at the big scale. And if it

11   did, well, I can't conceive of it. So I would

12   leave that to Dr. Mullen to show me that that is

13   possible. So I don't claim to have all the

14   answers by any measure, but my opinion is that I

15   don't see that.

16   Q.   And do you know the level of uncertainty

17   that is expected by the court?

18   A.   I mean, I know what the level of

19   uncertainty that is what we call irreducible, that

20   no amount of sampling, no amount of statistical

21   modeling, there's nothing -- this is fundamental

22   to the problem and it's a lot.

23   Q.   You're unaware of what level of

24   uncertainty is acceptable to the court?

1   A.   No.

2   Q.   The word I said is correct?

3   A.   Yes.

4   Q.   Thank you. Let's change gears for a

5   minute and talk about where you have opined about

6   a risk of inadvertent dissemination of highly

7   confidential data. What are the facts on which

8   you base that opinion?

9   A.   Well, I was involved in -- nothing that

10   went to litigation, nothing -- I was involved in a

11   case involving inadvertent data leak of hundreds

12   of millions of records that no one intended to

13   ever let out and it was hacked. So these things

14   happen and they're a problem. And you read about

15   them in the papers. This is the kind of thing

16   that happens hopefully rarely but it does occur.

17   Q.   I want to talk about the incremental

18   risk that is presented here in this particular

19   instance. Do you understand what data has been

20   requested from the trust?

21   A.   Yes.

22   Q.   And will you agree with me that the data

23   that has been requested does not include personal

24   identifying information?

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 1   A.        Well, I guess that's definitely what,

 2   you know, the debtors are claiming.  I don't have

 3   any -- I mean, there is -- I read lots of reports

 4   saying that it has to be -- in order to make sure

 5   that it doesn't have personal identification, it

 6   does have to be cleaned.

 7   Q.        I'm going to walk through with you the

 8   information requested, and I just want to make

 9   sure we're talking about the same thing.  The

10   subpoena requests the claimants' law firm.  Would

11   you consider that personal identifying

12   information?

13   A.        Well, I mean, I don't have an opinion on

14   what is or isn't personal identifying information.

15   My guess is which law firm you're working for, I

16   don't know, is that personal.

17   Q.        If you don't have an opinion about what

18   PII and confidential information is, then how do

19   you have an opinion that there may be the

20   inadvertent disclosure of confidential information

21   that is requested by the subpoenas?

22   A.        My understanding from reading all of

23   these reports and submissions is that personal

24   identifying information may be in this data.
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1   Q.   All right. And have you come to

2   understand that the place in which the personal

3   identifying information that may be in this data

4   is included is in the exposure fields?

5   A.   Yes, that's been my understanding, the

6   exposure fields and in particular narratives that

7   go on and on about potentially other family

8   members and other people who are not at issue and

9   that my -- my more or less understanding is that a

10 lot of that has to do with cost, the cost to

11 prepare that data to excise this and things

12 related to that.

13 Q.   I just want to make sure we're talking

14 about the same thing.

15 A.   Yes.

16 Q.   So, your understanding is that the risk

17 of inadvertent disclosure of personal identifying

18 information involves the exposure fields of

19 information that have been requested in the

20 subpoenas; is that right?

21   MR. ANSELMI: Objection to form.

22   THE WITNESS: My understanding is

23 that. There may be other things as well but

24 certainly that.

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 1   BY MR. EVERT:

 2   Q.          I'm in a little bit of a box here, Dr.

 3   Wyner because you tell me you can't tell me what

 4   is personal identifying information but you also

 5   are unclear on where the fields are.  So let me

 6   try again.  Let me try this a different way.

 7            Do you believe a claimant's law firm is

 8   personal identifying information or do you not

 9   know?

10   A.          I don't have an opinion.

11   Q.          Do you have an opinion on whether or not

12   the date claim was filed is personal identifying

13   information?

14   A.          Again, I don't have an opinion.

15   Q.          Is it fair to say you have no opinion

16   about what is and what is not personal identifying

17   information?

18   A.          It is fair to say that.

19   Q.          If I were to tell you that the trusts

20   have maintained that they're concerned with

21   production of this data has to do with the

22   inadvertent disclosure of personal identifying

23   information that is in the requested exposure

24   fields, would that be consistent with your
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1   understanding?

2   A.   It is.

3   Q.   So, I want to walk through, as I

4   understand it, what would have to happen for that

5   inadvertent disclosure to occur. Are you aware

6   that the order requires the trusts to scrub those

7   exposure fields for any personal identifying

8   information?

9   A.   I am aware.

10 Q.   Are you aware the order from the court

11 requires for any personal identifying information

12 that is missed by the trusts, that Bates White is

13 required to scrub that data?

14 A.   I am aware.

15 Q.   Are you aware that Bates White already

16 has personal identifying information on all 12,000

17 claimants?

18 A.   I read that in Dr. Mullen's report, so,

19 yes.

20 Q.   Are you also aware, of course, that

21 Verus has the personal identifying information on

22 those 12,000 claimants?

23 A.   Yes.

24 Q.   And the DCPF has that information,

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1   correct?

2   A.   That's right.

3   Q.   And you would assume that the law firms

4   that represent those claimants have the personal

5   identifying information, correct?

6   A.   Yeah.

7   Q.   And the debtors have it in their claims

8   database; is that correct?

9   A.   Yes. But there must be something that

10   is going -- they must be transmitting something,

11   right.

12   Q.   And the ACC in this case, the Asbestos

13   Claims Committee because they now have the

14   database, they have the personal identifying

15   information on the 12,000 claimants, would you

16   agree with that?

17   A.   I suppose so.

18   Q.   But that's on the claimants. What we

19   are talking about is the inadvertent disclosure in

20   the exposure fields, correct?

21   A.   Certainly.

22   Q.   So, you're in the business of estimates.

23   For an inadvertent disclosure to occur, the first

24   thing that would have to happen would be for a

1   claimant to put in personal identifying

2   information in the exposure field for a

3   non-claimant; is that correct?

4   A.   That certainly is one thing that has

5   been described. But there can be other ways. I'm

6   not an expert on this.

7   Q.   We're talking about exposure fields,

8   that's what we're talking about defining, right,

9   so it would have to be in the field in order for

10 it to be disclosed, right?

11 A.   This is you you're talking about and I'm

12 agreeing that would be personal information. I'm

13 not saying it's the only way.

14 Q.   Bad question. In order for there to be

15 inadvertent disclosure of personal identifying

16 information that is in an exposure field, it has

17 to be placed in the exposure field?

18   MR. ANSELMI: Objection to form.

19   THE WITNESS: It seems to me

20 that's absolutely right, logical.

21 BY MR. EVERT:

22 Q.   Thank you. And then that personal

23 identifying information would have to be missed by

24 the trusts in their scrub of the data, correct?

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 1    A.        Yes, I would guess, right.

 2    Q.        Then that personal identifying

 3    information would have to be missed in Bates

 4    White's scrub of the data; is that correct?

 5    A.        Well, there's lots of ways for this to

 6    happen here.  Can I tell you a story?

 7    Q.        I understand we're not talking about in

 8    possibilities but that would be the next step that

 9    would have to occur, correct?

10                     MR. ANSELMI:  Objection to the

11    form.

12                     THE WITNESS:  Well, what actually

13    would also have to is that in the process of

14    transmitting it, for Bates White to clean it, it

15    would have to not been accidentally copied or sent

16    to the wrong place or put in the wrong -- human

17    beings are involved.  Human beings make mistakes.

18    And I've seen it up close and personal with some

19    of the most unbelievable personal information that

20    was sworn up and down no one should ever, ever

21    see, yet it went out.

22    BY MR. EVERT:

23    Q.        I understand.  So, in some form or

24    fashion it would have to be an inadvertent
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1   disclosure that occurs, and your point is that

2   could occur after only Verus has done their scrub

3   or only the DCPF has done their scrub; is that

4   your point?

5   MR. ANSELMI: Objection to form.

6   THE WITNESS: I mean, we're

7   talking about inadvertent -- if Verus lets it out,

8   that's on them. Let's separate that. We're in

9   the process -- where things get dangerous is when

10 things get moved from one entity to another.

11 That's really the issue and how that happens and

12 who does the transfer. In my experience, that's

13 been the weakest link in exposure of private

14 information is in the transferral. So, Verus will

15 do what it does and we assume they do it right.

16 And then that's when things could happen. That's

17 just my experience and my opinion. But the real

18 question is my statement very much is that there's

19 some risk here. I don't even know how likely it

20 is. I don't know that. I have no opinion on how

21 likely these things are.

22 BY MR. EVERT:

23 Q.   I'd like to try to focus on the

24 incrementality of the risk. The risk of

1   inadvertent disclosure of PII already exists for

2   all 12,000 claimants, correct?

3   A.   Well, the risk of PII disclosure will

4   only happen if it is disseminated from the trusts

5   that already have them to Bates White.

6   Q.   Remember, PII for the 12,000 claimants

7   does reside at Verus, agreed?

8   A.   Yes, that's right.

9   Q.   It also resides at DCPF, agreed?

10 A.   As far as I know, yes.

11 Q.   It also resides in the debtor's database

12 at Bates White, agreed?

13 A.   I assume. That's what I've been told.

14 Q.   It also resides in the debtor's database

15 at the debtors?

16 A.   Yes. But there's other people's

17 personal information that I think may only reside

18 with Verus and the trusts. That can get

19 communicated.

20 Q.   It's where I'm trying to get. The risk

21 of inadvertent disclosure of the PII from the

22 12,000 claimants already exists in multiple

23 places, correct?

24   MR. ANSELMI: Objection to form.

1   THE WITNESS: Yeah. But those

2   aren't moving, right. So movement is the real

3   question.

4   BY MR. EVERT:

5   Q.   Inadvertent is what we're talking about

6   here. It already exists at those places, correct?

7   A.   Again, this is the level of existence.

8   It generally isn't at risk until it's in the

9   process of being transferred.

10   Q.   So, in this case, the debtors were

11   required to produce their database to different

12   parties, the ACC, the FCR, so it had to move. So

13   that risk existed at that time; is that correct?

14   A.   Presumably.

15   Q.   What I'm trying to get to, Dr. Wyner, is

16   the 12,000 claimants, their PII is already at

17   risk; can we agree on that?

18   A.   Well, it already was at risk. And I

19   think it managed to go through okay.

20   Q.   So, there is no risk of a hack of any of

21   these entities, in your view?

22   MR. ANSELMI: Object to form.

23   THE WITNESS: I guess that's

24   possible but I don't know.

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1   BY MR. EVERT:

2   Q.   So, how many more claimants do you think

3   or -- I'm sorry. Strike that.

4   How many non claimants do you think

5   would be missed by Verus in their scrub?

6   MR. ANSELMI: Objection to form.

7   THE WITNESS: I have no idea.

8   BY MR. EVERT:

9   Q.   Did you ask DCPF what their rate was

10 when they scrubbed the data in the DB&P matter?

11 A.   My opinion had nothing to do with that.

12   MR. EVERT: It's a good time for

13 a break.

14   (Whereupon a break was taken.)

15 BY MR. EVERT:

16 Q.   Dr. Wyner, I want to pick back up with

17 the discussion about the inadvertent data breach

18 that might occur. I think I understood you to say

19 that the real risk is in the transfer; is that

20 right?

21 A.   In my experience that's been the risk.

22 Q.   Are you aware of the way that the

23 information on the claimants will be transferred

24 in response to this subpoena?

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 1    A.        I don't, no.

 2    Q.        So, if I were to tell you that there are

 3    actually claimant pseudonyms used in the transfer

 4    and not the names of either the 1200 or the 12,000

 5    claimants such that one cannot identify whose

 6    information it is, would you agree with me that

 7    there's not much risk of disclosure of PII in the

 8    transfer?

 9                    MR. ANSELMI:  Objection to form.

10                    THE WITNESS:  I can't say what

11    the amounts of the risk are.  I don't have an

12    opinion on the amounts of the risk, either.  But I

13    can tell you that in my personal experience that

14    it was promised it wasn't supposed to happen

15    through my cases and somehow it did.

16    BY MR. EVERT:

17    Q.        So, is it fair to say that at the end of

18    the day your opinion on this is that inadvertent

19    disclosures occur?

20    A.        Yes.

21    Q.        And this particular case, you don't

22    really know the mechanics of what the transfer is

23    going to be or how the data is going to be kept

24    or transferred or any of those things, your
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1   opinion is not really based on any of those

2   things; am I correct?

3   A.   That's correct.

4   Q.   Your opinion is merely based on the fact

5   that you know that inadvertent disclosures, in

6   fact, occur?

7   A.   Yes.

8   Q.   Now, you do make a statement in your

9   report that says if only 10 percent of the target

10   population is produced, the damage and the

11   resulting data breach to the individual claimants

12   can be expected to be ten times smaller because it

13   would involve ten times fewer claimants. Did I

14   read that correctly?

15   A.   You did.

16   Q.   And that falls under the sort of common

17   sense rules of statistics; is that fair?

18   A.   Yes, it's very fair and very common

19   sense. It's not any deeper than that.

20   Q.   In fact, in this case it's not exactly

21   right because we're not talking about the

22   claimants' PII, we're talking about non claimants

23   in the exposure fields, so it won't match up

24   exactly, fair?

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1   A.   Yeah, it's splitting hairs but yes.

2   Q.   So, it would still be in the ball park,

3   in your opinion, but it's not exactly right in

4   this instance, fair enough?

5   A.   Yeah, I'm making, as you say, the common

6   sense observation that the scale of the damages --

7   the size of the damage would scale the number of

8   the size of the data sets, expected size. It's a

9   random variable.

10   Q.   I think I understand your testimony

11   earlier about the over arching effort here to

12   estimate the value of current and future asbestos

13   claims. Did I understand you to say that there's

14   going to be uncertainty in the final estimate,

15   it's just a question of how much uncertainty?

16   A.   Well, I mean, both questions, you want

17   to make an estimate and then you would want to

18   give an estimate of the uncertainty. Those are

19   the two most important tasks. They're both --

20   obviously you need to know the estimate. You also

21   need to know the size of the uncertainty in the

22   estimate. The first thing people communicate is

23   the estimate. The second thing they communicate

24   is the uncertainty of the estimate.

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1   Q.   Let me try to say it a different way.

2   Your testimony is that the effort to try to

3   estimate the current and future asbestos claims

4   against these debtors is one that will be fraught

5   with uncertainty; is that your testimony?

6   A.   Yes.

7   Q.   And I think I understand you to say that

8   there's going to be uncertainty no matter what we

9   do, whether we sample 1200 claimants in this

10   instance or whether we get the entire population

11   of 12,000 claimants, there will still be

12   uncertainty in the final answer; is that what

13   you're saying?

14   A.   I'm saying more than that, but that is

15   certainly the first thing that I am saying.

16   Q.   What else are you saying?

17   A.   I'm also saying that the uncertainty in

18   the final estimates that you're talking about are

19   going to be much, much larger than the uncertainty

20   caused by only sampling 1200.

21   Q.   That was my next question. Although you

22   would see the uncertainty that is created by the

23   sampling of 1200 versus a review of the entire

24   population of 12,000 as immaterial in the face of

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1   the remaining uncertainties; is that right?

2   A.   Yes.

3   Q.   And that's based on your assumptions

4   about the purposes for which this data will be

5   used to reach the final estimate?

6   A.   Well, it's based on the purposes that

7   are outlined in Mullen's report and it's based on

8   my other knowledge and it's also based on the

9   assumption that if there was something that would

10   depend on having more data, Dr. Mullen would have

11   told me. It's right there, right.

12   Q.   Are you surprised that Dr. Mullen wants

13   to study and analyze many of same factors that you

14   used in your Honeywell NARCO individual review

15   model?

16   A.   Not at all.

17   Q.   I want to ask you about your discussion

18   in your report about the declaration signed by Dr.

19   Mullen's colleague from Bates White in the

20   Bestwall. Do you remember that?

21   A.   Yes.

22   Q.   So, that was a declaration signed by

23   Dr. Gallardo-Garcia; is that correct?

24   A.   I think so, yes. I'm pretty sure I read

1   it, but I may only be referring to the

2   descriptions of it in some of the other places.

3   Do we have it on our list?

4   Q.   When you say it, you're referring --

5   A.   Gallardo-Garcia.

6   Q.   -- Gallardo-Garcia's declaration?

7   A.   Yes.

8   MS. MOSKOW-SCHNOLL: It was

9   attached as an exhibit, too --

10   THE WITNESS: It was an exhibit to

11 one of these. Okay.

12 BY MR. EVERT:

13 Q.   Is it your understanding from your

14 review of Dr. Mullen's testimony is that his

15 opinion is that he will still be able to provide

16 opinions regarding estimation of the debtor's

17 liability, negotiation of a plan, formulation of a

18 plan and the other items he outlines even if the

19 court orders a 1200 claim sample of the trust

20 data?

21 A.   I think I've parsed that correctly but

22 can you say it again?

23 Q.   Sure. Is it your understanding from Dr.

24 Mullen's testimony his opinion is is that he will

1 still be able to provide opinions in regard to

2 estimations of the debtors asbestos liability and

3 negotiation of a plan to reorganization,

4 formulation of a plan of reorganization and

5 confirmation of a plan of reorganization in these

6 cases even if the court orders only a 1200 claim

7 sample of the trust data rather than the entire

8 population?

9   MR. ANSELMI: Did you say Mullen

10 or Gallardo-Garcia?

11   MR. EVERT: I said Mullen.

12   THE WITNESS: I don't think -- I

13 think he doesn't talk about that directly in his

14 expert report. I do think in the -- if I recall

15 that in the deposition he said something to the

16 affect that I'll still be able -- I'll do my job

17 as best as I can if you give me whatever you give

18 me. I don't think he's making any opinion that

19 goes beyond that.

20 BY MR. EVERT:

21 Q.   I think we're in the same place. I just

22 want to make sure. Dr. Mullen's testimony is he

23 can still give an estimate if the court orders

24 only a 1200 claim sample, it's just the level of

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1   uncertainty that will be associated with that

2   estimate, is that --

3   A.   I think so, yes.

4   Q.   -- your understanding?

5   A.   Yes.

6   Q.   Do you recall that that is essentially

7   the point that was being made in Dr.

8   Gallardo-Garcia's declaration or do you not recall

9   it one way or the other?

10   MR. ANSELMI: Objection to form.

11   THE WITNESS: I mean, my

12 understanding was that, yes, he was going to say

13 this is what I'm given and we're going to do the

14 best that we can. But he -- he had opportunities

15 to talk about like what the deficiencies would be

16 and how things would -- are really -- where they

17 might be weaker and things of that nature and none

18 of that happened.

19 BY MR. EVERT:

20 Q.   When you say he had opportunities to

21 talk about that, are you aware that the court in

22 that case had already ordered a 10 percent sample

23 only be provided?

24 A.   Yeah, I'm aware of that.

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1   Q.   So, what would be the point of

2   Dr. Gallardo-Garcia discussing the loss of

3   accuracy associated with a sample if the court has

4   already ordered it?

5   MS. MOSKOW-SCHNOLL: Objection.

6   MR. ANSELMI: Objection.

7   THE WITNESS: Because he's at

8   liberty to design the sample any way he wants. So

9   when you're designing a sample, the fundamental

10   discussion has to be about loss of uncertainty and

11   the most efficient use of the data you have. He

12   didn't talk about that at all.

13   BY MR. EVERT:

14   Q.   Let me rephrase the question. What

15   would be the point of Dr. Gallardo-Garcia in an

16   instance where the court has already ordered a 10

17   percent sample in talking about the problems

18   associated with having to use a sample as opposed

19   to analyzing the entire population?

20   MR. ANSELMI: Objection to form.

21   THE WITNESS: Because if I were

22   told to order -- I can only use 1200 and I was

23   concerned about uncertainty that resulted from

24   that, I would opine at length about the way and

1 the design of my stratification and what goes into

2 it because I'd have to argue this is how I want to

3 do it and the purpose for why I would do that. I

4 wouldn't just drop something down that seems

5 rather generic unless you were comfortable that

6 you had a lot of data and this generic thing would

7 work well.

8 BY MR. EVERT:

9 Q.   As I understand your testimony, you're

10 saying that had you been in Dr. Gallardo-Garcia's

11 position, you would have provided more information

12 about the deficiencies in the sampling; is that

13 correct?

14   MR. ANSELMI: Objection to form.

15   THE WITNESS: Not exactly. If I

16 had been in Dr. Gallard's position and I was

17 concerned that 1200 -- a random sample of 1200 or

18 1200 somehow leaving me in a hole, I would talk at

19 great length about how I would use my 1200 and I'd

20 have to work really hard to provide that

21 stratified or weighted or any design I would wish

22 to apply to this data because 1200 is leaving me

23 in a hole and I want to explain how I'm going to

24 do the best I can. But if on the other hand 1200

1   was just fine, then I would just throw, you know,

2   anything right out of the audit book right at it.

3   BY MR. EVERT:

4   Q.   And you say that because that is what

5   you would have done even if the judge had already

6   ordered you that you're only getting a 10 percent

7   sample?

8   A.   Listen, Dr. Gallardo went to a terrific

9   school, the University of Pennsylvania. I don't

10 want to criticize how he designs his sample. But

11 I'm just saying that my -- the way I would have

12 done it if I were concerned that 1200 were not

13 enough, I would have spent a lot of time talking

14 about why I wouldn't want to design a particular

15 sample in the way I did and I probably would not

16 make it generic. I would make one that is very

17 specific for this specific purpose.

18 Q.   And are you aware of whether or not

19 those positions had already been taken in the

20 Bestwall case before the court ruled on the 10

21 percent sample?

22 A.   I'm not aware.

23 Q.   To your knowledge, that litigation had

24 already occurred or not, you don't know?

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1   A.   I don't know. But I do know what, you

2   know, what a standard sample looks like and this

3   was it. In fact, I saw some emails discussing a

4   variety of samples that would be used in this case

5   that looked just like that.

6   Q.   Would you agree that Dr. Gallardo-Garcia

7   in his declaration said that sampling relative to

8   a full data set analysis increases the analytical

9   cost and reduces the precision of the results?

10   MR. ANSELMI: Objection to form.

11   THE WITNESS: Well, those are

12   again on some levels basic common sense. Of

13   course it's going to take more work, arguably not

14   any substantively more work and it will reduce the

15   precision, again, arguably but not any materially

16   relevant amount.

17   BY MR. EVERT:

18   Q.   So, you don't remember whether that was

19   in the declaration or not?

20   A.   No, I don't remember.

21   Q.   But those statements are ones that you

22   would agree with?

23   A.   In a very general way they are true but

24   they're not -- it doesn't mean that they're -- it

1   decreases by a precision amount that has a

2   material or practical application.

3   Q.   I understand. But the statement is true

4   as stated?

5   A.   As stated.

6   Q.   Can you stratify a sample based on

7   unknown characteristics?

8   MR. ANSELMI: Objection to form.

9   THE WITNESS: No, you can't.

10   BY MR. EVERT:

11   Q.   So, if, for example, in the trust data

12   requested by the subpoenas there are exposure

13   contact groups that are unknown to the debtors,

14   the debtors would be unable to stratify a sample

15   for that data, for those unknown parameters?

16   A.   I mean, I'm not really sure what that

17   is. So, unknown -- I'm sorry what --

18   Q.   I asked you at the beginning to please

19   tell me if you didn't understand my question and

20   you are fully in your right to tell me you don't

21   understand my question.

22   A.   I don't understand the question.

23   Q.   For example, if there is information in

24   the trust data that provides exposure contact

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1   groups in terms of occupations and industries, all

2   other sorts of exposure related information that

3   are unknown to the debtors, then the debtors are

4   unable at this time to stratify a sample based on

5   those unknown characteristics?

6   A.   You don't generally want to stratify an

7   unknown. It's never something that -- because you

8   can't do it. You don't do it and you don't know

9   why you would do that. Again, just a

10   restatement -- there are things that they don't

11   know, they can't stratify them.

12   Q.   That's fair. Would you agree that if

13   analyzing the entire population of a data set is

14   costless, you should look at the entire

15   population?

16   MR. ANSELMI: Objection to form.

17   THE WITNESS: Can you repeat

18   that?

19   BY MR. EVERT:

20   Q.   Would you agree that if analyzing the

21   entire population of the data set is costless,

22   then you should look -- you should analyze the

23   entire data set rather than a sample?

24   MR. ANSELMI: Objection to form.

1   THE WITNESS: So, I'll slightly

2   rephrase it. You're saying if the cost is zero,

3   then you should always prefer the population to be

4   sampled, yes.

5   BY MR. EVERT:

6   Q.   You said it better than I did. I'm not

7   surprised.

8   MR. EVERT: Thank you very much.

9   THE COURT REPORTER: Counsel, can

10   I get your transcript orders, please. Mr.

11   Anselmi, do you want a copy of the transcript?

12   MR. ANSELMI: Yes.

13   MR. HOGAN: Ordinary course. I

14   don't need it expedited.

15   MS. PHILLIPS: Yes.
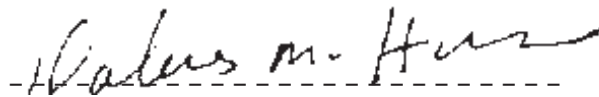
16   MS. MOSKOW-SCHNOLL: Yes.

17   (Witness excused.)

18   (Deposition concluded at 3:50

19   p.m.)

20

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 1            C E R T I F I C A T E

 2

 3            I hereby certify that the witness

 4   was duly sworn by me and that the deposition is a

 5   true record of the testimony given by the witness.

 6

 7

 8

 9   ----------------------------------

10            Dolores M. Horne

11            Dated:  May 19, 2023

12

13

14

15   (The foregoing certification of this transcript

16   does not apply to any reproduction of the same by

17   any means, unless under the direct control and/or

18   supervision of the certifying shorthand reporter.)

19

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22

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 1              DEPOSITION ERRATA SHEET

 2   NO.  J9684107

 3   ARMSTRONG WORLD INDUSTRIES, INC.

 4   ASBESTOS PERSONAL INJURY SETTLEMENT

 5   TRUST, et al

 6           - vs -

 7   ALDRICH PUMP, LLC, et al

 8            DECLARATION UNDER PENALTY OF PERJURY

 9        I declare under penalty of perjury that I have

10   read the entire transcript of my Deposition taken

11   in the captioned matter or the same has been read

12   to me, and the same is true and accurate, save and

13   except for changes and/or corrections, if any, as

14   indicated by me on the DEPOSITION ERRATA SHEET

15   hereof, with the understanding that I offer these

16   changes as if still under oath.

17

18        Signed on the _____ day of

19   _____,  20 --.

20

21

22   _____

23        ABRAHAM J. WYNER, Ph.D.

24
```

ABRAHAM J. WYNER, PH.D.   May 17, 2023
ARMSTRONG WORLD INDUSTRIES vs ALDRICH PUMP   123

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 1              DEPOSITION ERRATA SHEET

 2    Page No. __ Line No. __ Change to: _____

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21    _____

22    Reason for change: _____

23    SIGNATURE:_____DATE:_____

24            ABRAHAM J. WYNER, Ph.D.
```

ABRAHAM J. WYNER, PH.D.   May 17, 2023
ARMSTRONG WORLD INDUSTRIES vs ALDRICH PUMP   124

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 1              DEPOSITION ERRATA SHEET

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22     Reason for change: _____

23     SIGNATURE:_____DATE:_____

24              ABRAHAM J. WYNER, Ph.D.
```

EXHIBIT B

Page 1

1   UNITED STATES BANKRUPTCY COURT
                 WESTERN DISTRICT OF NORTH CAROLINA
2   CHARLOTTE DIVISION
3   ----------------------------X
          ARMSTRONG WORLD INDUSTRIES,)
4   INC. ASBESTOS PERSONAL   ) Miscellaneous Proceeding
          INJURY SETTLEMENT TRUST,   )
5   et al.,   ) No. 22-00303 (JCW)
)
6   Plaintiffs,   ) (Transferred from
) District of Delaware)
7   v.   )
)
8   ALDRICH PUMP LLC, et al.,   )
)
9   Defendants.   )
          ----------------------------X
10   In re   ) Chapter 11
)
11   ALDRICH PUMP LLC, et al.,   ) Case No. 20-30608
)
12   Debtors.   )
          ----------------------------X
13
14   DEPOSITION OF CHARLES HENRY MULLIN, PH.D.
15   Monday, May 8, 2023; 1:06 p.m. EDT
16
17
18
          Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,
19   CLR, RSA, NYRCR, NYACR, Remote CA CSR #14409, NJ CCR
          #30XI00244600, NJ CRT #30XR00019500, Washington State
20   CSR #23005926, Oregon CSR #230105, TN CSR 998, Remote
          Counsel Reporter, LiveLitigation Authorized Reporter,
21   Notary Public
22   Job No. 5905066

Page 2

1   Deposition of CHARLES HENRY MULLIN, PH.D.,

2   held at the law offices of Jones Day, 51 Louisiana

3   Avenue, Northwest, Washington, D.C. 20001, before

4   Cindy L. Sebo, Registered Merit Court Reporter,

5   Certified Real-Time Reporter, Registered Professional

6   Reporter, Certified Shorthand Reporter, Certified

7   Court Reporter, Certified LiveNote Reporter, Real-Time

8   Systems Administrator, California Shorthand Reporter

9   #14409, New Jersey Certified Court Reporter,

10   #30XI00244600, New Jersey Certified Realtime Reporter

11   #30XR00019500, New York Realtime Certified Reporter,

12   New York Association Certified Reporter, Washington

13   State CSR #23005926, Oregon CSR #230105, Tennessee CSR

14   #998, Remote Counsel Reporter, LiveLitigation

15   Authorized Reporter and Notary Public, beginning at

16   approximately 1:06 p.m. EDT, when were present on

17   behalf of the respective parties:

18

19

20

21

22

Page 3

1   A P P E A R A N C E S:

2   Attorneys for Plaintiff ACC:

3   ROBINSON & COLE LLP

4   AMANDA R. PHILLIPS, ESQUIRE

5   One Boston Place, 26th Floor

6   Boston, Massachusetts 02108

7   617.557.5916

8   aphillips@rc.com

9   -and-

10   LAURIE A. KREPTO, ESQUIRE

11   1650 Market Street, Suite 3030

12   Philadelphia, Pennsylvania 19103

13   215.398.0554

14   lkrepto@rc.com

15   -and-

16   CAPLIN & DRYSDALE

17   JEANNA RICKARDS KOSKI, ESQUIRE   (Via Zoom)

18   One Thomas Circle, Northwest, Suite 1100

19   Washington, D.C. 20005

20   202.862.5069

21   jkoski@capdale.com

22

Page 4

1   A P P E A R A N C E S (Continued):

2

        Attorneys for Plaintiff Claimants' Representative,

3   Joseph Grier:

4   ORRICK HERRINGTON & SUTCLIFFE LLP

5   DEBRA L. FELDER, ESQUIRE

6   Columbia Center

7   1152 15th Street, Northwest

8   Washington, D.C. 20005-1706

9   202.339.8567

10   dfelder@orrick.com

11

12   Attorneys for Custom Matching Claimants:

13   HOGAN MCDANIEL

14   DANIEL K. HOGAN, ESQUIRE

15   1311 Delaware Avenue

16   Wilmington, Delaware 19806

17   302.656.7540

18   dkhogan@dkhogan.com

19

20

21

22

Page 5

1   A P P E A R A N C E S (Continued):

2   Attorneys for Debtors/Defendants Aldrich Pump LLC
      and Murray Boiler LLC:

3
      EVERT WEATHERSBY HOUFF

4
      C. MICHAEL EVERT, JR., ESQUIRE

5
      3455 Peachtree Road, Northeast, Suite 1550

6
      Atlanta, Georgia 30326

7
      678.651.1250

8
      cmevert@ewhlaw.com

9
                    -and-

10
      CLARE M. MAISANO, ESQUIRE

11
      111 South Calvert Street, Suite 1910

12
      Baltimore, Maryland 21202

13
      443.573.8507

14
      cmmaisano@ewhlaw.com

15

16

17

18

19

20

21

22

Page 6

```
 1            A P P E A R A N C E S (Continued):

 2         Attorneys for DCPF:

 3             YOUNG CONAWAY STARGATT & TAYLOR, LLP

 4             KEVIN A. GUERKE, ESQUIRE

 5             1000 North King Street

 6             Wilmington, Delaware 19801

 7             302.571.6616

 8             kguerke@ycst.com

 9

10         Attorneys for DCPF Trust:

11             BALLARD SPAHR LLP

12             BETH MOSKOW-SCHNOLL, ESQUIRE   (Via Zoom)

13             919 North Market Street, 11th Floor

14             Wilmington, Delaware 19801-3034

15             302.252.4447

16             moskowb@ballardspahr.com

17                      -and-

18             BRIAN N. KEARNEY, ESQUIRE

19             1735 Market Street, 51st Floor

20             Philadelphia, Pennsylvania 19103-7599

21             215.864.8265

22             kearneyb@ballardspahr.com
```

Page 7

```
 1              A P P E A R A N C E S (Continued):
 2      Attorneys for Debtors and Debtors in Possession:
 3          JONES DAY
 4          BRAD B. ERENS, ESQUIRE  (Via Zoom)
 5          MORGAN R. HIRST, ESQUIRE
 6          110 North Wacker Drive, Suite 4800
 7          Chicago, Illinois 60606
 8          312.782.3939
 9          bberens@jonesday.com
10          mhirst@jonesday.com
11
12      Attorneys for Trane Technologies Company LLC and
        Trane U.S. Inc.:
13
            MCCARTER & ENGLISH, LLP
14
            PHILLIP S. PAVLICK, ESQUIRE  (Via Zoom)
15
            Four Gateway Center
16
            100 Mulberry Street
17
            Newark, New Jersey 07102
18
            973.849.4181
19
            ppavlick@mccarter.com
20
21
22
```

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Page 8

```
 1               A P P E A R A N C E S (Continued):
 2         Attorneys for Non-Party Verus Trust:
 3             LOWENSTEIN SANDLER LLP
 4             MICHAEL A. KAPLAN, ESQUIRE
 5             One Lowenstein Drive
 6             Roseland, New Jersey 07068
 7             973.597.2302
 8             mkaplan@lowenstein.com
 9
           Attorneys for Verus Claim Services, LLC:
10
               ANSELMI & CARVELLI, LLP
11
               ANDREW E. ANSELMI, ESQUIRE
12
               101 Avenue of the Americas
13
               8th & 9th Floors
14
               New York, New York 10013
15
               212.308.0070
16
               aanselmi@acllp.com
17
18         ALSO PRESENT:
19             PETER CUMBO, Bates White  (Via Zoom)
20             ALLAN TANANBAUM, Vice President, Deputy General
               Counsel, Product Litigation at Trane
21             Technologies  (Via Zoom)
22             JOSEPH GRIER, Claimants' Representative
```

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1   --oOo--

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3   CHARLES HENRY MULLIN, PH.D.

4   Armstrong World, et al. v Aldrich Pump LLC, et al.

5   Monday, May 8, 2023

6   --oOo--

7

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3   CHARLES HENRY MULLIN, PH.D.

4   Armstrong World, et al. v Aldrich Pump LLC, et al.

5   Monday, May 8, 2023

6   --oOo--

7   (Exhibits Provided Electronically to Reporter.)

8   CM DEPOSITION

         EXHIBIT NUMBER   DESCRIPTION   PAGE

9

         Number 1   Declaration of Charles H.

10

                        Mullin, Ph.D.   17

11

12   Number 2   Subpoena to Produce Documents,

13   Information, or Objects or to

14   Permit Inspection of Premises

15   in a Bankruptcy Case

16   (or Adversary Proceeding)   51

17

         Number 3   Expert Report of Abraham J.

18

                        Wyner, Ph.D.   101

19

20

21

22

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1   --oOo--

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

3   --oOo--

4   Washington, D.C.

5   --oOo--

6   Monday, May 8, 2023; 1:06 p.m. EDT

7   --oOo--

8   --oOo--

9   CHARLES HENRY MULLIN, PH.D.,

10   after having been first duly sworn by the certified

11   stenographer to tell the truth, the whole truth, and

12   nothing but the truth, testified as follows:

13   --oOo--

14   CERTIFIED STENOGRAPHER: Thank

15   you.

16   The witness is sworn.

17   MR. KAPLAN: Thank you.

18   --oOo--

19   EXAMINATION BY COUNSEL FOR NON-PARTY VERUS TRUST

20   --oOo--

21   BY MR. KAPLAN:

22   Q.   Good afternoon, Dr. Mullin.   I'm

Page 12

```
 1      Michael Kaplan.  We met briefly off the record.  I

 2      represent the nonparty Verus Trust.

 3                   And I think I've drawn the short

 4      straw of -- of going first today, and maybe the

 5      only.  We'll see.

 6                   You have been deposed before,

 7      correct?

 8           A.    Correct.

 9           Q.    I'd be lying if I told you I didn't

10      know that.

11                   So I'm going to give you the very

12      abbreviated version of today's sort of ground rules

13      so that we can't ever have a disagreement.

14                   You know all of your answers have to

15      be verbal?

16           A.    Correct.

17           Q.    We have to do our best not to talk

18      over one another, right?

19           A.    That's the goal.

20           Q.    Right.

21                   You understand you're testifying

22      under the penalty of perjury, correct?
```

Page 13

1   A.   Correct.

2   Q.   You understand that from time to

3   time, maybe in response to every question, your

4   counsel is going to potentially object to something

5   that I'm saying.

6   Unless he instructs you not to

7   answer, you know you can answer, right?

8   A.   I have the option of answering, yes.

9   Q.   Okay. Lastly and, I think, most

10   importantly is if you don't understand my question,

11   I'd like you to tell me that you don't understand

12   it, and maybe we'll -- and I'll be able to rephrase

13   it for you so that you get a question you

14   understand.

15   If you answer, I'm going to assume

16   that you understood the question.

17   Correct?

18   A.   That may be a poor assumption.

19   If I answer, I had a clear

20   understanding of the question. I have no way of

21   knowing if that aligned with your intent of the

22   question.

Page 14

1   So it doesn't necessarily mean that

2   your understanding and mine are the same; it just

3   means we both have one.

4   Q.   Well, the benefit will be that if you

5   think there's a problem with the question in any

6   way, you shouldn't answer; you should tell me.

7   Because if you do, I promise you, when, we get to

8   court, I'm going to hold up the deposition

9   transcript and say you answered, so you understood.

10   All right?

11   A.   And I will tell the judge what I

12   understood, so it will be fine.

13   Q.   Terrific. And we will be off to the

14   races there.

15   Lastly, if you need a break in this

16   very, very short session, hopefully, that we

17   have -- we'll take one for sure, but please let me

18   know at any time.

19   And, obviously, if there's any

20   question of privilege, somehow, that came up, we

21   can stop, take a break and get the privilege issue

22   resolved and come back in. But I don't think we're

Page 15

1   going to have that issue today.

2   All right.

3   (Pause.)

4   BY MR. KAPLAN:

5   Q.   So, Doctor, what is it that you're

6   being -- being proffered as an expert in here?

7   A.   I'm -- the proffer I don't control.

8   I've been asked to really explain the difference

9   between using a 10 percent sample or -- 10 percent

10   sample of what's really about a 3 percent sample of

11   the claims data already or using the 3 percent we

12   asked for in the $12,000 in totality and how that

13   would affect the precision of the ultimate analyses

14   offered in estimation down the road.

15   Q.   Okay. My question was a little more

16   straightforward than that. Let me rephrase it for

17   you because it might be you didn't understand.

18   What is your expertise in?

19   A.   I'm trained as an economist. I have

20   extensive expertise in statistics, econometrics,

21   economic modeling. I have applied those in a mass

22   tort setting frequently.

Page 16

1   And probably most germane to this

2   process, I have expertise in estimating future

3   liabilities under various different sets of

4   assumptions and -- which get into the estimation

5   process itself but in terms of the data inputs and

6   how they affect that and the statistical properties

7   and, hence, the precision.

8   So it's really estimation and

9   statistics are probably the two applications, but

10   there's a lot of underlying training and expertise

11   that underlies those two areas.

12   Q.   Okay. Did anyone assist you in

13   preparing your declaration that was submitted here?

14   A.   Yes.

15   Q.   Okay. And who are those people?

16   A.   I couldn't give you a whole list

17   sitting here. My process -- I work with a team --

18   Q.   Okay.

19   A.   -- and I draft reports with the team.

20   I ultimately review them and edit them to make sure

21   they reflect my opinions. And that work done is

22   under my direction.

Page 17

1   Q.   Okay.   And I'm going to mark for you,

2   just so that we have and we can get started with

3   it --

4   MR. KAPLAN: Can we just call it

5   CM-1? Anyone have a problem with that?

6   MR. EVERT: Sure, that's fine.

7   MR. KAPLAN: CM-1.

8   It is your -- and I apologize for

9   those in Zoom world.   I don't have electronic

10   copies to share, but it's Dr. Mullin's

11   declaration at Docket 55, filed on March 9th,

12   2023.

13   I do have copies for the room --

14   some copies for the room.

15   --oOo--

16   (CM Deposition Exhibit Number 1,

17   Declaration of Charles H. Mullin,

18   Ph.D., marked for identification, as

19   of this date.)

20   --oOo--

21   BY MR. KAPLAN:

22   Q.   Okay.   Do you recognize this

Page 18

1   document, Dr. Mullin?

2   MR. EVERT: Hang on one second.

3   I just wanted to make sure, for

4   everybody on the phone, that they know

5   it's -- because he's filed more than one

6   declaration in the case. So it's Docket

7   -- it's -- the declaration at Docket 55 is

8   the declaration filed in association with the

9   -- I believe with the Motion for

10   Reconsideration, although . . .

11   MR. KAPLAN: Sure hope it is.

12   MR. EVERT: Yeah, that's right.

13   MR. KAPLAN: Okay.

14   BY MR. KAPLAN:

15   Q.   You recognize that document,

16   Dr. Mullin?

17   A.   I do.

18   Q.   Okay. And the team that you talked

19   about in the process you use -- is that what you

20   used to prepare what we're calling CM-1?

21   A.   Correct.

22   Q.   Okay. Do you know how many hours you

Veritext Legal Solutions

Page 19

```
 1        spent in preparing this?

 2              A.     I do not.

 3              Q.     Okay.  How much time did you spend

 4        preparing for your deposition today?

 5              A.     Specifically for the deposition?

 6                     Probably five to eight hours.

 7              Q.     Okay.  Did you speak to anyone

 8        besides counsel about your deposition today?

 9              A.     I spoke with a couple members of my

10        team.

11              Q.     Okay.  And what did you talk about

12        there?

13              A.     So, first, I'll clarify what I mean

14        by "prepare," because that will give context, which

15        is I reviewed Dr. Wyner's rebuttal report --

16              Q.     Okay.

17              A.     -- and so I talked to my team about

18        that report and talked to -- principally, that was

19        the main topic of conversation with my team.

20              Q.     It was about Dr. Wyner's report?

21              A.     Correct.

22              Q.     Okay.  We'll get to that at some
```

Page 20

```
 1        point today.

 2                      Did you meet with counsel in advance

 3        of the deposition?

 4              A.      I did.

 5              Q.      Okay.  How many hours did you meet

 6        with counsel for?

 7              A.      In terms of this is the topic?

 8                      Around an hour, maybe an hour and a

 9        half.

10              Q.      Okay.  And when was that?

11              A.      So a meeting on Thursday or Friday of

12        last week and then a little bit of time before the

13        start of the deposition this morning.

14              Q.      Let me just say this:  The document

15        which we've showed you as CM-1, this declaration

16        for the motion for reconsideration -- is this the

17        only document that you are planning on relying on

18        in the -- for the June 6th hearing?

19                      MR. EVERT:  I'm sorry.  Let me

20          ask, when you say "document," do you mean

21          declaration?

22                      MR. KAPLAN:  I'm sorry.
```

Page 21

1   Declaration. Bad wording. Yes.

2   THE WITNESS: I don't know the

3   technicalities of it. I had a similar

4   declaration that I think was in response to

5   an action in New Jersey, and I don't know the

6   technicalities of how that transfers over.

7   But there's a lot of overlap in the content

8   of those two. But, really, the content

9   across those would be the focus of that

10   testimony as I see it.

11   BY MR. KAPLAN:

12   Q.   Okay. Are you preparing any kind of

13   supplemental declaration in response to Dr. Wyner?

14   MR. EVERT: I'm just going to

15   break in, Michael.

16   I think we agreed we weren't going

17   to do that, that this was going to be his

18   supplemental declaration.

19   You weren't part of those

20   discussions, so I apologize for jumping in

21   and answering the question, but -- yeah. So

22   I think, at least from a legal perspective,

Page 22

```
 1          we would be relying on any declarations

 2          Dr. Mullin has filed that are applicable to

 3          the Trust discovery issue; but, no, he's not

 4          going to file -- his deposition is going to

 5          serve sort of as his response.

 6                    MR. KAPLAN:  Excellent.  All

 7          right.  Good.  That will short-circuit some

 8          of -- some of those questions.

 9                    BY MR. KAPLAN:

10          Q.    I apologize, Dr. Mullin.  I was

11     not -- were you present at the March 30th, 2023

12     hearing that sort of preceded this round of

13     exercises we're doing right now?

14          A.    I was present at a hearing.  If that

15     was the date of it --

16          Q.    Yeah.

17          A.    -- probably.

18                    MR. EVERT:  Yes, he was.

19                    MR. KAPLAN:  He was there.

20                    BY MR. KAPLAN:

21          Q.    Okay.  Excellent.

22                    All right.  So I want to focus you in
```

Page 23

1   on -- on, really, two questions -- two sets of

2   questions today -- others may have other questions,

3   but I want to focus you in on two. The first is

4   that judge's question about why sampling doesn't

5   work for the Debtors' side, and the second is why

6   sampling wouldn't reduce the risk of even human

7   error of missing some PII being disclosed.

8   Okay?

9   A.   Okay.

10   Q.   All right. By background, have you

11   offered an expert opinion previously on the

12   sufficiency of a sample side?

13   A.   Yes.

14   MR. EVERT: In any case?

15   MR. KAPLAN: In any case.

16   MR. EVERT: Okay.

17   BY MR. KAPLAN:

18   Q.   How many of the cases?

19   A.   I couldn't give you a count. I know

20   it's a common topic in the insurance coverage work

21   that I've done, so it comes up frequently in that

22   context. So that's going to be the principal

Page 24

```
 1        context.

 2                         I've done sampling in, I guess --

 3        with the Consumers Finance Bureau [sic].  There's

 4        probably other cases as well, but I've used

 5        sampling in an array of different positions.

 6             Q.     How about in any type of mass tort

 7        case?

 8             A.     Most of those insurance coverage

 9        actions involve mass tort claims --

10             Q.     Okay.

11             A.     -- so definitely, in relation to mass

12        torts, I've given opinions on sampling before.

13             Q.     Okay.  Can you recall the last time

14        you gave an opinion on sampling in -- in a mass

15        tort case?

16             A.     It's common.  I'd have to go look.  I

17        don't know the last time I did it.

18             Q.     Okay.  And you said in the insurance

19        context.

20                         Who is it that retained you in those

21        contexts -- in those cases -- excuse me, not

22        contexts, cases?
```

Page 25

```
 1              A.      I've been retained by policyholders;

 2       I've been retained by insurance companies; I've

 3       been retained by reinsurance companies, whether

 4       it's reinsurance and insurers in litigation, and

 5       retrocession errors.  So it's kind of up and down

 6       the line.

 7                      Sampling is common regardless of who

 8       my clients are in those contexts.

 9              Q.      Okay.  You were involved in the -- in

10       the Mallinckrodt case, correct?

11              A.      Correct.

12              Q.      What was it that you did there?

13              A.      I was retained relatively late in

14       that case.  There was a settlement in place.  There

15       were objectors to that plan, and I was brought in

16       to discuss the reasonableness of the settlement --

17              Q.      Okay.

18              A.      -- with regard to opioid claimants in

19       particular was the emphasis of that.

20              Q.      Okay.  If you flip to Page 17 of 30,

21       the ECF page numbers on the top of your

22       declaration, there is a list of selected
```

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1   experience.

2   Does that document help refresh your

3   recollection at all in terms of the case in which

4   you offered an expert opinion on sampling, outside

5   of this case, of course?

6   A.   In general, this is the cases I'm

7   allowed to publicly disclose at this point --

8   Q.   Okay.

9   A.   -- so there's numerous cases on this

10   list where I would have offered opinions on

11   sampling.

12   Q.   Can you give me an example of -- of

13   an opinion -- again, obviously, we can only ask you

14   about publicly available cases and you can only

15   disclose publicly available cases.

16   So looking at this list, which is the

17   universe we're working off here, can you give me an

18   example of a case which you offered an opinion on

19   sampling in?

20   A.   Some of the analyses that are in the

21   public domain of what I've done on the Aearo

22   bankruptcy originally dealt with the 1 percent

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```
 1      sample that had been drawn in the MDL --

 2               Q.     Okay.

 3               A.     -- so I didn't design that sample,

 4      but I utilized that sample.

 5                         (Whereupon, the witness reviews the

 6                          material provided.)

 7                         THE WITNESS:  Fourth bullet on

 8          what's Page 18 of 30 --

 9                         BY MR. KAPLAN:

10               Q.     Yeah.

11               A.     -- is the Consumer Finance Protection

12      Bureau case in which I've designed and utilized a

13      sample.

14                         (Whereupon, the witness continues to

15                          review the material provided.)

16                         THE WITNESS:  I had input in some

17          of the sampling discussions in Bestwall.  I

18          was not ultimately the person who signed off,

19          but I had input into those.

20                         (Whereupon, the witness continues to

21                          review the material provided.)

22                         THE WITNESS:  There was some
```

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1   sampling in the ACE Bermuda Insurance versus

2   3M arbitration.

3   (Whereupon, the witness continues to

4   review the material provided.)

5   THE WITNESS: The General Re-SCOR

6   matter, about two-thirds, three-quarters of

7   the way down Page 19, had sampling.

8   (Whereupon, the witness continues to

9   review the material provided.)

10   THE WITNESS: My recollection is

11   there was sampling in the bottom two on that

12   page.

13   MR. EVERT: That would be the

14   AIU Insurance and the THAN?

15   THE WITNESS: Yep.

16   (Whereupon, the witness continues to

17   review the material provided.)

18   THE WITNESS: I believe the fourth

19   bullet on Page 20, the National Indemnity

20   matter there versus the State of Montana.

21   I believe the next one, Newco

22   versus Allianz, had sampling.

Page 29

1   The U.S. Silica versus Ace matter

2   two-thirds the way down the page had

3   sampling.

4   I think the third from the bottom,

5   Cannon Electric versus Affiliated, had

6   sampling.

7   The Goodrich matter, penultimate

8   one on the page, had sampling.

9   I did a lot more insurance work

10   earlier in my career, and we're going to

11   start to get a long list of them if not, we

12   can keep going if that's sufficient.

13   BY MR. KAPLAN:

14   Q.   Let me stop you there for a second --

15   no. Let me stop you there, which is -- in -- in

16   the cases that you identified on these first few

17   pages -- and I understand there's potentially

18   more -- were you a proponent or opponent of

19   sampling in those cases?

20   A.   I don't really view it as either.

21   Q.   Okay.

22   A.   I mean, I'm trying to work towards

Page 30

```
 1        getting sufficiently precise opinions for the

 2        parties to resolve a matter.  And it's

 3        fact-specific as to any given matter whether

 4        sampling or a census or some other process is

 5        what's going to be most efficient in getting to

 6        resolution of the case, in reality.

 7                  And so that's really how I approach

 8        these.  I'm neither pro sampling or against

 9        sampling.  I'm what's going to work most

10        effectively in a given setting.

11             Q.   So let me understand.

12                  Is it your testimony that different

13        cases can have different outcomes with respect to

14        sampling in terms of whether it's efficient or not

15        efficient?

16             A.   Correct.  It's a cost-benefit

17        analysis --

18             Q.   Sure.

19             A.   -- and you're looking at that

20        cost-benefit analysis, which is going to be

21        fact-specific to the case.  And sometimes it makes

22        sense to look at the census.
```

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1   In this case, for example, we are

2   using the entire Debtors' historical claims

3   database. We're not saying let's use a 10 percent

4   sample of data already in electronic format. We're

5   saying no, we use all of it because it's all

6   already in electronic form. And that's going to,

7   on a cost-benefit analysis, make sense as opposed

8   to sampling from the historical claims data.

9   You know, in contrast, when you look

10   at claim files in the case and you say what

11   historical claim files might want to get produced

12   and reviewed, that's an expensive operation; you do

13   sampling.

14   So in one case, you turn over

15   everything because it's already in electronic

16   format. In the other case, because there's a large

17   volume of manual labor and cost and time, you use a

18   sample.

19   So even within this case, there's

20   places where my opinions are use all the data, and

21   there's other places where it's use a sample of the

22   data. It's not one or the other; it's what makes

Page 32

```
 1        sense for the question at hand and the facts at

 2        issue.

 3                  Q.     Let's look at -- see if I can put

 4        this into some specifics here.

 5                         You said that you offered an opinion

 6        on sampling in the Aearo Technologies case,

 7        correct?

 8                  A.     I said I used -- I had opinions that

 9        utilized a sample --

10                  Q.     Okay.

11                  A.        -- and I utilized the 1 percent

12        sample that was preexisting from the underlying MDL

13        proceeding.

14                  Q.     All right.  And in your opinion, was

15        that sample sufficient for the purpose you were

16        using it for?

17                  A.     For the scope of the opinion I was

18        doing, I mean, it was a constraint.  It was the

19        only thing available at the time, so it more

20        prescribed the strength of the opinion I was able

21        to offer.

22                         So by construction, it was sufficient
```

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```
 1        for the opinion I offered.  With more data, I could

 2        have offered a more refined opinion.

 3             Q.     Okay.  How about in the Consumer

 4        Financial Protection Bureau case?  You said you

 5        offered an opinion -- I don't want to misstate

 6        it -- that utilized sampling or on sampling.

 7                    Which was it?

 8             A.     I designed the sample on that case --

 9             Q.     Okay.

10             A.     -- it involves literally millions of

11        phone calls.  So it would be completely time

12        prohibitive to have people listen to the millions

13        of phone calls and do something comprehensive.  So

14        from a cost-benefit analysis, it was necessary

15        there to use sampling.

16             Q.     I think you said you participated in

17        Bestwall, but I think we all understand you didn't

18        offer the principal opinion there, correct?

19             A.     I haven't filed any declarations or

20        reports in Bestwall.

21             Q.     Okay.  Good.

22                    How about -- you said ACE Bermuda --
```

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1   you utilized a sample there?

2   A.   Correct.

3   Q.   And what was the context in that

4   case?

5   A.   Well, it's a Bermuda form insurance

6   action, which I think means it's all

7   confidential --

8   Q.   Okay.

9   A.   -- so I don't think I can really tell

10   you the substance of it outside of it's insurance

11   coverage.

12   Q.   Okay. That makes it a little

13   difficult to -- how about let's go down to the

14   bottom of the page to the AIU versus

15   Philips Electric that's in Delaware Chancery?

16   Public that you can talk about?

17   A.   I know the two -- the general

18   theme -- the two that are there are connected to

19   each other. It's really the same opinion in both.

20   They both stem from the THAN Trust. And AIG and

21   the THAN Trust had coverage litigation, and they

22   were seeking discovery on the underlying records

Page 35

```
 1        from the THAN Trust itself.

 2             Q.      Okay.  And what was it -- how did the

 3        opinion on sampling work in there?

 4             A.      I have a recollection sampling was in

 5        it, but I don't recall, sitting here.  I haven't

 6        reread that even if I have it still.  I don't think

 7        those are both in the public domain, but I'm not

 8        100 percent certain of that.

 9             Q.      It's in the SDNY.  Everything is in

10        public there.

11                     Have you ever offered an expert

12        opinion on data privacy before?

13             A.      No.

14             Q.      All right.  Do you have any type of

15        specialized training in data privacy?

16             A.      I don't know what you consider

17        specialized.  We have an entire technological

18        services department; we have HITRUST certification;

19        we have SOC 2 certification.  Part of all of that

20        certification is training for everybody at

21        Bates White, including myself.  So I've had all of

22        the training that goes with those certifications.
```

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1   This is where, if you say

2   "specialized," I think HITRUST would say some of

3   that is specialized, but I'm not sure what you mean

4   by that.

5   So I've gone through the training

6   that goes along with the company getting all of the

7   security credentials.

8   Q.   Okay. Have you taken any -- beyond

9   what the company is -- is offering, any specific

10   type of coursework on data privacy?

11   A.   No.

12   Q.   Do you have any certifications, you,

13   yourself, in data privacy?

14   A.   No.

15   Q.   All right. Have you ever been

16   proffered as an expert in data privacy previously?

17   A.   No.

18   Q.   Okay. And finally -- I'm fairly

19   certain I know the answer to this, but if you tell

20   me "yes," I'm going to be pretty surprised -- which

21   is is you're not a lawyer, correct?

22   A.   No.

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1              Q.     All right.  We're off to a good

2     start.

3                     You're not qualified to offer a legal

4     opinion on the question of law, right?

5              A.     That's a whole different question,

6     but I don't intend to offer any.

7              Q.     Are you qualified to offer a legal

8     opinion on the Federal Rules of Civil Procedure?

9              A.     I don't intend to offer any.

10             Q.     Not my question.

11                    Are you qualified to offer an opinion

12    on the Federal Rules of Civil Procedure, in your

13    view?  This is only your view.

14             A.     No.

15             Q.     Okay.

16                    All right.  I showed you before -- if

17    we can flip back to the meat of your -- sort of

18    your declaration there, CM-1.

19                    Anything in there that needs to be

20    corrected before we dive into it?

21             A.     Not that I'm aware of.

22             Q.     All right.  Excellent.
```

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1   All right. In looking through the

2   declaration, Dr. Mullin, can you point me to which

3   paragraph or paragraphs contain your opinion on why

4   the proposed 10 percent sample is not sufficient

5   for the Debtors?

6   (Whereupon, the witness reviews the

7   material provided.)

8   THE WITNESS: I think the core of

9   that starts in Paragraph 15 --

10   BY MR. KAPLAN:

11   Q.   Okay.

12   A.   -- and probably runs through

13   Paragraph 18 of how the data would be used in broad

14   brush strokes.

15   Q.   Okay. And is it your opinion that a

16   10 percent sample is not sufficient for the

17   purposes?

18   A.   So it's my opinion that on a

19   cost-benefit assessment, which is how you decide

20   whether you should sample or not, the benefits

21   greatly outweigh the costs here, so it makes sense

22   to get those benefits when they outweigh the costs.

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1   So it's going to allow me an estimation to give a

2   much more precise answer and address some questions

3   that otherwise I may not be able to address or

4   quantify reliably, so it -- so, yes, because it

5   passes that cross -- cost-benefit analysis.

6   Q.   Okay. Yeah, the -- is your entire

7   opinion related to the sufficiency tied to just

8   cost-benefit?

9   A.   I mean, that is the fundamental

10   principle of designing a sample and when do you

11   sample and when don't you, so you can't really

12   answer these questions about is sampling

13   appropriate or not in the absence of talking about

14   what it costs.

15   If there's zero cost to having all

16   the data, you should use all the data because

17   you'll be more precise, and why would you give up

18   the precision? If it's impossible to get all the

19   data, it's a silly exercise to talk about what

20   would happen if we did get it. So the two are --

21   can't be separated, the -- what are the benefits,

22   what are the things that the data enable you to do

Page 40

1   and what's the cost of gaining access to that data.

2   That's the trade-off of sampling

3   always. So to -- you can't answer questions absent

4   that framework about sampling.

5   Q.   Okay. Let me try it this way: Why

6   is -- why is a 10 percent sample not sufficient for

7   the stated purposes?

8   A.   Well, so I think this is a place

9   where we need to clarify. One, the Debtors have

10   over 400,000 historical claims. I have not asked

11   for 400,000 data through counsel as a request to

12   assist in our work. We asked for 12,000; less than

13   3 percent.

14   So this isn't like the examples where

15   the Trusts say, Federal-Mogul asked for 435,000

16   Claimants; they asked for 12,000; 3 percent. So I

17   was prudent. I did take into a sense the costs of

18   this, and I asked for 3 percent through counsel to

19   get data on a very limited set of 3. And now I'm

20   being asked to go, for the sake of the analysis,

21   from 3 percent to .3, 10 percent of 3 percent.

22   So you're going to say it's

Page 41

1   10 percent?

2   I think you're asking me to take

3   .3 percent of the available data, not 10, and move

4   from what was already a request for 3 down to .3.

5   So if we're going to say 10 percent,

6   let's make sure it's 10 percent of 3 percent, which

7   I think is the intent of your question. But I want

8   to make that very clear, if that's how we're going

9   to use the terms.

10   Q.   Well, let's see -- let's drill down

11   on that because I don't represent the Debtor as,

12   you know; I represent one non-party.

13   So can you explain to me how it is

14   you're getting from this 10 percent to 3 percent to

15   .3 percent? Because I'm not -- I'm not following.

16   A.   Okay.

17   So the Debtors have faced hundreds of

18   thousands historical claims in the tort system.

19   Some requests that have gone to the Trusts from

20   prior parties have requested their entire

21   historical data, so hundreds of thousands of

22   claims.

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1   I don't think I need that. I have

2   tried to filter this down in how we think about

3   this request. We asked for 12,000. We -- I

4   already said, anything before 2005, it's not going

5   to give me enough information that I need to go

6   after that right now.

7   I eliminated all dismissed claims.

8   Dismissed claims have been produced in other

9   contexts. They were produced in Garlock. They

10   contain a little bit of information that would help

11   but not a lot. That's -- 80 percent of the

12   mesothelioma claims, for example, against Murray

13   resulted in dismissal. I've already eliminated

14   those. I've constrained it to just mesothelioma

15   claims.

16   So it's not that I asked for the

17   ocean through counsel in these requests. I'm

18   seeking for estimation a very targeted subset

19   that's going to be most informative. That's about

20   3 percent of the historical Claimants. I'm seeking

21   information on those three through the subpoenas --

22   or, really, the Debtors, on my behalf, are seeking

Page 43

1   that. So that's where I'm saying we're starting at

2   3 percent. And now others are saying, Let's go

3   from 3 to .3, take 10 percent of that 3 percent.

4   Q.   Okay. So you're talking about the

5   totality of the universe; you aren't being specific

6   to -- for instance, I represent the Verus Trusts.

7   Are you familiar with those?

8   A.   Yes.

9   Q.   Okay. Your testimony is that

10   in -- in looking at the information the Verus

11   Trusts potentially possess as a whole, that's how

12   you're drilling down from 10 percent to 3 percent

13   to .3 percent, correct?

14   A.   No.

15   Q.   Okay.

16   Are you only looking for -- what is

17   the limitation on the Verus Trust, then?

18   A.   So the Debtors, Aldrich and Murray,

19   combined have over 400,000 -- received claims on

20   behalf of 400,000-plus Claimants. So if you wanted

21   to collect information on all the historical

22   Claimants that have brought claims against the

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1   Debtors, you would be asking a request for over

2   400,000 people.

3   That's not what the request was. It

4   was for 12,000, around 3 percent of the universe of

5   historical Claimants that these two Debtors have

6   received claims from.

7   So it started targeting at 3 percent,

8   3 out 100, and so it's the universe of Claimants

9   who brought tort claims against the Debtors'

10   prepetition. That's the initial universe.

11   Q.   Is it your testimony that the Verus

12   Trusts possess 400,000 Claimants' worth of

13   information?

14   A.   I think you can look at reports, and

15   they have more than 400,000 Claimants that filed

16   claims against entities by the Verus Trusts, but

17   what's the overlap -- the question of what's the

18   overlap between the 400,000-plus the Debtors faced

19   and which ones are in -- file a Trust claim against

20   Verus. But the Verus entities have received more

21   than -- claims on behalf of more than 400,000

22   individuals.

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1   Q.   Let's try it this way: What is it

2   that the Debtors need -- excuse me.

3   Strike that.

4   What is it that you need this

5   information for that you asked the Debtors to go

6   get it?

7   A.   So when estimating future

8   liabilities, there's a few different steps in that

9   process.   One is, how many future people will

10   develop mesothelioma with the types of

11   characteristics that would make them compensable

12   against these Debtors?

13   When doing that exercise, the

14   industry and occupational work backgrounds of

15   Claimants matters.   That affects the odds that they

16   will be compensable.   So when you're doing this

17   forecast, you'd really like to break Claimants down

18   into industry and occupational groups that have

19   different levels of valuation associated with them.

20   So one of the things that this data

21   provides is, in electronic form already, a rich set

22   of industry and occupational work history

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1   information, so you're able, then to forecast by

2   different industry and occupational groups because

3   they have different demographic characteristics.

4   So some of those groups taper off more quickly, so

5   the claims would decrease faster. Some will

6   decrease more slowly.

7   So to get a more precise estimate of

8   the number of future claims that the Trust would

9   receive, you really want to do the analysis by

10   industry and occupational groups; that both gives

11   you a more precise estimate of the totality of the

12   liability and, probably just as importantly, it

13   helps you better protect future Claimants relative

14   to pending Claimants. Because when you do this

15   type of a forecast, forecasting the number of

16   claims the Debtor would have received one year post

17   petition, that's easy, relative to forecasting the

18   number of claims the Debtor would receive 20 years

19   post petition.

20   The further into the future you go,

21   the more uncertainty. And so we want to minimize

22   that because we really don't want to be in a

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1   position where future Claimants are getting paid

2   less than the pending Claimants, so improving that

3   forecast is important.

4   Q.   Okay. Any other reason the Debtor

5   needs the information?

6   A.   So there's a second piece besides --

7   that uses that same type of information to help you

8   design a claims resolution process and then,

9   similarly, helps you show that that claims

10   resolution process is feasible at confirmation, so

11   you're using it for those purposes as well.

12   Depending on the exercise you're

13   doing, but, in particular, under what is often the

14   Plaintiff's theory in these cases, you're trying to

15   do an estimate of what Claimants would have been

16   paid in the tort system; and that's something that

17   varies by both industry, occupation but also law

18   firm, jurisdiction.

19   And so when you start asking these

20   questions, it may be that only 100 of the 1,200

21   claims apply to a question of interest, so that's

22   constrained to a 1,200-claim sample, but only one

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1   in 12 go to a subpopulation that I need to estimate

2   something on behalf of; now I have only a sample

3   size of 100 to answer that question. And that's

4   not sufficient.

5   So when you start peeling down, if

6   you really want to ask a question that's just one

7   average for the whole population, 1,200 claims, in

8   general, would be enough. But as soon as you start

9   saying there's a subpopulation of interest, like

10   maybe pipefitters and electricians are different

11   from carpenters, maybe certain jurisdictions are

12   different from others, so you need to look at a

13   subset, I no longer get to look at 1,200 claims,

14   and so I need those subsets to also be big enough

15   to give reliable opinions and accurately estimate

16   the future.

17   Q.   Okay. So let me -- is it -- before

18   we go further, any other reasons why you ask the

19   Debtor to go get this information?

20   A.   There's what's the bulk of

21   Paragraphs 15 and 16, which is really what fraction

22   of a Claimant's exposures were known to the Debtors

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 1        at the time of settlement.  So that's the thrust of

 2        Paragraphs 15 and 16 in my declaration, so that's

 3        another issue where this information would be

 4        important.

 5               Q.    All right.  Let's start with that

 6        one, which is you say, What information was known

 7        to the Debtors at the time of settlement?

 8                    That is, it's -- how does that help

 9        advance the ball of the case?

10                    MR. EVERT:  I'm going to object to

11             the form of the question.  I'm not sure what

12             you're asking.

13                    THE WITNESS:  So little bit of

14             history:  Key aspect of the Garlock case was

15             that Judge Hodges found that not all that

16             information had been revealed and concluded

17             that tainted the tort history, so

18             extrapolating historical tort settlements

19             into the future wasn't appropriate.

20                    The Plaintiffs assert -- and it

21             may turn out to be true -- that post Garlock,

22             that behavior stopped.
```

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1   BY MR. KAPLAN:

2   Q.   What behavior specifically?

3   A.   Not revealing the totality --

4   suppressing information or not revealing --

5   Q.   Okay.

6   A.   -- all the alternative exposure

7   information.

8   Whether or not that stopped is an

9   empirical question. For mine, maybe that did stop

10   completely. Maybe it's identical to what was in

11   Garlock. I don't have an opinion about that. I

12   want to look at the data and have the data tell me,

13   is that going on or not going on.

14   That was a very salient fact in the

15   estimation in Garlock. I would expect the outcome

16   of that empirical exercise to be a salient fact

17   here. So that speaks directly to an aspect of what

18   you could potentially rely on a tort system

19   settlement for or not. So that's one spot where

20   answering that question is going to directly enter

21   into an estimation process.

22   Q.   Okay. I want to show you the -- this

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 1        is just an exemplar subpoena of one.  I believe

 2        they all were fairly similar, but this was one that

 3        was issued to the ACandS Asbestos Trust in

 4        connection with the -- when it was grouped

 5        in New Jersey.

 6                    MR. KAPLAN:  We'll mark this as

 7           CM-2, and I have copies to share with

 8           everybody.

 9                    (Sotto voce discussion.)

10                         --oOo--

11                    (CM Deposition Exhibit Number 2,

12                     Subpoena to Produce Documents,

13                     Information, or Objects or to Permit

14                     Inspection of Premises in a

15                     Bankruptcy Case (or Adversary

16                     Proceeding),  marked for

17                     identification, as of this date.)

18                         --oOo--

19                    BY MR. KAPLAN:

20           Q.    Take a look at that, and let me know

21        whenever you're ready.

22                    MR. KAPLAN:  Just for those on the
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 1          Zoom world, the cover page is not filed

 2          anywhere, but the thrust of what I'm about to

 3          talk about is filed at --

 4                    MR. EVERT:  It's the order

 5          granting the subpoenas --

 6                    MR. KAPLAN:  Yeah, Docket 1240.

 7          Yep.

 8                    MR. EVERT:  -- right, Docket 1240

 9          in the main case.

10                    MR. KAPLAN:  Yes.

11                    BY MR. KAPLAN:

12          Q.    All right.  Have you seen that

13      document -- again, I want to focus in on the order

14      here, Dr. Mullin.

15                    Have you seen this document before?

16          A.    I believe I've seen the order before.

17          Q.    Okay.  Excellent.

18                    I want to focus you in on Paragraph 5

19      of the order, which is, I believe, what we were

20      just covering a moment ago, which talks about what

21      the subpoenas are seeking evidence for.

22                    Do you see that?
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 1                    A.    I do.

 2                    Q.    All right.  And I believe that the

 3         first thing you spoke to me about was the -- the

 4         estimation of the Debtors' liability for current

 5         and future asbestos-related claims and the

 6         negotiation, formulation and confirmation of the

 7         plan, correct?

 8                         MR. EVERT:  I'm sorry.

 9                         Could you repeat that question?

10                         MR. KAPLAN:  Sure.  I'm just

11            trying to -- he gave me -- if I recall, there

12            were three areas which he gave me to --

13                         BY MR. KAPLAN:

14                    Q.    -- that you needed the data for:  One

15         was forecasting; one was -- call it claims

16         resolution and -- and the Trust distribution; and

17         the third I'll generally refer to as the "Garlock

18         problem."

19                         Okay?

20                         Did I get those right, those three --

21         what -- the three purposes?

22                    A.    So estimating liability, of which you
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1        have a lot of inputs into, the Garlock problem is a

2        subset of that, if it exists.  You know, so there's

3        estimating liability; and there's designing the

4        plan; and then there's showing the plan as feasible

5        in confirmation.

6                Q.      Okay.

7                MR. ANSELMI:  I'm sorry.

8                Could you repeat that last answer?

9        I couldn't hear.

10               Or could you repeat it back, what

11       the answer was?

12                              --oOo--

13               (Whereupon, the certified

14                stenographer read back the pertinent

15                part of the record.)

16                              --oOo.

17               MR. ANSELMI:  Okay.

18               BY MR. KAPLAN:

19               Q.      So that's what I was trying to drill

20       down on, what this is.

21               Your testimony is that this -- this

22       -- if we look at the colon past "specifically,"
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1        there's a semicolon, and then we get to -- The

2        estimation of the Debtors' asbestos liability is

3        the second phrase or clause there, correct?

4               A.     Correct.

5               Q.     And that's where your testimony is is

6        that the -- determining whether that there was a

7        similar issue in Garlock falls in?

8               A.     Correct.  This is broken out a little

9        different, probably the phrase before that

10       semicolon --

11              Q.     The reliable basis --

12              A.     -- in this context, is probably where

13       the Garlock part falls; but yes.

14              Q.     Okay.  And this "permitted purposes"

15       term is a defined term that I didn't design, but

16       I'm going to go with it.

17                     You see that term there which talks

18       about the permitted purposes?

19              A.     I do.

20              Q.     Okay.  My question is this:  With

21       respect to the first permitted purpose, the

22       determination of whether prepetition settlements of
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1   mesothelioma claims provide a reliable basis for

2   estimating the Debtors' asbestos liability, is it

3   your opinion that a 10 percent sample would not be

4   sufficient?

5   A.   For most aspects of that, I'm

6   actually constraining myself to a 10 percent sample

7   already.

8   So for most aspects of that -- like,

9   for example, whether or not all the exposures have

10   been revealed -- there's a comparison of Trust data

11   to underlying Claimant information as collected

12   from the claim files, that's being envisioned as a

13   comparison of claim file sample to the Trust data

14   and would likely be done with approximately 1,200

15   Claimants.

16   So for most of the things that I

17   think would fall under that, the 10 percent sample

18   is already being used, because it would be --

19   that's where the claim file production, which is

20   not already in electronic format so has a different

21   level of expense associated with it, has a

22   different cost-benefit analysis. And so that's the

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1   binding constraint on addressing the bulk of what

2   would fall under that first item.

3   Q.   Okay. How about with respect to the

4   estimation of the Debtors' asbestos liability -- is

5   it your opinion that a 10 percent sample would not

6   be sufficient for that?

7   A.   "Sufficient" is probably not the term

8   I would use.

9   Could I perform an estimate with a

10   10 percent sample if constrained? Yes. That

11   estimate would have a much broader range of

12   uncertainty about it, and so the Court would have

13   less guidance; the Trust would have a higher risk

14   of not reserving enough funds for future claims.

15   So this is a question of precision,

16   right? It's -- is it worth gaining the extra

17   precision for whatever costs are associated with

18   producing those data?

19   It's still feasible to give an

20   opinion, but you're just going to have a lot less

21   precise about that opinion.

22   Q.   Let's stop there for a second with

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1   respect to precision.

2   Can you quantify how much less

3   precise 10 percent would be versus, say, for

4   example, a 12 percent sample size?

5   A.   So there are areas where I was

6   comfortable doing that. You know, I did drop all

7   the dismissed claims from the request. I dropped

8   everything that wasn't a mesothelioma from the

9   request. So there's areas where I felt like I had

10   the information to have confidence that

11   constraining myself to 3 percent of the historical

12   claims that the Debtors have received would still

13   leave me in a position where I hadn't given very

14   much up in terms of precision.

15   Beyond that, it's very hard to

16   quantify until you have the data, because you don't

17   know what you're going to find.

18   So, for example, if you take the

19   Garlock-style question, if it turns out that the

20   assertions of the Plaintiffs' bar is validated and

21   all exposures are being revealed in a

22   contemporaneous manner, that issue just drops out

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1   of the estimation. So I wouldn't need a large

2   sample size if it turns out -- for that question if

3   it turns out it never happens.

4   In contrast, if it happens but it

5   only happens in select jurisdictions or for select

6   types of claims, then I need a lot more data,

7   potentially, to address that.

8   So saying exactly how much data you

9   need and the critique that Dr. Wyner said, if I

10   haven't quantified it, that's because it's not

11   actually quantifiable at the moment, but you're

12   taking a big risk for -- you know, on that front.

13   On other aspects, like estimating

14   claims by industry and occupation group, I haven't

15   run it in this particular context, but I know the

16   -- for example, the occupational exposure curve for

17   construction claims goes out about 10 years further

18   as a shift from lots of traditional industrial

19   exposures. So having a good understanding of that

20   can move your estimate 5 or 10 percentage points.

21   And so knowing the breakdown of those

22   in a fulsome manner could easily add, you know, 5

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1   or 10 percentage points of precision to the type of

2   estimate you're making, and that would be -- when

3   you're talking hundreds of millions of dollars, 5

4   or 10 percentage points can be a lot of money.

5   You know, I haven't done all that

6   work. I don't have the data, so I don't know

7   exactly what it's going to move it. That's

8   something you can't know until after the fact.

9   Q.   Again, I'm trying to understand if

10   there is a way to -- so I think I understand you

11   said it's not quantifiable, but let me just make

12   sure.

13   The precision of a 10 percent versus

14   a 15 percent sample size -- again, this is all

15   before you have the data -- you're not able to

16   quantify the mathematical difference in terms of

17   how precise they would be?

18   A.   So there are places where you could

19   be concrete.

20   Q.   Okay.

21   A.   So if you took, for example, a law

22   firm that has 400 resolved claims and now we take a

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 1        10 percent sample of 400 paid claims during the

 2        sampling period.  Now we take a 10 percent sample;

 3        we'd expect to get 40.  If it turns out that

 4        breaking that law firm out and doing analyses by a

 5        law firm is important, I now have a sample size of

 6        40, which is going to have three-and-a-half times

 7        the uncertainty of what I would have had with 400.

 8        400 for that law firm probably would be enough; 40

 9        is almost assuredly not.  And so now, I'm going to

10        introduce a whole bunch of uncertainty.

11                    Most of the law firms have well under

12        400, so there's only a handful of law firms that

13        have more than 400 paid claims during this period,

14        so is -- for all but a handful of them, if you

15        needed to do something by law firm, you'd want the

16        totality of the available claims out of the 12,000.

17                    There's a couple that have more than

18        4- or 500 claims, but it's only a couple.  So

19        that's an example where I know which law firms I'll

20        need to break out and treat separately -- I don't

21        know yet.  When we do financial reporting work,

22        it's common to break out 10 or 20 law firms in the
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1   analysis to get the most precise estimate of what

2   we would expect in the tort system.

3   So I expect I have to break it out by

4   law firm. I expect that analysis to matter

5   materially to the precision. And if I only get

6   10 percent, I'm going to lose an awful lot of

7   information from there and my work is going to be

8   materially less precise.

9   Q.   How much less precise?

10   A.   So at the law firm level, you're

11   going to be, again, more than tripling the amount

12   of uncertainty. The baseline level of uncertainty

13   is unknown. You're tripling the uncertainty, but

14   you don't know the baseline until the data comes in

15   and you do the analysis. So that's not answerable;

16   the relative loss is.

17   Q.   Okay. Let me turn to the sort of

18   last point there, and then I'll take a break for a

19   couple of minutes.

20   The development and evaluation of

21   Trust distribution procedures for any plan of

22   reorganization confirmed in these cases, the third

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1   purpose.

2   Okay?

3   Is a 10 percent sample sufficient for

4   that purpose?

5   A.   It may turn out to be sufficient for

6   some occupational groups you'd want to look at and

7   almost assuredly insufficient for others. So,

8   again, it's similar to law firm. Until you've done

9   the work, you don't know how you're going to bundle

10   those groups together, but it's typical to have

11   multiple groups.

12   The smallest groups are frequently

13   the most highly paid claims, so you have a very

14   high per-claim value in a CRP for relatively small

15   number of people fitting it, is the typical fact

16   pattern. So you're expecting the place that the

17   precision matters most to be the place exactly

18   where getting a 10 percent sample instead of all

19   the data is going to cause you the biggest problem

20   because it may only be that 5 percent of the claims

21   are in that group; and so then, instead of having

22   1,200 claims to work with, suddenly I have 60. And

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1   60 is not going to be enough for almost any

2   reasonable statistical analysis.

3   In contrast, 600 would be.

4   Q.   Is it your testimony here that there

5   is no percentage, in terms of sample size, that

6   would be sufficient?

7   MR. EVERT: I'm just going to

8   object. I don't think that's what he said.

9   I think the problem is with the word

10   "sufficient," but . . .

11   THE WITNESS: I think quite to the

12   opposite --

13   BY MR. KAPLAN:

14   Q.   Okay.

15   A.   -- I didn't -- I asked for 3 percent

16   of the data to start with.

17   And so the context that's being lost

18   in your questioning is before the Trusts ever

19   received a request, I had already concluded I don't

20   need this for 97 percent of the Claimants to do my

21   work and get to a sufficiently precise estimate.

22   So quite to the contrary, I'm more

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1   saying 3 percent's sufficient; .3 is not. Taking

2   away 90 percent of the 3 percent request? No, that

3   wouldn't be sufficient; the 3 percent is.

4   So I did that work up front and

5   constrained the request to only 3 percent of the

6   data.

7   MR. KAPLAN: Okay. All right.

8   Why don't we take five minutes here? Try to

9   actually make it five minutes, if we can. If

10   not, it will be 10.

11   We'll go off the record.

12   --oOo--

13   (Whereupon, a recess was taken from

14   1:59 p.m. EDT to 2:10 p.m. EDT.)

15   --oOo--

16   BY MR. KAPLAN:

17   Q.   All right. Dr. Mullin, we're back

18   from the break.

19   Any reason you can't continue?

20   A.   No.

21   Q.   Okay. Not at least this break.

22   Before we left, you said, a couple

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1        different times -- you were talking about you

2        had -- there was a universe of 400,000 claims which

3        you limited to -- which you said was 3 percent of

4        that and then took it down to .3 -- were being

5        asked to take it to .3 percent.

6                        Do you remember we were discussing

7        that?

8              A.      Yes.

9              Q.      Okay.  The 400,000 claims that you --

10       that the claims universe was starting with -- are

11       they all mesothelioma claims?

12             A.      No.

13             Q.      Okay.  Approximately how many of the

14       400,000 are mesothelioma claims?

15             A.      I don't know the exact count.

16             Q.      That's why I asked for an

17       approximation, because I figured you didn't.

18             A.      More than 25,000, less than 50-.

19             Q.      Okay.  And were you asked to do an

20       analysis of nonmesothelioma claims?

21             A.      Estimation is currently constrained

22       to mesothelioma claims, but any plan of
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1        reorganization will have to address all claims.

2                     So for the purposes of the current

3        scope of estimation, mesothelioma claims is what is

4        needed, but eventually you'll have to design a

5        claims resolution process for all claims.

6             Q.     Okay.  And you also talked about

7        claims -- you eliminated claims that were

8        dismissed, correct?

9             A.     Correct.

10            Q.     Were you asked to analyze claims that

11       were dismissed?

12            A.     Yes.

13            Q.     Okay.  And how is it that you would

14       be analyzing the claims that were dismissed?

15            A.     A fundamental question when valuing

16       claims is which ones will be dismissed and which

17       ones will be paid.  So you often compare the

18       characteristics of dismissed claims to paid claims.

19                   If you only look at characteristics

20       of paid claims and say these characteristics are

21       associated with payment, it may turn out that those

22       exact same characteristics are also associated with
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 1        claims that don't get paid.  So you -- to figure

 2        out what subsets of claims would be paid, dismissed

 3        claims are relevant.

 4              Q.     How about -- where do administrative

 5        settlements factor into your analysis?

 6              A.     So administrative settlements, in

 7        many ways, for estimating liability make the

 8        problem more difficult because, frequently, in the

 9        context of administrative settlements, underlying

10        Defendants and these Debtors, in particular, have

11        not gone through as exhaustive a discovery process,

12        so they contain less information about the

13        characteristics of those claims.  And understanding

14        the characteristics of the actual claims is

15        relevant for projecting the number of future

16        claims.

17              Q.     Okay.  So I think you said just a

18        moment ago that you were approximating somewhere

19        between 25- to 50- mesothelioma claims of the

20        universe of 400.

21                     Did I get that right?

22              A.     It's thousands on end of all of those
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 1        numbers, but yes.

 2                 Q.      For -- yes.  Let's get that right for

 3        the record purposes because, otherwise, one of us

 4        will try and use it later.

 5                 A.      Don't know which one that would be.

 6                 Q.      You can bank on that --

 7                         MR. ANSELMI:  It depends.

 8                         BY MR. KAPLAN:

 9                 Q.      -- you can bank on -- no, I'm

10        kidding.

11                         Your testimony was, if I'm correct,

12        that of the 400,000 or so claims, you believe that

13        25- to 50,000 are mesothelioma claims?

14                 A.      Claims, yes.  Claimants -- it might

15        be a little lower.  I'm -- 80 percent of the Murray

16        claims were dismissed; 50 percent of the Aldrich

17        claims are dismissed.  So you need more than double

18        the 12,000 because, over half, you have a dismissal

19        rate even for one that's half and 80 percent for

20        the other.  So that's really where I got to the

21        lower number of about 25,000.

22                         But it could go -- how much higher
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 1        than that it goes -- that could go -- I haven't

 2        tabulated it.  So it's more than 25,000, and I'm

 3        confident it's less than 50- but probably closer to

 4        25- than 50-.

 5              Q.     And the subpoenas that brought us all

 6        together on this lovely spring day in

 7        Washington, D.C. -- they are seeking information

 8        about mesothelioma -- mesothelioma claims, correct?

 9              A.     The request was constrained to 12,000

10        mesothelioma claims; that's correct.

11              Q.     Okay.  So how is it that we get to

12        the 3 percent, .3 percent when you have -- you're

13        looking for information from 12,000 mesothelioma --

14        mesothelioma Claimants out of 25- to 50,000?  That

15        seems like a higher percentage.  I'm not a

16        statistician, but . . .

17              A.     I answered this question before,

18        which is there's over 400,000 Claimants.  I chose

19        not to -- I chose -- I asked -- I did not ask the

20        client to seek information on nonmesothelioma

21        Claimants despite the fact that those could be

22        relevant for designing claims resolution processes
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1        or claim -- or claim feasibility.  They could still

2        be helpful in terms of the questions that are

3        relevant, but they are not as important as the

4        mesothelioma.

5                    So I made a choice to constrain and

6        not ask for anything that wasn't mesothelioma.

7             Q.     You would agree with me that if there

8        were, for example, 25,000 mesothelioma Claimants

9        total, 12,000 is just shy of half, right?

10            A.     It would be 48 percent if there were

11       25,000.  I can do that math on the fly.

12            Q.     Thank goodness, because all the

13       lawyers in the room were looking for their iPhones.

14                   All right.  That's -- that's

15       48 percent.

16                   And if it were 50,000, can you do

17       that math on the fly?

18            A.     Just multiply by 2, so 24 percent.

19            Q.     Excellent.

20                   So that's not 3 percent, correct?

21            A.     It's more than 3 percent of the

22       mesothelioma claims.  I always said it was
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1   3 percent of the approximately 400,000. And I've

2   been clear with you the whole time that that was

3   all diseases.

4   So if you switch the denominator, the

5   percentage will change no matter -- and you can

6   switch it to anything else, and it will be a new

7   percentage, too. It's not what I was saying

8   before.

9   I was actually using the universe of

10   claims historically brought against the debts is

11   what's north of 400,000.

12   Q.   Right. And we agree that the

13   universe of mesothelioma claims are lower than

14   that, correct?

15   A.   Correct. They have claims of people

16   without mesothelioma.

17   Q.   Let's turn back -- let's look at

18   Paragraph 15 of your declaration, which is CM 1 for

19   the record purposes.

20   And certainly feel free to look at

21   whatever, but I want to focus in on the last

22   sentence.

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1   Whenever you're ready, Doctor, the

2   last sentence in Paragraph 15.

3   A.   Yes.

4   Q.   Yeah. So what you're talking about

5   here is that -- provide more data that will improve

6   the quality of our estimation and

7   claims forecasting work.

8   And we've talked a lot about this

9   previously.

10   Do you see that?

11   A.   I do see that.

12   Q.   The number that we're sort of arguing

13   about in the context of this hearing are

14   somewhere -- a number between 1,200 claim files and

15   12,000 claim files, correct? Can we agree on that?

16   A.   I think these are electronic records,

17   not claim files. But 1,200 -- 12,000 Claimants --

18   the information on 12,000 Claimants versus the

19   information on 1,200 Claimants.

20   Q.   Okay. Let's talk -- let's use

21   Claimants, then, so we're both saying the same

22   thing.

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1   We're talking about the difference

2   between 1,200 Claimants and 12,000 Claimants,

3   correct?

4   A.   Correct.

5   Q.   All right. How much -- can you

6   quantify for me how much getting the, say, 2,400

7   Claimant files would improve the estimation in

8   claims forecasting?

9   A.   So -- and what you can do

10   definitively is talk about what's the relative

11   improvement in precision. This is actually a place

12   where Dr. Wyner and I don't disagree. The basic

13   statistical formulas move with the square root of

14   the sample size. So if you quadruple the sample

15   size, you double your precision. You take the

16   square root of the relative movement.

17   So asking to take a 10th of the

18   sample is asking you to slightly more than triple

19   your level of uncertainty in everything you're

20   doing.

21   So we're going to present things to

22   the Court that have three times -- a little bit

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 1      more than three times the uncertainty about them

 2      than if we had the 12,000.  We know that's going to

 3      be the relative impact.

 4              Q.      Let's start with the 1,200 out of the

 5      12,000.

 6              What -- can you quantify the level of

 7      precision there?

 8              A.      Again, it depends on the question.

 9      So I don't disagree with what Dr. Wyner put in,

10      where he said, If you're asking the question about

11      a proportion for the totality of the population.

12      He applied that formula correctly.

13              If, on the other hand, you want a

14      proportion for one law firm, and that law firm has

15      300 records that now we only sampled 30, you're

16      going to apply that same formula to a population or

17      a sample of 30 and you're going to have very large

18      confidence intervals.  You can apply the same

19      mathematical formula.  I don't do those in my head.

20      But you will have confidence intervals that are

21      quite broad that -- in my experience, broad enough

22      that most courts would say, that's not very
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1   precise; I don't know if we're going to rely on it.

2   So it's a question of how large of a

3   subpopulation are we able to analyze. And that's,

4   I think, the main difference between what Dr. Wyner

5   was looking at and myself. He's implicitly assumed

6   you always only care about a question for the

7   entire population so you get to use all 1,200

8   files.

9   And as soon as you go to questions

10   that involve a subset of the population -- maybe

11   the liability differs by gender, and you want to

12   look at females separately, but they're only

13   20 percent of the Claimants.

14   Now, if gender matters, I don't have

15   1,200; I have 240. I don't have 12,000. I'm

16   already down to a 20 percent sample, in essence,

17   because only 20 percent of the Claimants are

18   female.

19   So as soon as you start looking at

20   subpopulations of interest, 1,200 within a

21   subpopulation would be sufficient, but there's many

22   subpopulations that would have less than 1,200 if I

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1      take a 10 percent sample.

2            Q.      Is there a way to design the sample

3      so that it addresses the subpopulations you're

4      interested in?

5            A.      You could attempt to mitigate.  So

6      you could say I want 1,200 females out of the 2,400

7      or so females, if you were to -- out of the --

8      yeah, 2,400 out of -- if it's about 20 percent, and

9      then 1,200 males.  You could make it bigger, and

10     that might address that question.

11                  But then if you go to law firm -- if

12     there's a law firm that only has 300 claims --

13     Dr. Wyner and I, I think, agree that 30 claims is

14     not enough.  We'll probably learn in his deposition

15     whether he thinks 30 claims is sufficient, but, you

16     know, at 300, we'd probably agree -- I don't want

17     to put words in his mouth, but -- on the

18     statistical formulas, that you'd need all 300.

19                  So for any law firm that has less

20     than somewhere usually in the 3- to 500 range, most

21     statisticians are going to say you really need to

22     look at all of them if you want to be able to use
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1   that data to make projections about the future.

2   Q.   Let's talk about -- turning back to

3   the -- the 10 percent sample that is being

4   discussed here, is there a way to design the sample

5   size to address the stated purposes that you're

6   looking for?

7   A.   You can mitigate, right -- you can

8   mitigate the risk. And that is what you do in

9   sample design. Whenever you take a sample, you're

10   always taking a risk that you actually won't have

11   the information you need. It's in -- it's

12   intrinsic to sampling.

13   And the smaller you make the sample,

14   the greater that risk becomes because the ultimate

15   answer is only known after the fact. You don't

16   know ahead of time.

17   And so, in this context, yes, you can

18   design things that mitigate that risk, but you

19   can't eliminate it. And the smaller you make the

20   sample, the greater that risk becomes.

21   Q.   And sitting here today, can you give

22   me -- can you quantify what the risk is if the

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1        Court were to order just the 10 percent sample, or

2        1,200 Claimants?

3               A.      As I said, I can't give you a

4        specific number because that's not known until

5        after you have the data and you do the analysis.

6               That said, in general, if you want to

7        forecast liability, particularly if you want to

8        forecast what Claimants would have received in the

9        tort system, you need to control for law firm and

10       jurisdiction.  Those are two things that, when I do

11       financial reporting disclosure work, I will control

12       for.  When you're looking at future tort system

13       spend, you control for those two elements.

14               If you start controlling for those

15       two here and you look at a law firm in a given

16       jurisdiction, there's only a couple law firms and

17       jurisdictions that have more than 400 claims.  So

18       in those, maybe you could sample, and you would

19       still end up with more than 10,000 claims, because

20       for the vast majority, this -- you're already at a

21       size where you wish you had more data.

22               Q.      Maybe I just missed it.
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1   I guess your testimony -- am I

2   correct your testimony is you cannot quantify the

3   risk sitting here today, put a number on it?   If

4   the sample -- what I mean -- by "quantify," I mean

5   it's only 30 percent reliable or 40 percent

6   reliable or 50 percent reliable.

7   A.   So, ultimately, the Court, in my

8   experience, is who tells me whether it's reliable

9   or not.   What I tell the Court is what's the

10   uncertainty of the estimate.

11   And so every time you tell me to

12   triple my uncertainty, I get nervous.   If three

13   different inputs all tell me to triple my

14   uncertainty -- this is one input into estimation.

15   Now the uncertainty is 27 times as big.

16   Going into a court where I might have

17   been able to say, Here's an estimate plus or minus

18   30 million, you tell me to triple, and now I have

19   to say, Here's an estimate plus or minus 90.   But I

20   have another input that also adds uncertainty of

21   threefold.   Now, instead of plus or minus 90, it's

22   plus or minus 270.

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1   Each uncertainty interacts with the

2   other ones, and they -- it's more multiplicative in

3   nature. So it's not that this is the only

4   parameter that matters and creates uncertainty;

5   there are others. And as you fold them, they start

6   to get larger.

7   So this is a place where sampling at

8   10 percent will likely approximately triple the

9   uncertainty for key inputs into the model.

10   Tripling that uncertainty means I'm going to triple

11   my confidence with the uncertainty at the end.

12   And I don't see the costs as

13   justifying that, given the benefit of being able to

14   triple my precision and the guidance I give a

15   court, when, in the best case, a scenario is

16   already going to be you have tens of millions of

17   uncertainty; so now you're going to triple that.

18   That's adding an awful lot of uncertainty -- tens

19   of millions at least of uncertainty to the

20   estimate.

21   So you said "quantify." Going to the

22   10 percent sample will add tens of millions of

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 1      uncertainty, maybe 100 million.  I don't know.  I

 2      haven't done that work.  But it will be at least in

 3      the tens of millions based on historical

 4      experience.

 5              Q.     When you say "uncertainty," can you

 6      explain what it is you mean there?  There's

 7      factors -- is that factors or variables you can't

 8      account for?  Or what is that?

 9              A.     I would have less data to be able to

10      refine an estimate.  So that future estimate will

11      have greater statistical -- that will add

12      statistical uncertainty on top of the other types

13      of uncertainty that already exist.  And so it's

14      going to expand any level of confidence you have in

15      an estimate; "expand" in the sense of degrade your

16      confidence, expand the uncertainty.

17              Q.     Let's look at Paragraph 16, which

18      is -- again, I'm focusing on the end of it, which

19      is where you say, This would enable us to quantify

20      the proportion of alternative exposure disclosed to

21      the Debtors at the time of settlement.

22              You see that?
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1   A.   I do.

2   Q.   Is it your testimony that the

3   1,200-Claimant sample is not sufficient for that

4   purpose?

5   A.   No.

6   Q.   It is sufficient for that purpose?

7   A.   I'm actually -- the sample of claim

8   files were going to juxtapose that with this

9   currently approximately 1,200. So that compares --

10   that requires the comparison of the two. So that's

11   already being envisioned for that specific question

12   of only looking at 1,200.

13   And that's really motivated by the

14   cost of producing and reviewing claim files,

15   because they're not already in electronic format.

16   If all that information was in electronic format,

17   I'd use more data than that, but it's not, so the

18   cost is materially higher.

19   Q.   Paragraph 17, you talk about The

20   variations in disclosure patterns would allow us to

21   model the impact of the partial information on

22   settlement amounts.

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1   Do you see that, Doctor?

2   A.   I do.

3   Q.   Is it your testimony that a

4   10 percent sample of 1,200 Claimants wouldn't be

5   sufficient for that purpose?

6   A.   It may be. And, initially, that's

7   what I'm going to try to do it with because, again,

8   I'm only going to have that quantified for the ones

9   that are contrasted with claim files.

10   If you learn, for example -- a

11   complete hypothetical -- say Claimants represented

12   by counsel -- or counsel represented by 25- -- let

13   me get it right. I'll start that over.

14   Let's say there's a subset of law

15   firms that represent 25 percent of the historical

16   Claimants, where a small fraction of the exposures

17   are being disclosed, but for the law firms that

18   represent the other 75 percent of Claimants, almost

19   everything's been disclosed.

20   I may not have enough data for that

21   25 percent, but then I would do a targeted

22   follow-up of -- to try to fill that information in,

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1   and -- as opposed to asking for it over the whole

2   universe.

3   So I really view this as a two-step

4   process: the first, which is really Paragraph 16,

5   where, if at all, is full disclosure not occurring,

6   which gets -- so for which claims is the --

7   Paragraph 17 even a relevant question.

8   And then not knowing the answer to

9   that, I view this as -- I may be able to do it with

10   1,200. I may need to supplement at some point to

11   get precision.

12   Q.   Okay. Short of a -- I think you

13   referred to it as a "census" or a "population,"

14   when you talk about all the claims.

15   Correct? That's what you're

16   referring to?

17   You said in your report a couple

18   times, you know, a census -- a population-level

19   census analysis.

20   That would be all 12,000, correct?

21   A.   Correct.

22   Q.   Okay. Is there a number -- you know,

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1   as you said a moment ago, it's the judge who's

2   going to tell you what ultimately is reliable, and

3   I would probably agree with that statement to the

4   extent that I'm sure you're going to give the judge

5   an opinion on what number he should come out at.

6   Is there some number short of 12,000

7   that you are comfortable opining to the judge would

8   be sufficiently reliable for the purposes we

9   discussed?

10   A.   As I said, I went about this really

11   asking that question ex ante and how could I

12   minimize the size of the request counsel would make

13   on my behalf for data. And I already -- the things

14   that I was comfortable eliminating, I've

15   eliminated, which got me down to the 12,000. And

16   so I've gone through that process already.

17   So I'm not at the point where I'd say

18   I'm comfortable making it smaller. You can do all

19   the analysis with a sample of 1,200; you can do all

20   the analyses with a sample of 6,000. You'll just

21   have less precision.

22   Whether that precision turns out to

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1   be binding on the ultimate reliability in the

2   Court's eyes, one, it's a question for the Court;

3   but, two, it's where those numbers work out at the

4   end.

5   If you could give an estimate that

6   was plus or minus, you know, a dollar and it became

7   plus or minus $3, the Court would probably be fine

8   with that; but if it was plus or minus 50 million,

9   it became plus or minus 150 million, the Court may

10   really not be okay with that. That may be too

11   broad of a range.

12   But that's where, when you say

13   "trip" -- when I think of it as tripling my

14   uncertainty, until you've done the work, I don't

15   know if I'm going -- no, I'm not going from $1 to

16         $3; I can't be that precise -- but I don't know if

17   I'm going from 50 to 150 million or if I'm going

18   from 20 million to 60 million. I don't know the

19   answer to those things until I've done the work.

20   Q.   Again, I want to focus you on just

21   the mesothelioma claims, because that's what --

22   what we're talking about here is -- your testimony

Page 88

1   is that you are not prepared to offer -- to suggest

2   that any number short of 12,000 is sufficient,

3   correct?

4   MR. EVERT: Object to the form of

5   the question.

6   THE WITNESS: Again, "sufficient"

7   I -- I don't think is the right term, which

8   is why I struggle with answering that

9   question. I think you are taking unnecessary

10   risks relative to the cost of data production

11   to reduce it further. And I would advise

12   against it.

13   BY MR. KAPLAN:

14   Q.   Okay. I'm using "sufficient" because

15   I believe the Judge's words were "doesn't work."

16   So let me ask it this way, which is:

17   Is it your testimony that only the 12,000 Claimants

18   will work for the Debtors' purposes?

19   A.   I'll try this a different way, see if

20   we can get on the same page.

21   No statistician can tell you the

22   sample size you need before the data is produced in

Page 89

1   a discovery exercise like this to say the number of

2   claims at which it will work. What happens is the

3   more claims you get, the higher the probability

4   that it will work becomes.

5   So it's not -- whether you -- there's

6   almost no difference, right, if you give 12,000

7   claims or 11,999. The odds that that 12,000th

8   claim was the linchpin to take you from working to

9   not working is almost zero, right? But at the same

10   time, no one can tell if you go from 12,000 to

11   11,000, that may be what swings it. Going from 11

12   to 10 may be what does.

13   But as you shrink, the odds that the

14   analysis you would want to perform to give the

15   Court better guidance would become unfeasible. And

16   it's a statistical probability. It's not a known

17   thing until you have the data and it's after the

18   fact.

19   It's like default risk in that sense.

20   As somebody becomes riskier, their odds of default

21   goes up. But it doesn't -- you don't know yet if

22   they're going to default or not; you just know the

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 1        odds are up.

 2                    As you shrink the sample size, the

 3        odds that you won't be able to give sufficient

 4        guidance rise.

 5             Q.     Let me just see if we can get on the

 6        same page -- I appreciate that -- which is is can

 7        you estimate and forecast based on 1,200 Claimants?

 8             A.     It is feasible to do all the math,

 9        and you will have a broader confidence interval, so

10        you will give up precision.  But you -- you will

11        get an estimate with a substantially broader

12        confidence interval of degree of uncertainty about

13        that estimate.

14             Q.     Can you quantify the proportion of

15        alternative exposures disclosed to the Debtors at

16        the time of settlement with the 1,200 Claimants?

17             A.     As we said before, that's what I'm

18        trying to do, is I'm using the 1,200 for which --

19        the claim files.  That sample isn't finalized yet,

20        but that's the size that's being discussed of the

21        claims result for positive payment -- would be

22        using those 1,200 and comparing those to the Trust
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1      data to do that.

2                     My intent is to do that.  I am

3      optimistic that will work.  I can't guarantee it.

4      And if you needed to supplement, you may, for

5      certain law firms, need to supplement additional

6      claim files, but you would already have the Trust

7      data necessary.

8            Q.    Can you create the model you discuss

9      in Paragraph 17 and the impact of partial

10     information on settlement amounts with the 1,200

11     Claimants?

12           A.    Not as a materially higher

13     probability of not being feasible with the 1,200

14     than the analysis in Paragraph 16, but it depends

15     on how large of a subpopulation actually is failing

16     to disclose all of the exposures contemporaneously.

17                 It's really going to hinge on the

18     answer to a question that is unknown until we

19     observe the Trust data.

20           Q.    So let me just ask it this way, which

21     is easiest:  I know you're talking about the

22     reliability of the model.  Can you create the model
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1   you're envisioning with the 1,200 Claimants?

2   A.   You can do it mathematically. Will

3   it result in a level of precision -- I'll phrase it

4   differently.

5   I can always do the math, but if the

6   precision is lacking sufficiently, it should still

7   be thrown out on Daubert because you don't have

8   sufficient guidance. There are standards where you

9   can't just say, Here's an estimate; I have no idea

10   how accurate it is. You actually need to give

11   sufficient precision for someone to rely on it.

12   The Court ultimately decides what

13   that level of precision is; I don't. But I can do

14   the math. It doesn't mean that the math will

15   produce a number that the Court finds useful.

16   So the model can mechanically work.

17   But will it provide sufficient guidance to be

18   deemed reliable by the Court? The odds that the

19   answer to that is no go up as you shrink the sample

20   size.

21   Q.   Okay. Turn to Paragraph 19 of your

22   declaration, if we could. You talk about cost and

Page 93

1   benefits of sampling, which is in a -- I have

2   some -- just specific questions for you here, which

3   is, let's start with, What kind of sample is it

4   that's being proposed here?

5   Assuming that the 1,200 would be --

6   is how the Court -- what they stick with, what kind

7   of sample is being proposed?

8   A.   Stratified random sampling.

9   Q.   Is there a different type of sample

10   that would be more or less reliable -- or let's

11   just stick with more reliable.

12   A.   So ex post, again, once you know the

13   answer, you can always go back and design a better

14   sample than the one you did ex ante because you

15   have more information.

16   So when you design a sample, you use

17   historical experience to guide you on where there's

18   likely to be more information or what types of

19   Claimants are more important to the questions that

20   you're asking, so the stratification is imposing

21   certain assumptions. If those assumptions turn out

22   to be directionally correct, then the sample

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1   stratifying will be more efficient than taking a

2   simple random sample.

3   There's really good reasons to

4   believe that, for example, oversampling the

5   high-value claims will lead to more precision. It

6   could turn out not to be true, but in almost every

7   case like this in the past, almost every case I've

8   ever done that's involved a mass tort, that

9   produces greater efficiency than not doing it.

10   Q.   Okay. Let's skip ahead a

11   couple minutes here, and I want to talk to you a

12   little bit about the Court's second question, which

13   is the -- why sampling wouldn't reduce the risk of

14   even just human error, missing some of the PII

15   being disclosed.

16   Where in your declaration is it that

17   you're discussing that?

18   MR. EVERT: While he's looking,

19   Andrew and Michael, I was going to say

20   earlier, the declaration sort of says what it

21   says, so I'd object. It's something that

22   limits the paragraph he picks, but I hear --

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1   I hear the fair point of your question.

2   (Whereupon, the witness reviews the

3   material provided.)

4   THE WITNESS: The bulk of that

5   information expands Paragraphs 23 to

6   Paragraph 30.

7   BY MR. KAPLAN:

8   Q.   And these are the paragraphs that

9   talk about the process in place to scrub the PII,

10   correct, as well as the base and what's the ability

11   to maintain that information, or are we looking at

12   different ones?

13   A.   That is part of the content.

14   Q.   Outside of what is contained in --

15   and, again, I certainly appreciate counsel's

16   point -- outside of what is contained in this -- in

17   these paragraphs, are you going to offer any other

18   opinion as to why the proposed 10 percent sample,

19   or 1,200 Claimants, doesn't reduce the risk of PII

20   being disclosed?

21   A.   So for the Claimants themselves -- I

22   mean, I don't know -- I don't think this is

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1   inconsistent with what's in here in any way, but

2   for the Claimants themselves, Bates White already

3   possesses the PII. If we don't have the PII, it's

4   not in the request. It's only people where we know

5   the name and we know the Social Security number.

6   We're never asking the Trust to send

7   us PII. So the only PII that's at risk that would

8   be incremental would be information that

9   Bates White actually doesn't want. It's

10   information that was in an exposure field that, as

11   I understand it, the Delaware facility is going to

12   take a pass at redacting that. Bates White has its

13   own obligation to redact that. So it has to be in

14   the field to start with, failed to get redacted by

15   the Delaware facility, failed to get redacted by

16   Bates White, and then have a data breach.

17   So if we had 12,000 Claimants, if

18   5 percent of the Claimants had a field with some

19   additional PII, 99 percent of it gets redacted by

20   Delaware, 99 percent of what they gets missed gets

21   redacted by Bates White, you're talking .01

22   incremental piece of PII, when you would have

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1   already 12,000 people's PII in a data breach.

2   So going from 12,000 people to

3   12,001, I don't want to be trivial about anybody's

4   PII, but it's one more out of 12,000. So when you

5   say, is this materially increasing the risk that

6   already exists, going from 12,000 to 12,001, that's

7   not a particularly material increase.

8   So this process, this specter that's

9   being put out there for this, is so remote that,

10   no, I don't put a lot of weight on it, because by

11   the time you go through two levels of redaction and

12   you need a data breach on top of it, you know, this

13   is not going to produce a material number of people

14   relative to the PII that is already out there.

15   Q.   When you say "out there," you mean

16   already in Bates and White's system?

17   A.   Well, it's in Bates White; it's in

18   the Debtors', it's in Verus; it's in the Delaware

19   facility --

20   Q.   Sure.

21   A.   -- it's with, you know, Ankara, if

22   they downloaded the claims database; it's with LAS.

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1   I mean, all the various parties working in the case

2   who have the Debtors' database or have the same

3   Claimants in a different context also all have that

4   PII, so all of these parties, in general, possess

5   the PII to start with. You're not fundamentally

6   changing that risk.

7   Q.   You talked a moment ago about a data

8   breach.

9   Are Bates and White's systems

10   infallible?

11   A.   I don't think there's any system

12   that's infallible.

13   Q.   Okay. Are you aware of whether

14   Bates and White's systems have ever been breached

15   prior to today?

16   A.   They have not.

17   Q.   In any form at all? No hacks? No

18   phishing? No nothing?

19   I'm not talking about the Claimant

20   files.

21   A.   So my technical services people will

22   tell me people attempt to breach our systems

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1   multiple times every day. That's probably the

2   training that all of you get, too, right?

3   We've never had a data loss.

4   A breach, has somebody ever clicked

5   on a link somewhere, but there's so many layers of

6   security, it doesn't go anywhere.

7   We've never had a data loss.

8   You know, what you call a "breach,"

9   depending on how you define that, every single

10   entity in the world has. If you say, Did any of

11   your employees ever click on a false link, then

12   every organization has. So -- but did it result in

13   anything?

14   Bates White has never had a data

15   loss.

16   Q.   Okay. And when you say -- I want to

17   make sure that we're talking about the same thing

18   because this would be a scenario where we -- we

19   would talk past each other.

20   Are you aware of proprietary

21   information on Bates White's system ever being

22   accessed by an external actor?

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1   A.   No.

2   Q.   Okay. Your testimony is not that

3   Bates and White's -- Bates and White cannot be

4   hacked, correct?

5   A.   As I said, I don't think there's any

6   system out there --

7   Q.   Right.

8   A.   -- that it's impossible for a

9   sufficiently motivated party to potentially hack.

10   MR. EVERT: If the Russian

11   government wants your data, they can get your

12   data.

13   MR. KAPLAN: I'm fairly certain

14   they have mine, so I'm okay with it already,

15   just to be clear.

16   MR. EVERT: We heard that, but --

17   (Laughter.)

18   MR. KAPLAN: Yeah. It's because

19   I'm a Philadelphia fan; they have everyone's.

20   BY MR. KAPLAN:

21   Q.   You agree with me, Doctor, that you

22   can't be 100 percent certain that the data will not

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 1        be improperly accessed, correct?

 2                A.      I agree.  I don't think anybody in

 3        any -- I mean, I don't think the data sitting at

 4        Verus or the Delaware facility can be 100 percent

 5        certain.  There's no such system.

 6                Q.      Thankfully, they're not sitting here

 7        for your deposition today, so I'll ask them another

 8        time, maybe.

 9                        All right.  Let's turn now, as

10        promised much earlier, to Dr. Wyner's report.

11                        MR. KAPLAN:  And we'll mark this

12           as -- I think we're up to 3, correct -- to 3.

13                        I was able to keep track of that,

14           look at that.

15                                --oOo--

16                        (CM Deposition Exhibit Number 3,

17                         Expert Report of Abraham J. Wyner,

18                         Ph.D., marked for identification, as

19                         of this date.)

20                                --oOo--

21                        MR. KAPLAN:  I don't know how many

22           I printed so . . .
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 1                    (Sotto voce discussion.)

 2                    BY MR. KAPLAN:

 3          Q.    Given that -- you've seen this

 4    before, correct, Dr. Mullin?

 5          A.    Correct.

 6          Q.    I believe you said you were

 7    discussing it with your team in advance of today.

 8                    Which part or parts of Dr. Wyner's

 9    opinion is it that you take issue with?

10                    MR. EVERT:  I object to the form

11       of the question.

12                    Is that really fair?

13                    Do you want to walk him through

14       each paragraph, or do you want to --

15                    MR. KAPLAN:  I just want to know

16       what he disagrees with.  You told me he's not

17       going to produce a rebuttal report, so I'm

18       not going to get an opportunity to hear -- to

19       get it on a line-by-line.  I want to know

20       what he's got an issue with here.

21                    MR. EVERT:  Do you think you can

22       do that?
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1   THE WITNESS: I'm going to be

2   talking for a while. That's a very broad,

3   open question. I'm happy to answer it, but

4   I'm going to ask you not to ask follow-up

5   questions until I finish, because I need to

6   give a complete answer if we're going to do

7   that. I don't want to get segued halfway

8   through by a follow-up and then be told that,

9   no, you didn't finish and so that's it.

10   BY MR. KAPLAN:

11   Q.   You have my absolute word. I'm ready

12   for you to tell me what it is you have an issue

13   with.

14   A.   Start on Paragraph 6.

15   Q.   Okay.

16   A.   He says, As described in detail

17   below, it is my opinion that a random sample -- a

18   random 10 percent sample of 1,200 Claimants would

19   fulfill all of the Debtors' reasonable needs.

20   He never defines "reasonable needs."

21   He never defines "all." So he's made this blanket

22   statement with a universal qualifier. And at no

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1   point he -- does he -- he covers two specific

2   questions in his report, two. He entirely ignores

3   the question that the 90 percent of the data that

4   the Trusts are requesting that not get produced

5   would be used. He only addresses two questions,

6   where my intent was to only use the 10 percent of

7   the data that would be produced in the sample.

8   So if -- and the critique is, On the

9   questions where Dr. Mullin's already only going to

10   use a 10 percent sample, a 10 percent sample

11   suffices; ergo, it suffices for everything.

12   The latter doesn't follow. He

13   addressed the two places where I'm already

14   constraining myself to a 10 percent sample and

15   saying, There, it's enough.

16   He doesn't talk anything outside of

17   that scope anywhere. Yet it doesn't even define

18   what those other reasonable uses would be, yet has

19   this universal statement with no backing anywhere

20   in the report.

21   So at its highest level, you can put

22   almost every complaint I have under that category.

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1   I don't think he has any idea how I'm going to use

2   the data. I don't know how he could.

3   I'm going to go forward and do an

4   estimation report. I've given broad categories of

5   how I would use that. And he's made a statement

6   that "all reasonable" ways.

7   As we talked through earlier, I

8   expect to have to condition things on law firm and

9   jurisdiction because that's frequently very

10   important.

11   It may turn out not to be here, but

12   it's much more likely that it would be than not.

13   And he has no opinions about what happens as soon

14   as you need to address the subpopulation. All of

15   his opinions are assuming I'm only looking at the

16   entire universe at once, that he's disclosed here

17   at least.

18   And so I expect to have to look at

19   subpopulations. Jurisdiction, law firm would be a

20   key one. Gender could easily come up as one, you

21   know, and industry and occupational groups. I

22   expect to use that data to put people into

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1   clustered groups that behave similarly and then do

2   extrapolations based on each of those subgroups.

3   So he has entirely ignored what

4   happens when only a subset of the sample is

5   applicable to the question of interest.

6   And if you look at simple tabulations

7   in the data, like paid mesothelioma claims by law

8   firm, paid mesothelioma claims by gender, paid

9   mesothelioma claims by jurisdiction, you see really

10   quickly that if you sample, you're not going to

11   have enough data to answer those questions.

12   You know, so at a big level, that's

13   the overarching problem with his whole report.

14   He very much mischaracterizes the

15   testimony of my partner, Dr. Jorge Gallardo-Garcia.

16   He asserts in Paragraph 8 that Dr. Gallardo-Garcia

17   clearly states that sampling is sufficient.

18   He does not state that. If you go

19   read his report, he makes it clear that there's a

20   court order that constrains him to 10 percent, and

21   within that, he's going to design the most

22   sufficient sample -- the most efficient sample he

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1   can -- but he actually is explicit that that's not

2   what he believes is best, but he's got an external

3   constraint forcing him.

4   To that point, I speak with

5   Dr. Gallardo-Garcia on a regular basis. His office

6   is a few doors from mine. I know that is not his

7   opinion. So I don't know how he's reaching that

8   when you read that report in totality, but it is

9   explicitly wrong.

10   There's an irony. Well, he complains

11   that At no point does Dr. Mullin quantify the

12   potential loss of accuracy.

13   I think he very much knows that is an

14   exercise you can't do ex ante when the very data

15   you're seeking is fundamental to what

16   subpopulations you need to analyze later. That's

17   an impossibility.

18   The irony is, he reaches a conclusion

19   that the 10 percent sample is enough in a

20   cost-benefit without ever quantifying the cost. So

21   if he's going to complain that you have to quantify

22   an element of it and he's reaching the opposite

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1    conclusion without ever quantifying the loss, the

2    cost, and his -- one of his clients has done this

3    exercise, so one of his clients has already

4    redacted information for a different request.

5                     So instead of all of us sitting here

6    in the dark and saying, How often does this PII

7    show up in these exposure fields, there's one --

8    one of his clients knows the answer to that in the

9    context of DPMP.  He either didn't ask him for

10   that, they didn't disclose it to him, but he could

11   know, oh, that occurs in one in a thousand records,

12   one in 100 records, one in two records, which could

13   greatly inform this question.

14                     He could also ask them, when they did

15   their redaction process and their quality control

16   on it, did they think they eliminated half of them?

17   Ninety-five percent?  Ninety-nine percent?  So how

18   many do you think slipped through?

19                     He's silent even though his client

20   actually has done this exercise once and has the

21   data.  So the person who could actually quantify

22   the cost whose client has access to know exactly
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1   how many records have this information and

2   presumably has done quality control on that process

3   to know what their rate of eliminating it is, he

4   stays silent on, you know, that information. Yet

5   he concludes at the same time, even though his

6   client has this data, that the cost-benefit

7   analysis isn't justified.

8   So if we had that information, you

9   would be able to be much more precise. I gave a

10   hypothetical; 5 percent of the fields have it;

11   99 percent get cleaned up by the facility;

12   99 percent get cleaned up of what was missed by

13   Bates White to get to 0 or 1.

14   The first two numbers in that, they

15   actually know. So those are knowable. So are we

16   really looking at a handful of PII coming through?

17   Thousands? I hope not thousands of records, given

18   they went through that process. But he doesn't

19   access any of that even though his client has it.

20   As an expert, if my client has

21   information directly on point and doesn't share it

22   with me -- you should ask for it; hopefully, they

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1   volunteer it. So I'm -- that part confuses me as

2   to why that's not in his report, given he has

3   access. As I said, there's an irony because he has

4   the ability to quantify and stays silent.

5   Going back to Paragraph 9, the second

6   sentence, Such a sample has already been discussed

7   in the Bestwall declaration, which does not

8   identify any attribute of the population that

9   cannot be accurately studied with a sample.

10   The purpose of that declaration is

11   not to answer that question. The purpose of that

12   declaration is to say, What's the most efficient

13   sample we can get, given a third-party constraint

14   that it's at 10 percent?

15   It wasn't a declaration intending to

16   say, And these are the things that we can't do

17   accurately with that.

18   So its absence drawing inference from

19   that, when that's not the topic of the declaration,

20   is misleading.

21   So Paragraph 10, I think I've largely

22   already covered.

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1   And his NFL analogy, in 11, is really

2   quite misleading. We're talking about a tenfold

3   difference in sample size, and he's talking about a

4   .0 -- .01 difference in inches of height.

5   So the right analogy there is the one

6   I gave you before, where if you said -- if you told

7   me I can't have 12,000 claims, I get 11,999, we

8   would probably just all go home. Right? That's

9   the analogy to that. It's not -- you know, the

10   proper analogy here would be more like, Oh, you

11   have one that's 6-foot, 1 inches tall, and the

12   other is 5'4". You're talking about a very large

13   difference, a tenfold difference, not a very small

14   difference. So while the -- I think the proper

15   conclusion from that is actually in the exact

16   opposite direction.

17   Paragraph 12 suffers the same flaw of

18   him saying, for the purposes described by

19   Dr. Mullin and the Debtors' reasonable needs.

20   He never says what that's meant to

21   cover. He doesn't define "reasonable needs." I

22   don't know how, you know -- without specifying what

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1   he's putting in that bucket, how he can reach that

2   conclusion.

3   His premise in Paragraph 13 is

4   actually incorrect. He -- we actually do have a

5   potential problem of sampling bias. We're using

6   the historical Claimants to draw inferences about

7   future Claimants. The demographics of Claimants is

8   not constant through time. And so if you take --

9   if you erroneously conclude that I'm going to have

10   the same ratio of men to women, the same age

11   distribution over the next 30 years of Claimants as

12   I have in the last 10, you'll be very wrong. Those

13   things shift through time.

14   So we have a historical sample where

15   we're not actually trying to value the historical

16   claims; we're trying to use information about the

17   historical Claimants to draw inferences about

18   future claims.

19   So while the group I have to sample

20   is fixed, that group has different characteristics

21   than the future claims, and I need to control for

22   those differences or I will have bias.

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1   So it's actually very much in the

2   opposite direction of his conclusion. If he

3   understood that, it reverses the point from what he

4   is making.

5   That same flaw in logic really

6   applies throughout.

7   So while I don't disagree with any of

8   his math on Paragraphs 15 through 20, he bases it

9   all on examples where the undisclosed alternative

10   exposures is either 5 percent of what was available

11   or 10 percent, and then he ends up concluding that

12   this will, in percentage points, create a really

13   small confidence interval amount. If he just

14   assumed that it never happened, then he would say

15   it's 0 and his confidence interval would be, I know

16   that with virtual certainty and it's 0.

17   So when you push a probability

18   towards 0 or 1, you actually minimize the impact of

19   these factors.

20   So if you ran the exact same math but

21   it turned out there's a subpopulation where half of

22   the alternative exposures are not being disclosed,

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1   it's not in Paragraph 20, 1.5 percentage points any

2   longer. It gets dramatically bigger, and the

3   difference is about fivefold. So you would be

4   saying, instead of 1.5 percent, 7.5 percent.

5   So he's chosen an example that skews

6   things low in the direction of the outcome that his

7   client desires as opposed to choosing the example

8   that's more -- that could go in the other

9   direction, but it's not the -- you know, so this

10   idea that, in practice, however, the standard error

11   for a simple sample of 1,200 observations will

12   usually be a lot smaller than 1.5 percent,

13   that's -- you know, you can get to certain things

14   -- if you're not looking at a subpopulation, you're

15   looking at certain scenarios, that may be the

16   outcome, but you may have a very large confidence

17   interval if you end up with there's a subpopulation

18   of interest and you need to get it for that.

19   And so his mathematical formulas are

20   right, but he's really assuming throughout you only

21   care about the whole population, which, of course,

22   gives you no ability to change for changing

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1   demographic characteristics because you have an

2   estimate for one mix of demographics only, and you

3   really need the estimates for each of the

4   demographic groups to know how to remix that going

5   forward to match the future population. And he's

6   completely ignoring that fact through this whole

7   process.

8   So Paragraph 24, he gets into

9   estimating impact of potential nondisclosure of

10   alternative exposures. His first sentence, Because

11   the proportion of nondisclosed Claimants has a very

12   small standard error, it follows, if all the

13   settlements were the same size, that the standard

14   error of the overall average impact would also be

15   small.

16   Not only does it follow that; under

17   that assumption, the impact is zero and you don't

18   need to estimate anything. So if you assume the

19   problem away, because everybody gets the same

20   settlement amount whether they disclosed or not --

21   so he's assumed there's no impact -- if we assume

22   that it can't happen and has no impact, then we are

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1   very precise when under that assumption, our

2   estimate is no impact.

3   So that -- it's a complete

4   misrepresentation of the real world. He's

5   literally assumed it has no impact. It's like

6   assuming it never occurs and then estimating that

7   you don't need a lot of data for things that never

8   occurred to get -- get the probabilities very low.

9   So he's really in a corner solution

10   that makes no sense. If settlements are not the

11   same size, so now we're, at least, in the relevant

12   framework, a stratified sample can be drawn that

13   over-samples the claims with the highest variation.

14   You really can't. This, again, shows

15   a fundamental misunderstanding.

16   What we're trying to get is the

17   connection between the amount of disclosed

18   exposures, which is unknown at the time of

19   designing the sample. So he's saying, Let's look

20   at a parameter that we don't know right now and

21   stratify on it.

22   This is not a classic statistics

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1   exercise. It also has discovery in it.

2   You're learning about one of these

3   variables. You can't stratify on the variable that

4   you don't know yet. And that's what he's telling

5   me to do in this paragraph, is to stratify on a

6   variable that I won't know until after I get the

7   data in the sample.

8   So that's actually completely

9   infeasible, but it shows a fundamental lack of

10   understanding that this is a discovery exercise and

11   I don't know that. If I already knew it, I

12   wouldn't need a sample, right? I would already

13   have the information.

14   So that's a place that it's just

15   disconnected from the exercise that's going on.

16   He's suggesting something that's completely

17   infeasible.

18   There is no finite sample correction

19   factor, which he has in Paragraph 14, because we

20   aren't trying to estimate the impact for the

21   historical Claimants. We're trying to use the

22   historical Claimants to talk about pending and

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1   future claims. So we are always estimating.

2   The finite sample correction factor

3   applies to people you want to estimate that you

4   don't need to estimate now because the sample told

5   you the answer for those people.

6   We don't have any of those. These

7   are all historical claims.

8   We're not estimating what they get

9   paid. They've been paid. They've been released.

10   So, again, it shows that fundamental

11   misunderstanding of what we're actually trying to

12   accomplish.

13   If you don't understand how the data

14   is being used, you don't know how to design the

15   sample, you don't know what sample size you need,

16   and he's just repeatedly displaying his ignorance

17   as to how the data are actually being used in

18   estimations.

19   And, you know, it's things like this

20   that are huge red flags that he doesn't actually

21   know the facts of the situation, so he's applying

22   the wrong statistical tools to the question.

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1   Paragraph 25 is just wrong. He says,

2   Beyond the two parameters discussed above,

3   Dr. Mullin doesn't specify precisely or intimate at

4   any other parameter of -- parameters of interest.

5   We can go back, where -- this is

6   where he has entirely ignored Paragraph 15 of my

7   report. He chose to do an example for

8   Paragraph 16, an example for Paragraph 17. But

9   Paragraph 16, where you're really talking about the

10   need to control maybe for industry and occupational

11   groups, the need -- all the uses beyond is where

12   all the composure is revealed, he's ignored that

13   entire discussion in my report.

14   And, apparently, according to him, I

15   didn't even intimate any other parameters of

16   interest. So he seems to have skipped certain

17   paragraphs in the reading of my report to reach

18   that conclusion.

19   He talks, in Paragraph 26, about

20   anecdotes. In my experience, it's common for both

21   sides in a litigation to use anecdotes. They're

22   not necessarily statistically representative, but

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1   developing anecdotes is frequently done by both

2   defendants and plaintiffs in cases. So I don't

3   know if he's trying to insinuate that's bad or

4   good. It's a little unclear. But he at least

5   acknowledges that, to the degree anecdotes by

6   either side are important, a larger sample would

7   enable that better.

8   So it seems to be the one place where

9   he acknowledges that that's something where a

10   larger sample may be worthwhile.

11   So when we get into Paragraph 27,

12   again, he doesn't define "reasonable needs." He

13   doesn't appear to understand how it's being used.

14   So I don't know what he actually knows, but based

15   on what's -- he's written, you know, he makes

16   statements that are inconsistent with how the data

17   would be used. So I don't know, without him

18   stating what he believes the reasonable needs

19   are -- either his list is incomplete or his

20   conclusion is wrong.

21   It's wrong either way, but whether

22   it's because he has an incomplete list of the

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1   reasonable needs or he actually does know the full

2   list, hasn't specified them, then the data is

3   important for that list.

4   So Paragraph 28 makes me suspicious

5   that Dr. Wyner has not spent much time in a

6   litigation environment. The analytical burden of

7   sampling, I do discuss. When you sample in a

8   discovery process, so you learn more information

9   after having seen it, it is not uncommon for

10   experts to assert some form of ex post

11   stratification on the data to improve the

12   efficiency of an extrapolation.

13   There is lots of room for experts to

14   disagree about that. And I have been in many cases

15   where months, if not more, have been spent on

16   parties litigating over what is the proper way to

17   extrapolate.

18   If you're in the pure ivory tower

19   academic, prespecified population and I'm not

20   extrapolating outside of that population but I'm

21   going right back to the population I sampled from,

22   those problems don't exist, and then it's

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1   relatively straightforward mathematically.

2   But in a litigation setting, where

3   you need to control for differences going forward,

4   this can become a very expensive and drawn-out

5   process, and so steps to minimize that, I would

6   advise clients on, because it -- otherwise, you can

7   get into a lot of gamesmanship in that phase.

8   So Paragraph 29, I agree that if you

9   used statistical calculations that are required to

10   compete with the standard errors is not

11   particularly burdensome, that's correct, if all the

12   experts agree on which methodology to use to do it

13   in the first place. So it's a methodological

14   fight, not a computational fight. The computations

15   are straightforward. The methodology is not

16   necessarily straightforward.

17   He is correct -- and he nods a little

18   bit to this in the next sentence -- data analysis

19   on the full data set. He says, It's not

20   substantial -- substantively easier, especially

21   since there will be statistical challenges of all

22   types that will arise, sampling or no sampling.

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1   It's an interesting sentence because

2   most of his opinions are based in the framework

3   where that doesn't happen, so acknowledging that,

4   you're exacerbating that if you sample from this

5   group. So he's correct that many of the problems

6   will still exist, but you will exacerbate those

7   problems and you will get likely more litigation

8   around it as opposed to -- if you exacerbate the

9   issue.

10   He's definitely correct at the end of

11   that paragraph that he puts in bold. The sentence

12   before it defines the "these," but These will

13   introduce new uncertainty, distinct and

14   irreducible, and not due to sampling.

15   That is correct, but that emphasizes

16   the need for as much precision as you can get

17   through the sampling exercise. If I have two

18   sources of error, they compound each other; so the

19   gain in precision, knowing that I have other

20   irreducible error of improving my precision through

21   this sampling exercise, gets larger. That means

22   there's a bigger return having a larger sample size

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1   than if there wasn't irreducible error for other

2   sources.

3   So the fact that those other things

4   are irreducible and you can't reduce them

5   dramatically increases the return for reducing them

6   in the places where you can, because these interact

7   with each other.

8   That's really the same critique of

9   Paragraph 30.

10   The IRS critique in Paragraph 31, I

11   don't agree with. The IRS does not have the

12   resources to do what he is asking them to do, as he

13   says is their charge, so they definitely, because

14   they are resource-constrained, can't do that. So

15   they do at times use sampling. Other times, they

16   use a census.

17   They're making the point that when

18   it's all available electronically, a census doesn't

19   cost particularly more, so, okay, when it's all

20   available electronically, we'll take a much broader

21   review than if it's not available electronically.

22   They are resource-constrained. The

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1   cost of doing nonelectronic records is higher, so

2   we take fewer. The cost of electronic records is

3   lower, so we take more. That's the only point of

4   citing to it. It's no different than the Debtors

5   here who said, Our historical claims database will

6   produce the entirety of it; you can have all of it;

7   it's in electronic form; no need to sample.

8   Underlying claim files, there's a

9   need to sample. Those aren't already in electronic

10   form.

11   So the main point is, things in

12   electronic form are low cost to produce and you

13   take dramatically more, potentially all, than

14   things not already in electronic form.

15   Paragraph 32, he says, Because

16   there's no practical loss in accuracy created by

17   sampling -- and he goes on -- there's no need for,

18   draws other conclusions.

19   He appears to be focused entirely on

20   estimating a proportion for the entire universe of

21   12,000 historically paid claims. And on that,

22   there isn't really a practical loss in accuracy.

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1   And if that was the only thing you needed, I, too,

2   am already only using 1,200 claims for that because

3   that's what the claims file sample is. But to go

4   broader, if you're using it to estimate the number

5   of future claims and you want to do that by

6   industry and occupational groups, again, if you're

7   going to value by law firm or by jurisdiction, that

8   no longer applies.

9   So, again, it shows -- it just goes

10   back to that lack of fundamental understanding of

11   what is the exercise.

12   His last part about a data breach, in

13   Paragraph 32, there's already 12,000 people whose

14   PII is at risk. We're going to add a small number

15   to that, a number that were in the data field -- in

16   the exposure fields that the Trusts failed to

17   redact and Bates White fails to redact.

18   So we're not really getting -- if

19   there were a data breach, we aren't going from --

20   we don't get a 90 percent reduction. The 12,000 is

21   the same 12,000. So you're going to have the

22   12,000 and you're going to add a few more, or

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 1        instead of saying adding 10 more, maybe add one

 2        more; instead of adding one more, maybe add 0, but

 3        the 12,000 is still there.

 4                    So the real risk of the data breach

 5        is the 12,000 we already have, not the handful that

 6        are going to make it through all the screenings

 7        that come along first.  So saying this is

 8        fundamentally changing the risk of data breach is

 9        ignoring the amount of data that's sitting at risk.

10        You know, and there's lots of things being done to

11        minimize the odds of that.  I don't disagree that

12        you can't drive it to 0, but it's a very low

13        possibility.

14             Q.    Excellent.

15                    I kept my bargain that I wasn't going

16        to interrupt you in the middle of it, so --

17                    MR. EVERT:  That, you did.  Thank

18          you very much, Michael.

19                    MR. KAPLAN:  Yes.

20                    BY MR. KAPLAN:

21             Q.    Let me ask you a couple of questions,

22        then I think it's time for another break, which is,
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1   you discussed very early on -- and I wrote this

2   down -- this fundamental misunderstanding of the

3   subpopulation that you would like to study and work

4   off of. I think you said it in response to almost

5   the first paragraph, Paragraph 6, where you were

6   talking about -- when we were discussing reasonable

7   needs.

8   Do you recall that?

9   A.   Yes.

10   Q.   Where in your declaration,

11   Dr. Mullin, do you talk about the subpopulations

12   that you want to study?

13   (Whereupon, the witness reviews the

14   material provided.)

15   THE WITNESS: So this is in

16   Paragraph 15. In particular, if you go to

17   the middle of that paragraph, there's a

18   sentence, Further, the relationship of

19   exposures alleged to the various occupations

20   and trades of the Debtors' historical

21   Claimants and the extent to which the full

22   range of the alleged exposures is changing

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 1          over time are important to estimating a

 2          Defendant's legal liability share.

 3                   So that's talking specifically

 4          about industry and occupation and being able

 5          to do things at that level to control for

 6          those changes through time.

 7                   BY MR. KAPLAN:

 8          Q.      You agree with me that sentence

 9     doesn't talk about various law firms, though,

10     correct?

11          A.      That does not.  The reference to --

12     if you're familiar with the Garlock record, I

13     didn't try to rehash the entire Garlock record.

14     There's a paragraph on that.

15                   In Garlock, Claimants represented by

16     about -- or law firms who represented about

17     25 percent of the Claimants are the ones where

18     there appeared to be -- you know, not all the

19     exposures were being revealed, and for the other

20     75 percent, they were.

21                   So I wrote this assuming you had some

22     knowledge of the case.  I understand from this that
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1   you, personally, do not, in terms of these details

2   in the background, but with the -- with that

3   knowledge, I didn't try to give the whole history

4   again.

5   But if you're familiar with the

6   process and you're an expert in this field:

7   Controlling by law firm, controlling by

8   jurisdiction are fundamental things. It's done

9   routinely.

10   So I didn't state things that, to any

11   expert or person who does this regularly, would

12   seem obvious --

13   Q.   You assumed?

14   A.   -- it's very much in the Garlock

15   record.

16   I didn't -- I didn't write it for a

17   complete layperson who knew nothing about the

18   context of estimation. That is correct. I did not

19   write it for a person completely ignorant about

20   that entire process.

21   MR. KAPLAN: All right. Let's

22   take -- I don't know -- five or so minutes,

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1   same as we did last time, and we'll come on

2   back.

3   --oOo--

4   (Whereupon, a recess was taken from

5   3:26 p.m. EDT to 3:39 p.m. EDT.)

6   --oOo--

7   BY MR. KAPLAN:

8   Q.   Dr. Mullin, I just have a few more

9   questions, and then I'm going to switch -- pass

10   and -- and move on, which is, we were -- before the

11   break, we were talking about the -- the

12   subpopulations, and you pointed me to Paragraph 15.

13   And then you spoke about Garlock and the

14   assumptions you would make.

15   Where is it in your report that you

16   talk about the gender subpopulations that you

17   wanted to analyze?

18   A.   I don't think I call out gender

19   specifically. There's numerous subpopulations that

20   could turn out to be relevant. It's not intended

21   to be an itemized list of everything.

22   Q.   All right. Let's turn to the --

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1   the -- one of the questions you -- one of the areas

2   you do talk about is Claimants that have multiple

3   areas of exposure -- multiple potential exposure

4   sources, correct? That's one of the issues, you

5   said, and you talk about it in the context of

6   Garlock also.

7   Am I right?

8   A.   I'm in the wrong report. Give me a

9   second.

10   Q.   I'm sure Dr. Wyner's report has a lot

11   of excellent information for you.

12   MR. ANSELMI: If you want to adopt

13   his findings, we'll be fine.

14   (Laughter.)

15   THE WITNESS: I'm going to have to

16   ask you to repeat your question.

17   BY MR. KAPLAN:

18   Q.   Yeah. It's not a problem. I'm just

19   trying to bring us into -- in Paragraph 15, one of

20   the things you talk about is the alternative

21   exposure allegations. And that was one of the

22   things you -- I believe that you criticized

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1   Dr. Wyner for not talking about, was the

2   alternative exposure sources.

3   Correct?

4   A.   He talks about that in the sense of

5   what proportion of them are disclosed, right.

6   What I was making reference to, in

7   particular, was to the fact that the occupational

8   industrial mix changes through time. So you

9   actually need to estimate those by industry or

10   occupational groups, and you can't just have one

11   answer for the whole population.

12   So industry and occupation is going

13   to create subpopulations of interest where you're

14   going to need to estimate parameters for each of

15   those subpopulations.

16   Q.   I want to focus on something a little

17   more narrow, which is we can agree, correct,

18   because -- although I'm not an expert in this

19   particular field -- that a mesothelioma Claimant

20   likely has multiple sources of exposure?

21   A.   Many do --

22   Q.   Okay.

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1   A.   -- those that have material exposure

2   to gaskets typically do. In other settings, that

3   may not be true, so I don't want to overgeneralize.

4   But for these Debtors, I think, typically, a

5   Claimant would have exposure to a multitude of

6   products.

7   Q.   Okay. And one of the -- you've made

8   the point of highlighting the Garlock matter, which

9   is where, you know, as you stated, certain

10   Claimants did not disclose all of their alternative

11   sources of exposure, correct?

12   A.   That was ultimately the findings of

13   Judge Hodges.

14   Q.   Sure.

15   Let's -- I want to understand with

16   this subset of data that you -- this set of data

17   that we're looking at here with the 12,000

18   Claimants, which is, how is it that you're counting

19   it? And let me break that down for you, which is

20   that if one Claimant has five sources of exposure,

21   we agree that's five potential separate claims they

22   could make, right?

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1            A.      It could be more than that depending

2       on what the exposure is to.

3            Q.      I agree.  I'm using five because

4       that's how many fingers I have on one hand.

5                    Okay?

6            A.      Okay.

7            Q.      It looked good when I held it up.

8                    How is it that you are counting that?

9       Because -- is that five separate claims for

10      estimation, or is that one Claimant?

11           A.      So the unit of analysis is going to

12      be the Claimant.  You're ultimately evaluating a

13      future Claimant or a pending Claimant's claim

14      against these Debtors.  So it may be two claims in

15      that sense that you may value: one, their claim

16      against Aldrich; and, two, their claim against

17      Murray.

18                   But you want to know what are the

19      totality of exposures for that one individual.  And

20      the breadth of alternative exposures is directly

21      relevant to the strength of their claim against

22      Aldrich or Murray.
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1   Q.   Okay. So we're -- the unit, then, is

2   Claimant and not claim for estimation purposes?

3   A.   To be clear, it's two distinct

4   Debtors in a consolidated action. But as I

5   understand my charge, I don't say, Here's their

6   combined liability at the end of the day. At the

7   end of the day, I may be asked to have one estimate

8   for Aldrich and an alternative estimate for Murray.

9   So there's -- it's not -- if there's

10   an individual that claimed against Aldrich but

11   never filed a claim against Murray, that Claimant

12   is not going to be informative about estimating

13   Murray's future liability.

14   So I won't have all -- that's

15   probably your most obvious two-set populations of

16   interest, the two Debtors. Some Claimants sued --

17   named both. Many Claimants named one but not the

18   other.

19   Q.   Where is that discussed in your

20   report?

21   A.   In the report?

22   Q.   Yeah.

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1   A.   That's -- that's not discussed.   I

2   mean, many things in this report -- this

3   declaration is filed within the context of the case

4   to the benefit of the judge, who actually confirmed

5   the Garlock plan and has seen prior filings.

6   So I'm not writing, as I said, to a

7   lay audience that has zero context or knowledge.

8   I'm writing to an individual that has a lot of

9   context and knowledge.   So many of those things

10   aren't stated for a second time here.

11   Q.   How is it, then, that parties --

12   excuse me -- nonparties to the case who aren't the

13   judge, who didn't confirm the Garlock plan -- how

14   are they supposed to know what the basis of your

15   opinion are, then, if they're not stated?

16   MR. EVERT: I'm going to object to

17   the form of the question.

18   THE WITNESS: Again, it's done

19   within the context.   There's a lot of other

20   filings in the case.   I think the -- the

21   two -- I don't -- I would never assume -- I

22   don't know why a party would assume you

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 1        estimate one number for two Debtors.  That's

 2        a strange assumption, in my mind.

 3                  So if you're saying that's -- to

 4        me, that's obvious.  So if that's not obvious

 5        to a reading audience, okay.  I didn't call

 6        out that particular item.  I don't really

 7        view that as fault, although it may be

 8        beneficial to some parties.

 9                  But, typically, I think you hire

10        somebody who's familiar with the context who

11        can fill you in on context.  That's, in my

12        experience, what my clients do.  If something

13        comes in their lap that they don't have

14        firsthand knowledge of, they gain that

15        knowledge through who they hire to advise

16        them.

17                  BY MR. KAPLAN:

18        Q.    Okay.  You've talked a few times

19   today about tripling your uncertainty or

20   quadrupling your uncertainty or doubling your

21   uncertainty.

22                  We've had a few of those exchanges,
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 1        correct?

 2                A.      Correct.

 3                Q.      When you say "tripling your

 4        uncertainty," what number is it that you're

 5        starting from?

 6                A.      So we've gone around this barn two or

 7        three times now, at least.

 8                Q.      I'm aware.  Yeah.

 9                A.      Do you want me to say asked and

10        answered, or -- I mean, you're saying you're aware

11        --

12                        MR. ANSELMI:  That's his --

13                        THE WITNESS:  -- okay.  I don't

14            understand your question because it seems to

15            be identical to what you've already asked me

16            three times.  And if you are asking me the

17            same thing again, I stand by my answer.

18                        If you intend a different meaning

19            than what you asked me before, I don't

20            understand your question, and please clarify.

21                        BY MR. KAPLAN:

22                Q.      Excellent.  I enjoy when experts play
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 1      lawyer.  It looks great.

 2                  The -- my question for you is this:

 3      If you start with an uncertainty of, let's say, for

 4      instance, 1 percent uncertainty and you're tripling

 5      that, you're now at 3 percent uncertainty, correct?

 6           A.     Correct.

 7           Q.     So my question for you is -- and you

 8      have said -- you have said 50 million, 100 million,

 9      150 million.  You've said 400,000 today.  You've

10      said a lot of big numbers, but what -- what you

11      haven't said to me is what level -- what is the --

12      the uncertainty associated with using 1,200

13      Claimants for this sample.

14                  MR. EVERT:  I think this is when

15         I'm supposed to say asked and answered.

16                  MR. KAPLAN:  Okay.  That's fine.

17         That's good.  You say whatever you want.

18         You're fine.

19                  BY MR. KAPLAN:

20           Q.     You answer the questions.

21                  MR. EVERT:  I think he's said,

22         Michael, a number of times --
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1   MR. ANSELMI: Let him say it.

2   MR. EVERT: Okay.

3   THE WITNESS: Again, I believe

4   I've addressed this at least two if not three

5   times. I believe those answers were

6   complete. I will try this one more time for

7   you.

8   You can't know the answer to how

9   much uncertainty you have before you have the

10   data in front of you. That is impossible.

11   So nobody can tell you -- and this is true of

12   every single sampling exercise that's done

13   when it has a discovery component leading to

14   an analysis not estimating a proportion for

15   the historical population but an actual

16   estimation component to it, particularly out

17   of sample, like this would be done. You

18   don't know that ahead of time. It's -- it's

19   an infeasible question to give a precise

20   number to.

21   That said, based on my experience

22   doing this, if I'm going to look at something

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1   like but-for tort spend, which is typically

2   the plaintiff theory in these cases -- and

3   I'm probably going to have to address that at

4   some point -- the uncertainty -- if we had --

5   the baseline uncertainty is very likely

6   initially in the tens of millions. Whether

7   that's 15 million, 30 million, I don't know,

8   but it's -- it's very likely in the tens of

9   millions, not single-digit millions, not

10   hundreds. That's just based on having done

11   this exercise across numerous entities

12   through time.

13   Now, if I triple that, I'm adding

14   30 to maybe 200 million of uncertainty,

15   depending on where we are initial -- our

16   initial uncertainty may be 20. If our

17   initial uncertainty was 10 -- I don't think

18   we're going to be that low -- you would be

19   adding plus or minus 20 million. If the

20   initial uncertainty was 70 million, now

21   you're at plus or minus 210 million.

22   It's going to have an effect in

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1   that range. I don't know where, but it's

2   almost assuredly going to fall somewhere in

3   that range, based on historical experience.

4   But I can't give you a precise

5   number. I can only give you that kind of

6   general guidance because no one can answer

7   the question you're actually asking.

8   BY MR. KAPLAN:

9   Q.   Okay. Last question is, Is the sort

10   of mathematical extrapolation we did from the

11   400,000 down to the 12,000 -- where is that in your

12   declaration?

13   You can phone a friend, and he's

14   shaking his head.

15   MR. EVERT: Yeah. I'm just going

16   to interrupt. You're thinking of your

17   earlier declaration -- it was in your initial

18   declaration; it wasn't in this the sample

19   declaration.

20   THE WITNESS: I was going to say

21   that information is in the record; it's not

22   in this declaration. So that information has

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 1        been provided and at least -- I guess not the

 2        Trust, but the FCR, the ACC have all had

 3        access to that underlying database for a long

 4        time.

 5                  MR. KAPLAN:  Okay.  That's all the

 6        questions I have for now.  I'm going to step

 7        aside to whoever -- Mr. Guerke.

 8                  MR. GUERKE:  I will go next.

 9                        --oOo--

10            EXAMINATION BY COUNSEL FOR DCPF

11                        --oOo--

12                  BY MR. GUERKE:

13        Q.    Good afternoon, Dr. Mullin.

14        A.    Good afternoon.

15        Q.    My name is Kevin Guerke.

16              I represent the Delaware Claims

17     Processing Facility, sometimes referred to as

18     "DCPF."

19              Are you familiar with that?

20        A.    I am.

21        Q.    If -- if I ask you questions and

22     refer to "DCPF," will you know what I'm talking
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1   about?

2   A.   Yes.

3   Q.   You just were discussing that 400,000

4   Claimants with -- with counsel.

5   And I think, earlier today, you

6   testified that there were roughly 400,000 Claimants

7   that submitted claims to the two Debtor entities;

8   is that correct?

9   A.   I said there's more than 400,000.

10   Q.   More than 400,000?

11   A.   Claimants?

12   Q.   Yeah. Is that your testimony?

13   A.   Across the two, that's my

14   recollection, sitting here. I think there's an

15   exact tabulation somewhere.

16   Q.   And of those 400,000 or so, roughly

17   25- to 50,000 were mesothelioma Claimants, correct?

18   A.   That was -- I hadn't looked at the

19   exact number, but it's likely in that range.

20   Q.   How many of those 25- to 50-

21   mesothelioma Claimants also submitted claims to one

22   of the DCPF Trusts?

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1   A.   I don't know the answer to that.

2   It's a high proportion, I think, as we've gone

3   through the reconciliation -- we've done some of

4   the claims reconciliation process, but I don't

5   remember what the number is, sitting here.

6   Q.   Can you quantify any better what you

7   mean by "high proportion"?

8   MR. EVERT: I'm sorry. I want to

9   make sure -- he's asking, of the 25- to

10   50,000 mesothelioma Claimants in total, what

11   proportion. I just want to make sure -- that

12   is the question, right?

13   MR. GUERKE: I mean, the question

14   is what I asked him, and he gave an answer.

15   BY MR. GUERKE:

16   Q.   Did you understand my question, and

17   was your answer responsive to my question?

18   A.   I was answering with regard to the

19   12,000 because those are the only ones I directly

20   see any information on that were in the request.

21   Any claims outside of that request, I could make

22   inferences or draw from experience and other

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 1    places, but I don't have knowledge of within this

 2    case.

 3               Q.      Are there more than 12,000 Claimants

 4    who have submitted claims to the Debtor entities

 5    and also have submitted claims to DCPF Trusts?

 6               A.      Yes.

 7               Q.      So there's more than 12,000?

 8               A.      Who have submitted claims to the

 9    Debtor entities and submitted a claim to one or

10    more of the Trusts, yes, there's more than 12,000.

11               Q.      Are there more than 12,000

12    mesothelioma claims that both submitted claims to

13    the Debtor entities and also one of the DCPF

14    Trusts?

15               A.      Almost assuredly, but I haven't read

16    an exact number.  But almost assuredly.

17               Q.      In relation to the 12,000 that have

18    been requested, how many more, roughly?

19               A.      It's going to double or triple the

20    number because there's all the dismissed claims.

21    And just because they were dismissed against

22    Aldrich or Murray doesn't mean they would be
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 1         dismissed against all the predecessor entities that

 2         could file against the Trust.

 3                    There would also be a number of

 4         mesothelioma claims that predate 2005 that could

 5         have submitted claims against those Trusts.  I

 6         haven't sought discovery on those, so there's no

 7         reconciliation process.  I can't -- I haven't seen

 8         data that will give a precise qualification for

 9         those.

10                    But those two populations of claims

11         would produce a material number of additional

12         mesothelioma Claimants against the two Debtors that

13         would file one or more claims against entities in

14         the Delaware facility.

15              Q.    I'm eliminating dismissed claims,

16         focusing only on mesothelioma claims.

17                    Do you know how many more than the

18         12,000 Claimants submitted claims to the Debtor

19         entities and also the DCPF Trusts?

20                    MR. EVERT:  Object to the form of

21            the question because I don't understand --

22            there are dismissed mesothelioma claims you
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1   said you're eliminating, right?

2   THE WITNESS: I ask a couple of

3   clarifying questions.

4   BY MR. GUERKE:

5   Q.   Sure.

6   A.   There's two Debtors --

7   Q.   Two Debtors.

8   A.   -- one fact pattern is Aldrich paid a

9   claim. The same Claimant had a claim against

10   Murray, and the claim against Murray was dismissed.

11   So they both have a paid claim against one Debtor

12   and a dismissed claim against the other Debtor.

13   When you say I can differentiate the

14   two claims -- but the Claimant was paid by one

15   Debtor, right? So the Claimant's neither dismissed

16   nor paid; they're both, right? We have two

17   individual claims.

18   So when you say "dismissed," I need a

19   little more clarity as to what you mean because I

20   have two Debtors involved, when you asked the

21   questions, to be precise, so we don't commingle

22   terms.

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1   Q.   The subpoena that's directed at DCPF

2   seeks information on 12,000 Claimants, correct?

3   A.   Yes.

4   Q.   What I'm trying to get at is -- is,

5   for the subject of the subpoena, how many more

6   Claimants are out there beyond the 12,000?

7   A.   Well, the subpoena constrains itself

8   to a Claimant who was paid by one or both Debtors

9   where that payment occurred 2005 or later, all

10   right -- it's got a date cutoff for the date of the

11   payment -- and it has to be mesothelioma. All the

12   mesothelioma Claimants that don't fit one of those

13   three criteria have been excluded.

14   So that's if you were dismissed

15   against -- if neither Debtor paid you, if you were

16   paid earlier in time than the temporal cutoff or if

17   you were not nonmesothelioma, you've been excluded

18   from the data request.

19   Q.   So the 12,000 Claimants -- the entire

20   population has been included?

21   A.   Well, it's got a definition --

22   Q.   Using that definition --

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1   A.   -- so the definition -- it is the --

2   it is a census or the total population of Claimants

3   who resolved after the cutoff date, who had

4   mesothelioma and one or both Debtors made a

5   positive payment. That's the definition of what

6   went in. So by construct, it's 100 percent of that

7   definition.

8   Q.   All right. When did you start

9   working on this bankruptcy case?

10   Based on -- and I'll just tell you,

11   based on the docket, Bates White was formally

12   retained August 18th, 2020.

13   A.   I mean, we were working for the

14   Debtors as of the petition date. I think the

15   retention went through subsequent to that. There's

16   a lag between when -- typically in a bankruptcy

17   when you first start doing work for a client and

18   when all the paperwork goes through the bankruptcy

19   court.

20   Q.   How about you, personally? When did

21   you, personally, start working on this bankruptcy

22   case?

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1   A.   For the Debtors as clients, it would

2   have been roughly contemporaneous with that.

3   Q.   Bates White is also involved in

4   Bestwall and DBMP, correct?

5   A.   Correct.

6   Q.   What's your personal involvement in

7   those two cases?

8   A.   I advise on those at times. There's

9   select issues where my colleagues, counsel or

10   client seek me out on certain topics.

11   I don't think I'm at liberty to

12   disclose what those topics are at the current time,

13   particularly in the context of this case, but it's

14   been constrained to advising on select issues at

15   the moment.

16   Q.   Do you anticipate using sampling in

17   either Bestwall or DBMP?

18   A.   At the moment, I don't anticipate

19   testifying in either of those cases. So if you're

20   asking am I, personally, going to do that, I don't

21   anticipate testifying in either of those cases.

22   Q.   Do you know if Bates White

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1   anticipates using sampling in either Bestwall or

2   DBMP?

3   MR. KAPLAN: Kevin, I'm going to

4   object.

5   Is that appropriate for this

6   setting? He said he's not a testifying

7   expert in those cases or the fact that his

8   firm is.

9   Do you know?

10   THE WITNESS: I mean, I'm going to

11   stick to what's in the public record, because

12   it's -- I don't think I should talk in the

13   context of Aldrich/Murray about anything

14   that's not in the public record for Bestwall

15   or DBMP.

16   There's been back-and-forth in

17   Bestwall about what sample of historical

18   claim files to take. The fact that there's

19   back-and-forth on that is in the public

20   record. So the fact that they're looking at

21   various samples of claim files in the same

22   way that that issue is being looked at in

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 1          this case, that's true.

 2                    I don't know the DBMP public

 3          record well enough to know what's in it or

 4          not, so I'm not going to say anything because

 5          I just don't have confidence as to what's in

 6          the public domain.

 7                    BY MR. GUERKE:

 8          Q.     You testified earlier that you -- you

 9     anticipate that sampling will be used in the

10     Aldrich Pump case, in some respect, right?

11          A.     With regard to the historical claim

12     files, I suspect that's correct.  It's also -- I

13     mean, with regard to Trust data, I would say that's

14     exactly what we're doing here, too.  We didn't ask

15     for all the claims; we asked for a subset.  So it's

16     a version of sampling.

17          Q.     That's what I was getting at earlier

18     about the -- the 12,000 Claimants.

19                    What's the -- what are the 12,000

20     Claimants that you seek in the subpoena -- or

21     your -- your attorneys seek in the subpoena -- what

22     is that a sample of?
```

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1   A.   The over 400,000 historical claims.

2   Q.   But modified based on the parameters

3   of the -- of the subpoena, correct?

4   A.   Well, I -- I did not feel I needed

5   all 400,000 claims to do my work, information from

6   the Trusts. I reduced that down. So it's -- we're

7   not requesting a census from the Trusts of every

8   historical claim to merge to the claims database of

9   all of the Claimants. That's not what we're doing.

10   We're taking a very select

11   subpopulation that's about 3 percentage of the

12   total population of Claimants and asking for the

13   data for that 3 percent of the subpopulation --

14   that subpopulation. We're asking for 100 percent

15   of that subpopulation.

16   So it's a census of that

17   subpopulation, which is 3 percent of the total

18   data.

19   Q.   And other than sampling for

20   historically -- historical claim files, do you

21   anticipate any other sampling in the Aldrich Pump

22   or Murray bankruptcy case?

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 1           A.    We're likely to rely on various

 2    historical samples.  So, for example, prior to

 3    2001, there's not a census of historical

 4    mesothelioma diagnoses in the United States.  So

 5    what's available is a sample by the Survey of

 6    Epidemiological End Results.

 7                  2001 forward, we have census.  So we

 8    use the census for 2001 forward, but when we're

 9    looking at things of forecasting future disease

10    incidents in the population, we'll rely on samples,

11    but we're not -- that's because it's a constraint;

12    it's what's -- the only thing that was available.

13    You can't go back to 1995 and complete that sample

14    any longer.

15           Q.    The subpoena that was issued to DCPF

16    and, I think, all of them go back to 2005 -- seek

17    data that goes back to 2005; is that correct?

18           A.    Correct.

19           Q.    Why do you need data going back to

20    2005?

21           A.    So part of this is you do have

22    changing demographics through time.  So, ideally,
```

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1   you don't just look at a snapshot of the most

2   current. You want to be able to see if there's

3   trends or changes, and you want to be able to model

4   those changes.

5   So for questions such as Dr. Wyner

6   focused on are all the disclosures being revealed.

7   2005 is not particularly important to my analysis.

8   The more recent data is going to be much more

9   important because it's really what's happening more

10   recently in the tort system.

11   In contrast, for controlling for

12   industry and occupational group mixes and seeing

13   how those are evolving through time, you need a

14   time series of data. So the reason to reach back

15   further is so, as opposed to getting a snapshot at

16   a moment in time, you can see the underlying trends

17   in data, line that up with large government

18   datasets that are informative and create a more

19   reliable forecast.

20   So the reaching back further has a

21   lot more to do with accurately estimating the

22   number of future Claimants than the questions

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1   related to are the totality of exposures being

2   contemporaneously revealed.

3   Q.   Doesn't Bates White already have the

4   Garlock database?

5   A.   So there's a public version of the

6   Garlock database that any party who cares to get,

7   can have it. And Bates White has a copy of those

8   data.

9   Q.   Does Bates White have a copy of a

10   nonpublic version of the Garlock database?

11   A.   No. That was destroyed at the

12   conclusion of the bankruptcy, which is why I made

13   the distinction. There was another version of that

14   database that had more information in it than the

15   public version, which no longer exists.

16   Q.   Garlock filed bankruptcy in 2010,

17   right?

18   A.   June 2010.

19   Q.   Why wouldn't going back only to 2010

20   be sufficient for your purposes, considering

21   Bates White already has the Garlock database?

22   MR. EVERT: I'll just object to

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1   the form of the question because no sample

2   back to 2010 has been proposed.

3   Go ahead.

4   THE WITNESS: The Garlock database

5   is constrained to individuals -- at least on

6   Trust discovery aspect of it, is Claimants

7   against Garlock who were resolved prior to

8   their bankruptcy. So in all the pending

9   claims, that database -- there's not the

10   Trust discovery on -- it's similar to this

11   one, resolved claims.

12   And not every Claimant who names

13   Aldrich or Murray named Garlock back then.

14   So that would be a nonrandom subset of the

15   data.

16   And then you'd introduce all sorts

17   of questions about what biases have you

18   brought in by using this nonrandom subset,

19   requiring it to be in the Garlock data and be

20   resolved by Garlock prior to bankruptcy, as

21   opposed to being able to take the universe of

22   claims and not have any of those biases enter

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 1        the analysis.

 2                  BY MR. GUERKE:

 3        Q.    Couldn't -- wouldn't it be sufficient

 4   for your purposes to use the -- the Garlock

 5   database -- the information you have and supplement

 6   it with the subpoenaed information from 2010

 7   forward?

 8                  MR. EVERT:  Objection: asked and

 9        answered.

10                  THE WITNESS:  So there's going to

11        be a few issues with that.  You could

12        potentially make some progress on that route

13        with regard to the Delaware facility.  There

14        was no discovery on the Verus facility in the

15        Garlock matter, so there is no data in the

16        Garlock record of Trusts related to that

17        facility.  So any of this would apply only to

18        the Delaware facility as a starting point.

19                  Two, to the degree Claimants in

20        Garlock have filed Trust claims post the

21        Garlock discovery, because not all of those

22        claims were resolved at the time -- there's a
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 1        number of claims that were pending -- you

 2        would want to learn the status of those

 3        pending claims.

 4                     So you would need to go back

 5        and -- if there was a single pending claim to

 6        figure out what was the resolution of that.

 7        So it's not as simple as if you got the

 8        discovery before, what's the ultimate

 9        resolution.

10                     BY MR. GUERKE:

11        Q.      Can you use for your purposes the

12   data that was produced in Bestwall and DBMP from

13   DCPF and the DCPF Trusts?

14        A.      I believe that would violate numerous

15   confidentiality orders and be illegal for us to do.

16   So I don't think, legally, we could do that.

17                     If that issue were solved,

18   statistically, it has a similar issue.  DBMP is a

19   fundamentally different product than Aldrich.  You

20   could see Claimants who were dismissed against DBMP

21   who might be a high-value claim against Aldrich, or

22   vice versa.
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1   So -- and they won't be in Claimants

2   who named Aldrich that never named one of those two

3   entities.

4   So, again, you would have these

5   selection effects you're layering over. It

6   wouldn't be a representative sample. And that's

7   going to create potential biases, and then we would

8   be litigating over those biases.

9   Q.   I don't want to go through all the

10   questions and answers you gave prior counsel on

11   this subject. And I -- am I correct that -- strike

12   that.

13   In your declaration in Paragraph 9,

14   you discuss the decrease in precision. You had

15   several questions with Mr. Kaplan about decrease in

16   precision.

17   My question is, Specifically, what is

18   the decrease in precision referenced in

19   Paragraph 9? And if -- if your answer is, I

20   already explained that for half an hour, that's

21   fine.

22   But is there a way for you to answer

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1   that question?

2   A.   You're asking specifically about kind

3   of Romanette i, Decreased precision of the ultimate

4   analysis?

5   Q.   Yes.

6   A.   I believe -- that's focusing probably

7   on the most salient issue, which is the ultimate --

8   the final design of the CRB, the final estimate of

9   liability in an estimation proceeding.

10   When I say "the ultimate," it's

11   not what's the precision of an intermediate number

12   that then feeds in, but "the ultimate" in that is

13   referring to the final opinions of interest of

14   which the sample is providing inputs into.

15   Q.   And -- and the final opinion, is

16   that -- is what you mean the value -- the estimated

17   claim value that you would present to the Court of

18   the ultimate analysis you were referring to?

19   A.   It could be the final claim -- the

20   estimate of total value of pending and future

21   claims against Aldrich. It could be the final TDP

22   that's filed where you've used these data to help

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1   you structure that TDP. So as opposed to

2   intermediate steps that are building up to

3   something like that, it's these final documents or

4   these final high-level opinions.

5   Q.   But a final high-level opinion on

6   estimating present and future claim value, not

7   TDPs, can you tell us specifically what the

8   decrease in precision is that you're referencing in

9   Paragraph 9?

10   A.   So one issue in the case, as I

11   understand it, is the parties disagree about what

12   it is we're supposed to be estimating there, which

13   if you want me to get into that, I can, but I'm not

14   really intending to in this answer.

15   The Plaintiffs' theory of what would

16   the Claimants have received in the tort system is

17   likely to have a larger aggregate estimate than the

18   Defendant theory of what's kind of the intrinsic or

19   underlying legal liability. Those two numbers are

20   going to differ.

21   So while the percentage of

22   uncertainty may be the same, suppose they're both

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1        plus or minus 15 percent, clearly that's going to

2        be more dollars of uncertainty on something that's

3        at a higher baseline number.

4                    So it's going to have a bigger dollar

5        impact under the Plaintiffs' theory than under the

6        Debtors' theory.  It's going to approximately, on

7        many of the parameters, triple the uncertainty.

8                    But the rest is similar to the answer

9        I gave before, right?  I think that uncertainty is

10       probably on the order of tens of millions of

11       dollars as a baseline.  Until I do the work and

12       I've seen the data, I can't tell you something more

13       precise than that.

14            Q.    Do you expect your final estimated

15       claim number, present and future claims, the

16       ultimate analysis that you're referencing in

17       Paragraph 9 -- will that be in the form of a range?

18            A.    These have been presented in

19       different ways in different estimation proceedings,

20       so I don't know if we're at that point.

21                    There's -- many times, that's

22       presented as a scenario and a point estimate, but
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 1      then analyses around that to describe the amount of

 2      uncertainty -- you could present that as a range,

 3      but likely, if you were to present a range, you

 4      would give the Court some indication about what

 5      area within that range you find more likely.

 6                    So I don't view those as too

 7      different, but the one may not go all the way to a

 8      point estimate.  You may say, I'm very confident

 9      it's in this $50 million or most confident it's

10      most likely in a $50 million range, but maybe it

11      has this broader range that's feasible for

12      uncertainty.

13                    So which of those is a better form of

14      exposition depends a little bit on the types of

15      uncertainty and what you learn as you go through

16      the process.

17           Q.     You don't anticipate providing the

18      Court with a single final number, correct?

19           A.      If I concluded there was a scenario

20      that I found most likely, I will probably present

21      that number but then characterize the uncertainty

22      about that number.  If I don't have one scenario
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1        that I think is more likely, there may be a range

2        that I think is most likely but within that range,

3        I can't differentiate, and then there's uncertainty

4        about that range.

5                    You know, until you do all the

6        analysis, which of those is going to be where I

7        ultimately present opinions, I don't know, sitting

8        here today.

9           Q.      You reference in your declaration the

10       legal liability analysis that you're performing in

11       this case.

12                   Are you familiar with that?

13          A.      Yes.

14          Q.      The legal liability analysis that you

15       will go through includes multiple steps, correct?

16          A.      It does.

17          Q.      Do you agree that legal liability is

18       not a mathematical equation?

19                   MR. EVERT:  Let me ask, How is

20          that relevant to sampling?

21                   MR. GUERKE:  It's a foundational

22          question.
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1   MR. EVERT: Okay. If you know the

2   answer, if you can answer it.

3   THE WITNESS: So as an empirical

4   exercise, you ultimately reduce these

5   questions to a mathematical model. Whether

6   you're doing legal liability, but-for tort

7   spend, ultimately these become reduced to

8   mathematical models of every expert I've ever

9   seen do it. So the model, like all models,

10   is a simplification of the real world. Every

11   single model simplifies that on some

12   dimension. But, ultimately, they will be

13   expressed as a form of mathematics.

14   BY MR. GUERKE:

15   Q.   Along the way in the legal liability

16   process, there will be subjective determinations

17   that are made by Bates White, correct?

18   MR. EVERT: Object to the form of

19   the question.

20   THE WITNESS: There may be.

21   Again, I haven't done all that work.

22   As much as possible, I try to root

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1   things in data and empirical analyses, but,

2   at times, there are -- things can arise where

3   that's not feasible. And then you start --

4   you invoke some assumptions and usually do

5   scenario analysis.

6   BY MR. GUERKE:

7   Q.   Some of the steps in the legal

8   liability analysis include estimates, right?

9   A.   Every estimate of future liability

10   includes estimates. That's correct.

11   Q.   And also includes forecasts, correct?

12   A.   I don't know what distinction you're

13   drawing between the word "estimate" and "forecast."

14   If you intend those to mean something different,

15   tell me.

16   Q.   For the legal liability analysis that

17   you're going through, the -- the end game is for

18   the Debtors to estimate the value of claims,

19   correct?

20   A.   Correct, the value of pending and

21   future claims. That's correct.

22   Q.   Why is estimating sufficient for the

Page 170

1   analysis but sampling within the analysis is not?

2   A.   I don't agree with the predicate. I

3   am sampling. So certain -- there's a cost-benefit

4   analysis as to when you should sample and when you

5   should use the totality of the available data.

6   So on certain aspects where the cost

7   of producing the data is relatively small, I use

8   the -- I intend to use the totality of the data,

9   like, I will use the entire claims history from the

10   Debtor. I won't take a 10 percent sample of the

11   Debtors' claim history in their settlements.

12   Okay?

13   So things that are already in

14   electronic format, you tend to use all the data;

15   things that aren't already in electronic format,

16   you tend to use the sample.

17   It doesn't always have to work out

18   that way. I've done cases where we took a census

19   of everything that was not in electronic format,

20   too, so it -- it's a cost-benefit analysis that's

21   specific. And I've done ones where I've taken a

22   sample where everything was in electronic format

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1      because it was still too large to work with.

2                      So it's -- there's no absolutes

3      there, but that's how it generally breaks down.  So

4      I'm using the census at times for certain

5      questions; I'm using a sample for other questions,

6      and it's that cost-benefit analysis.

7           Q.      Whether DCPF produces 100 percent of

8      the information requested or 10 percent of the

9      information requested, will Bates White review

10     every single document that DCPF produces?

11          A.      We will use the totality of the

12     electronic information to the degree that it's

13     populated, so we will review it, but if -- if a

14     record was produced and all the fields were empty,

15     we probably wouldn't incorporate that record into

16     our analysis, because it actually had no data.  But

17     we -- the intent is to pull all of that into the

18     analysis.  Which of it will ultimately be germane

19     at the end is an empirical question, but I'm

20     expecting in terms of these trends for future

21     Claimants to use all of it.

22          Q.      And how will Bates White go about its
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1   review of the DCPF-produced information to fulfill

2   its obligation to redact PII that's in the

3   subpoena?

4   A.   So I'm not personally in charge of

5   doing that review at the moment, but the -- we do a

6   lot of document review in different settings. This

7   really isn't documents. It's electronic.

8   So I would have to go and ask to see

9   the exact specifics. But we've done similar

10   exercises in the past. We typically will do a

11   review conceptually. There will be a first pass.

12   We'll see what it flags. There will be a second

13   pass to get an error rate. That second pass may

14   not be for the totality of the claims. It may be

15   for a subset to see what the error rate is, how

16   many claims are you missing, if at all, right?

17   And you're really assessing are you

18   getting the vast majority of them, as you're going

19   on, and will determine some acceptable error rate

20   at the end of the day in the same sense that the

21   data being produced to us probably, despite DCPF

22   going through it, will still have missed a few. So

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1   we will go through a similar process of quality

2   controlling, quantifying our error rate and then

3   being able to say what's the maximum number of

4   claims statistically where there is remaining PII.

5   Q.   Forgive me if this was embedded in

6   your answer, but that first pass and the second

7   pass you just testified about, is that -- is that

8   100 percent review of all the data on a first pass

9   and then a 100 percent review of all the data on a

10   second pass?

11   A.   The second pass is likely to be a

12   subset where you're doing a quality control. If

13   you determine that your error rate is too high, you

14   would actually do a full second pass, because

15   you've determined your error rate is too high.

16   So it's -- when you do the quality

17   control pass, if you learn you're missing -- you're

18   getting 99.9 percent of them, you would probably

19   say, We've done a good job, and we're done.

20   If you found that you're only getting

21   80 percent of them, you would probably do a second

22   pass on all the data, because missing 20 percent is

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 1         not an acceptable error rate.

 2                     So it's -- the extent of the second

 3         pass is a function of what is your effective rate

 4         of capturing the information.

 5              Q.    If a sample is ordered, a 10 percent

 6         sample, Bates White would end up reviewing

 7         90 percent fewer claims that were produced from

 8         DCPF, right?

 9              A.    I think, yes.

10              Q.    That's the extent of my math right

11         there.

12                     (Pause.)

13                     BY MR. GUERKE:

14              Q.    Forgive the pause.  I'm trying not to

15         ask you questions that have been asked.

16                     MR. EVERT:  Much appreciated.

17                     BY MR. GUERKE:

18              Q.    Can you take a look at the subpoena

19         that I believe is --

20                     MR. EVERT:  CM-2, I think.

21                     BY MR. GUERKE:

22              Q.    -- which is Exhibit 2?
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1   Paragraph 10 of the subpoena lists

2   data fields that's being requested from the

3   recipient of the subpoena.

4   Do you agree with that?

5   A.   It's a list of the requested

6   information; that's correct.

7   Q.   And this isn't the DCPF subpoena, but

8   they're all very similar, with the same paragraph

9   and the same request.

10   Part g, 10, requests information for

11   all exposure-related fields.

12   Do you see that?

13   A.   I do.

14   Q.   Why does Bates White need all

15   exposure-related fields for its analysis?

16   A.   That's going to enter the analysis in

17   a couple different ways: One, it's going to allow

18   us to get a much more complete picture of people --

19   the nature of Claimants' exposure. So that will go

20   directly to, for example, what share of their

21   exposure would be derivative of Aldrich or Murray

22   as opposed to alternative exposures.

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1   It will also be directly relevant to

2   what type of actuarial curve the claim should be

3   mapped to for projecting the number of future

4   claims, so doing this industry/occupation, what

5   trades are they in, what industries are they in for

6   figuring out how to extrapolate to get the best

7   estimate you can of the number of future claims.

8   So it's going to enter into that type

9   of analysis. It will also be direct in terms of

10   what exposures were disclosed at the time -- by the

11   time of the Debtors' settlement versus what had

12   been disclosed in totality across the multitude of

13   Trusts.

14   Q.   Is it the -- is it this all-exposure

15   related fields where Bates White will use to

16   compare claims information submitted to the

17   Debtors?

18   A.   On the questions that were, if I'm

19   remembering right, Paragraphs 16 and 17 in my

20   declaration, yes.

21   Q.   Do you intend to look at every

22   historical claim submitted to the Debtors in the

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 1      tort system for that comparison process?

 2              A.      No.  We're intending to use a sample

 3      for that comparison, but to the extent we can, the

 4      totality of claims in terms of these industry and

 5      occupational trends for forecasting the counter

 6      future claims, so it depends on the -- which

 7      analysis you're referring to.

 8              Q.      And that sample is what you're

 9      referring to earlier that's being negotiated with

10      the ACC and the FCR; is that right?

11              A.      Correct.

12              Q.      So for the -- the 12,000 Claimants

13      that are being requested in the subpoena directed

14      to DCPF, are the Debtors providing Bates White with

15      all the claim files?

16              A.      No.

17              Q.      Why not?

18              A.      So producing a claim file -- it's a

19      set of documents that are typically not in

20      electronic format, and even if the documents

21      themselves are in electronic format, the

22      information you want out of, say, an answer to an
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1   interrogatory or out of the deposition haven't been

2   culled from that.

3   So turning a claim file into usable

4   data for analyses is very expensive on a

5   file-by-file basis because it's not already in

6   electronic format to be used, so the cost

7   associated with each datum that you want to pick up

8   is relatively high. And so in the cost-benefit

9   analysis, we have gotten comfortable that looking

10   at the 1,200 claims for that will be sufficient for

11   some of these questions from a cost-benefit

12   perspective.

13   That's around the point benefit where

14   the cost benefits are, as best you can tell -- you

15   don't know for sure -- but as best as you can tell,

16   getting close to even.

17   In contrast, the Trust data is

18   already in electronic format, so the -- compared to

19   a claim file, the ability to turn that exposure

20   history into a -- basically combining that

21   information across Trusts to characterize an

22   exposure history for a Claimant is relatively

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1   inexpensive compared to reviewing a claim file and

2   trying to review depositions and Answers to

3   Interrogatories and pull all of that information

4   out. So it goes back to that fundamental

5   cost-benefit analysis.

6   Q.   So for that comparison or that

7   evidence suppression analysis, don't you need to

8   have the same Claimants from the Debtors' sample

9   matched up with the same Claimants in the DCPF

10   subpoena?

11   A.   Yes.

12   Q.   And how are you doing that?

13   A.   So for the 1,200 that are in the paid

14   claims sample, those same 1,200 would be in the --

15   would be in the Trust data because it's a subset of

16   the 12,000. So for those 1,200, we can make that

17   comparison.

18   If we were constrained to a

19   10 percent sample from the Trusts, we would want

20   that sample to be identical to the claim file

21   sample so you can make the comparison on all 1,200.

22   For the other aspects, like

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1   controlling for industry and occupations to

2   forecast the number of future claim counts, that's

3   about getting the totality of the exposure history

4   and that, we would use all 12,000 Claimants for.

5   So there's certain exercises where we would only

6   use the 1,200 Claimants' information that overlaps

7   with the 1,200 for which we went through the claim

8   file exercise. And for other aspects of the

9   estimation, we would use all 12,000 Claimants'

10   information.

11   Q.   So if you're ultimately constrained

12   to a 10 percent sample in this case for Trust

13   information, you don't know yet whether that

14   10 percent sample will match up with the sample

15   that you're working on right now with the ACC and

16   the FCR, right?

17   A.   So there's no agreement at the moment

18   as to what the sample of claim files will be.

19   There's been back-and-forth. The concept is that

20   it will be the same. If they weren't the same and

21   they were both 10 percent samples, then you would

22   only have on average 1 percent; you would be down

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1      to 120 claims which would be in both, which would

2      be insufficient to do almost anything with.

3             Q.     You can't use it for the intended

4      purpose unless the two samples line up, right?

5                    MR. EVERT:  Object to the form of

6         the question.

7                    THE WITNESS:  If I want to look at

8         a comparison, I need both points in the

9         comparison, for when -- for that exercise, I

10        need both sets of data.

11                   BY MR. GUERKE:

12            Q.     So before you can determine a

13     sufficient sample for the Trust information, you

14     would first need to know what the agreement is on

15     the sample for the -- the Debtor historical files,

16     right?

17            A.     No.

18            Q.     What -- why is that "no"?

19            A.     So the fact that the historical files

20     are not already in an electronic format means that

21     each Claimant you sample there comes at a

22     materially higher cost, thousands of dollars, if
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1   not 10,000, to collect all that information and

2   process it.

3   So there's a substantial cost for

4   each data point you're taking in.

5   So that data, the review of the claim

6   file data and the cost associated with it becomes

7   the binding constraint for doing the comparison

8   because it's the higher cost source of data. So

9   what I need to determine for this comparison is the

10   higher cost source, which is the claim files.

11   I'm using the Trust data for multiple

12   purposes, not just that comparison. The other

13   purposes are what apply to the 90 percent of the

14   sample that doesn't overlap with the 10 percent

15   that would line up with the claim files.

16   So when I'm talking about asking for

17   the 12,000 and constraining myself to 100 percent

18   of that subpopulation, it's because that's the

19   subpopulation that's going to inform me about, in

20   particular, future claim counts, controlling for

21   industry and occupation, potentially controlling

22   for gender, controlling for different demographic

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1   characteristics as we go forward.

2   So they're serving -- the binding

3   constraint differs between the two, so in that

4   sense, they don't overlap. I'm going to have a

5   broader sample ideally of Trust data because it's

6   less expensive to produce than claim files, and I'm

7   going to have the claim file sample be a strict

8   subset of the Trust sample.

9   Q.   In Paragraph 21 of your declaration,

10   you state that DCPS -- DCPF has already produced

11   the same or substantially similar information for

12   similarly sized and likely substantially

13   overlapping claims population in response to nearly

14   identical subpoenas from DBMP and Bestwall.

15   Do you see that part of your

16   declaration?

17   A.   Which paragraph?

18   MR. EVERT: Twenty-one.

19   BY MR. GUERKE:

20   Q.   Twenty-one.

21   A.   Yes.

22   Q.   So what of the 12,000 Claimants' data

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1   in this case overlap with the -- the Bestwall and

2   DBMP case?

3   A.   I'm not allowed to nor have I merged

4   those databases. They're two separate cases.

5   What I know about each of them that I

6   am allowed to use is that each of them receives

7   about three-quarters of the claims that are filed

8   in the tort system. So if I have two defendants

9   that each are receiving 75 percent of the claims,

10   50 percentage points of that has to overlap because

11   there's only 25 percent left that could go to the

12   other Debtor that's not in the prior one.

13   So I know there's substantial

14   overlap. I know it's at least 50 percent of their

15   claims. It might be much higher. I don't know the

16   exact number. That's why it's written the way it

17   is. I'm not allowed to merge those. They're two

18   separate cases.

19   You know, if parties waived and said,

20   Go ahead and merge them, we could give you an exact

21   answer. But that's not the status. They're --

22   each case is in its own silo. And so I know it's

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 1        substantial, but I don't know the exact number.

 2               Q.      In Paragraph 22 of your declaration,

 3        you state that retrieving information for any

 4        specified Claimant should involve a relatively

 5        straightforward automated extraction of data as the

 6        match Claimants have already been identified.

 7                       Do you see that in Paragraph 22?

 8               A.      I do.

 9               Q.      What is your basis for that

10        statement?

11               A.      Well, as I understand the nature of

12        the databases, there's a Claimant identifier.  The

13        crosswalk process of identifying which Claimants in

14        the 12,000 actually filed a claim against any of

15        the Trusts -- as I understand it, that process has

16        been completed, because we've gone through a

17        reconciliation process on the matches that were

18        uncertain.

19                       So there's already a mapping from

20        that matching key to the records or at least the

21        key identifier of each Claimant in the Trust data.

22                       So now you're extracting specific
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1   data fields from a data fact -- a database that's

2   just a query from a database.

3   Any redaction the Trust wants to do

4   after that query is a different question. All

5   right? But the actual extraction of those fields

6   is just a database query at this point.

7   Q.   And the review-and-redaction process

8   that DCPF goes through is separate and apart what

9   you're saying in this paragraph, correct?

10   A.   Correct.

11   This is just retrieving from the

12   information from the field is straightforward.

13   There is a redaction process that the Trust has

14   stated it wants to do before producing the data.

15   Q.   Do you -- do you dispute the fact

16   that the -- that DCPF will do a

17   review-and-redaction process for whatever

18   information is required to be produced in response

19   to these subpoenas?

20   A.   They state they will do it. They did

21   it in DBMP. I have no reason to question it.

22   Q.   You have no firsthand knowledge of

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1   DCPF's business, do you?

2   A.   No.

3   Q.   You don't know specifically what DCPF

4   has to do in that review-and-redaction process,

5   correct?

6   A.   No, I don't know the specifics.

7   Q.   And, similarly, you don't know the

8   inner workings of DCPF, correct, on the business

9   side?

10   A.   No.

11   Q.   And you don't know -- you don't have

12   personal knowledge of DCPF's burden in responding

13   to the subpoena, correct?

14   A.   No.

15   Q.   "No," you don't have personal

16   knowledge, correct?

17   A.   I don't have -- I've seen the bill

18   from other cases. I don't have personal knowledge.

19   Q.   Are you offering an expert opinion on

20   DCPF's burden in responding to the subpoena?

21   MR. EVERT: I'll object to the

22   form, actually, because I think that's a

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1   legal question, are we offering him to have

2   an opinion. So to the extent, yes, he's

3   going to testify about the fact of what it

4   costs DCPF to do it and DBMP, then I think,

5   yes, we are offering him.

6   BY MR. GUERKE:

7   Q.   You can answer.

8   A.   The opinions in my report, if I'm

9   asked, I'm going to give. Whether they fall under

10   that definition, I don't know.

11   Q.   What are your qualifications for

12   offering an opinion on DCPF's burden?

13   A.   I think if the opinions in the report

14   talk about doing an extract from a relational

15   database, once you've completed the matching, that

16   is simple. That takes almost no time to write a

17   query, to take an extract from a relational

18   database.

19   I work with relational databases all

20   the time. You know, that -- if you consider that

21   as following as an expert opinion on their burden,

22   it's one aspect of looking at what's the actual

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 1        cost, given they've already done the matching

 2        exercise, to extract the fields.  That's minimal.

 3                    Otherwise, in terms of the redaction,

 4        the evidence I have as an economist to look at is

 5        the bill that got in the public for what that cost

 6        in DBMP, so that gives us a benchmark of what it

 7        may cost here to put a dollar figure on that

 8        burden.

 9             Q.     Is there anything else -- any other

10        information you're relying on to offer an opinion

11        on DCPF's burden in this case?

12             A.     Not beyond anything that's in my

13        report.

14             Q.     You rely on the Richard Wyner

15        declaration in your declaration, correct?

16             A.     On the -- if you can point me to

17        where.

18             Q.     The Richard -- Richard Wyner is the

19        DCPF COO, and there was a declaration submitted.

20        It's cited in your report.

21                    I can --

22             A.     I'm just asking you to reference --
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1   where in my report do I rely on it?

2   I'm not -- I don't have that mapping

3   at the tip of my fingertips.

4   If you point me to where, that's --

5   Q.   Sure.

6   It's Footnote 16 -- 13 and 16.

7   A.   Okay.

8   Q.   You are relying on the Richard Wyner

9   declaration in forming your opinions related to

10   DCPF's burden in this case, correct?

11   A.   I'm relying on the specific statement

12   that the data all resides in electronic format.

13   Q.   Any other part of the declaration

14   that you're relying on?

15   A.   I'm looking at these two sentences in

16   the footnotes therein and that it's organized by

17   Claimant.

18   Q.   Anything else?

19   A.   Without reviewing the totality, I'm

20   not sure it relates to anything else. The two

21   sentences of those two footnotes -- that's what the

22   footnotes are supporting.

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1              Q.      Have you reviewed the entirety of

2       Richard Wyner's deposition -- declaration submitted

3       in this case?

4              A.      I did read that at one point in time.

5              Q.      Do you dispute any part of it?

6              A.      I don't recall, one way or the other,

7       sitting here.

8              Q.      Sitting here today, do you dispute

9       any statement made in Mr. Wyner's declaration?

10             A.      I don't -- to the degree he has a

11      statement that any of my opinions are contradictory

12      of, then the answer to that would be yes, but I

13      haven't tried to map specifically his statements to

14      my opinions.

15             Q.      In Paragraph 22 of your declaration,

16      you state, In fact, I would expect the

17      Aldrich/Murray data production process would be

18      even less burdensome than the Bestwall and DBMP

19      process because DCPF -- DCPF has already developed

20      applicable algorithms through responding to similar

21      requests for the Bestwall and DBMP Debtors.

22                      Did I read that part of your
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1   declaration correctly?

2   A.   You did.

3   Q.   Specifically, what are the algorithms

4   DCPF has already developed that are referenced in

5   that declaration?

6   A.   Extracting the data fields would be

7   an almost identical query to the query that was run

8   in the other, particularly DBMP. The review for

9   looking for whatever protocols -- I don't know what

10   protocols they used -- but whatever protocols they

11   developed to review and remove any PII or PHI that

12   might be in the fields. They've already developed

13   those protocols and applied them before. So they

14   have the benefit of that experience to work on when

15   they do it again. And so almost always, your

16   second time doing that exercise is less expensive

17   than your first time because you have the benefit

18   of that experience.

19   Q.   So -- so the benefit of the

20   experience, is that what you're referring to as an

21   algorithm?

22   A.   Writing the algorithm and then the

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1     protocols, the processes they put in place.  They

2     had to develop some process for reviewing and

3     redacting.  And the other piece that's in there

4     because of the likely overlap, if they chose to

5     cross-reference with the records that they already

6     produced in DBMP in their production process, the

7     ones that had information that needed to be

8     redacted from DBMP, they could bring over the

9     redacted field and not have to redo the redaction.

10                    So the overlap should make it less

11    expensive because they've already done it for

12    subpopulation, and the fact that they have the

13    experience of having done it before and they aren't

14    developing the protocols should make it less

15    expensive.

16         Q.    Do you have any firsthand knowledge

17    of the process that DCPF employs to review and

18    redact these records?

19                    MR. EVERT:  Objection: asked and

20       answered.

21                    THE WITNESS:  No.

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1   BY MR. GUERKE:

2   Q.   Even though the subpoena doesn't

3   specifically request personal identifying

4   information, you agree that it would capture

5   certain personal identifying information, right?

6   A.   That is the allegation by the Trusts.

7   I understand their allegation. You know, it is

8   not -- there's traces when you build a database and

9   the exposure fields. If they've chosen to include

10   that type of information in an exposure field, then

11   it could be there.

12   They assert that some of those

13   exposure fields contain that information. So

14   that's -- their position is it does.

15   You could imagine a database about

16   exposure that doesn't have PII in because that's

17   really not relevant to the exposure.

18   So if you had a clean exposure field,

19   then you wouldn't have that issue. Right? So it's

20   the fact that their exposure field isn't clean,

21   it's contaminated with PII, that creates this

22   issue. It wasn't obvious at the time of issuing,

Page 195

1   seeking the data that that would be the case.

2   Q.   But you don't dispute that that is

3   the case, right?

4   A.   I -- I don't dispute the assertion.

5   Q.   Are you measuring DCPF's burden by

6   using the $86,000 billed in production costs in

7   DBMP?

8   A.   I view it as a relevant data point.

9   I don't think they're going to be at the exact same

10   number next time.

11   I mean, from a burden perspective,

12   it's more about the hours, because that's --

13   ultimately, that was paid by the Debtors and DBMP,

14   as I understand it. So the financial burden was

15   borne by the Debtors, but it's the scope of the

16   exercise.

17   Q.   You don't know what the per record

18   review costs for these Debtors' subpoenas will be

19   for DCPF, right?

20   A.   So you can get a rough estimate. And

21   if -- you can look at things like the Garlock data

22   and estimate how many Trusts a typical Claimant

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1      goes -- would file a claim against.  You can take

2      the $86,000, the number of claims that were

3      reviewed, divide, and you're going to be on the

4      order for that of about ten cents a record.

5                   Now, that doesn't mean we will come

6      in at exactly ten cents a record here, but it was

7      kind of if you do that back-of-the-envelope math,

8      you'll see it more on that order.

9           Q.      You're speculating what -- what -- it

10     would be speculation to try to determine what

11     DCPF's costs would be to respond to these Debtors'

12     subpoena, right?

13          A.      I wouldn't go and say it's

14     speculation.  You have an estimate.  You can look

15     at what did it cost them to respond to the DBMP

16     subpoena, which was substantively identical in

17     nature.  And so you have a very good benchmarking

18     exercise.

19                  It's not pure speculation.  That

20     would be -- you know, it is an estimate, but I

21     wouldn't call that pure speculation.  You know, the

22     -- almost perfect comparable to gauge what the cost
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 1      would be.

 2              Q.      DBMP included roughly 9,000

 3      Claimants, right?

 4              A.      Correct.

 5              Q.      Aldrich and Murray include roughly

 6      12,000 Claimants, correct?

 7              A.      Correct.

 8              Q.      So there are 3,000 more Claimants in

 9      play in this case, right?

10              A.      Correct.

11              Q.      So you would expect the costs of

12      production in this case to be greater than in DBMP,

13      correct?

14              A.      I don't think you can draw that

15      conclusion.  If there was zero overlap in the

16      Claimants and your exercise is one-third larger,

17      rough order, you would probably expect it to cost

18      one-third more.

19                      There may be some start-up costs, and

20      so the start-up costs you have once, and then the

21      per-claim file review.  So maybe it's a little less

22      than one-third more, because you don't have to do
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 1        the start-up costs an extra time.  You still have

 2        that once, but that's ignoring the overlap in the

 3        Claimants.

 4                     So if, hypothetically, 6,000 of the

 5        Claimants overlapped and that redaction had already

 6        been completed, maybe you only have to look at

 7        6,000 Claimants, because those are the ones that

 8        haven't been done.  And then you would expect it

 9        would be less expensive.

10                     If only 2,000 overlapped and so you

11        had to look at 10,000, you would expect it to be a

12        little more expensive.  I don't know the exact

13        overlap, but I would think they would take

14        advantage over that overlap because they could

15        materially reduce their cost.

16             Q.     Whatever the review costs would be,

17        it would be less with a sample, correct?

18             A.     Correct.

19                     MR. EVERT:  Kevin, let me

20          interrupt you for a second.

21                     He's available from 1:00 to 5:00,

22          and it will be 5:00 -- it's four minutes to
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1   5:00. We -- I know you got a little more to

2   go, but I'm just wondering would it assist

3   things if we can try to expedite to take

4   five minutes and get organized, or are you

5   close to finishing or just trying to get a

6   sense --

7   MR. GUERKE: I'm using the

8   5:00 p.m. as where I'm trying to finish.

9   It's up to you. I will take five minutes and

10   try to streamline it --

11   MR. EVERT: No. If you think

12   you're there --

13   MR. GUERKE: -- I will go until

14   you tell me to stop.

15   So you -- when are you going to

16   tell me to stop?

17   MR. EVERT: I'm not going to tell

18   you stop at dead 5:00 -- is he last? Anybody

19   else?

20   MR. HOGAN: I have one -- I had

21   one series of questions about Paragraph 16,

22   and that will take me probably 10 minutes.

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1   MR. GUERKE: Let me just go

2   through --

3   MR. EVERT: You want to try to

4   make it to 5:00, and then Dan will take it

5   from there?

6   MR. GUERKE: I will go through

7   this series of questions and hand it off.

8   Thank you.

9   BY MR. GUERKE:

10   Q.   Are you aware that November 30th, the

11   Court ruled on DCPF and the DCPF's Trusts motion to

12   quash?

13   A.   I know there was such a ruling. I

14   couldn't tell you the date.

15   Q.   And it was a 10 percent sample

16   ruling, right?

17   A.   There -- I'm aware that -- his

18   decision for 10 percent sample, yes.

19   Q.   In December, after that -- that

20   decision was rendered, the Debtors proposed a

21   stratified random sampling protocol to the parties

22   involved in -- in this case.

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1   Are you familiar with that?

2   A.   I'm very familiar with that.

3   Q.   Were you involved in preparing that

4   stratified random sample?

5   A.   Yes.

6   Q.   Were you in charge of that -- that

7   process? Is that your work product?

8   A.   I directed all the work on that;

9   that's correct.

10   Q.   The proposed sample that was

11   circulated December 19th was sufficient for your

12   purposes in this case, correct?

13   MR. EVERT: Object to the form of

14   the question.

15   THE WITNESS: I would not describe

16   it that way.

17   So given there's now external

18   constraint, the most data you can have is

19   10 percent. I want all 10 percent. That's

20   the most I'm allowed to have, and I'm going

21   to try to design a sample that will get me

22   the greatest level of efficiency I can out of

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 1        those data.

 2                  All right.  But it's a constraint

 3        now.  If the Court orders it, whether you

 4        like it or not, whether you think it's the

 5        right decision or not, you live with it.

 6                  So it was going -- I just accepted

 7        that things weren't going to be as precise

 8        and I'd give less guidance to the Court than

 9        I believe was optimal given the cost-benefit

10        analysis here.

11                  BY MR. GUERKE:

12        Q.     And the sample that you prepared

13    would have worked in your analysis, correct?

14                  MR. EVERT:  Object to the form of

15        the question.

16                  THE WITNESS:  So the question I

17        gave before to work could be the same answer

18        now -- the answer I gave to the similar

19        question would be the same now.

20                  BY MR. GUERKE:

21        Q.     The -- are you finished with your

22    answer?  I didn't mean to interrupt you.
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1            A.     Yes.

2            Q.     The proposed stratified random sample

3     that -- that the Debtors circulated is a

4     representative and efficient sample.

5                   You would agree with that, correct?

6            A.     That is its intent, is to be as

7     efficient -- it is definitively representative.

8     It's trying to squeeze as much efficiency out of

9     the sample of 1,200 as one can.

10           Q.     And the -- the -- the proposed

11    stratified random sample would provide a reliable

12    cross-section of Debtors' mesothelioma claims

13    settlement history, correct?

14           A.     Reliable?  I can't go to that point

15    at this.  I haven't done the analysis.

16                  This is where it goes back to the

17    same as does it work.  For certain questions, that

18    is very likely to turn out to be enough.  And for

19    other questions, I think there's a very high

20    probability that it's not sufficient and will end

21    up with very broad confidence intervals.

22           Q.     The sample that you prepared and was
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1   circulated to the parties was seeking information

2   for the period 2014 to the present, right?

3   A.   Well, part of that negotiation was if

4   we are going to be constrained to just 1,200

5   Claimants, the more recent Claimants are -- answer

6   more questions than the ones further back. I gave

7   some answers before about the further back ones are

8   to get demographic trends. The more recent ones

9   contribute both to the demographic trends and to

10   this question of were all the exposures disclosed.

11   So there's more information for the purpose of

12   estimation.

13   So I made the determination that

14   dropping all the earlier claims and losing that

15   information on trend was better than risking not

16   being able to answer the questions on full

17   disclosure. It's a trade-off. It may render,

18   being able to control for the trends properly,

19   impossible. But I'm now facing an external

20   constraint, and I'm trying to do the best I can

21   within that constraint.

22   Q.   And you could have performed your

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1   analysis with Trust data from 2014 to the present,

2   right?

3   MR. EVERT: I object.

4   And, Kevin, I've got to say I

5   object to this entire line of questioning,

6   because that was a 408 effort to compromise a

7   disputed issue in the case. And I think it's

8   inappropriate to use an e-mail that a lawyer

9   wrote to cross-examine him about what --

10   about what the lawyer's intent was in trying

11   to get the case settled.

12   MR. GUERKE: This was after the

13   ruling --

14   MR. EVERT: I understand, but we

15   still had a disputed issue about how to draw

16   the sample.

17   But I just -- I'm sorry. Note --

18   note for the record my objection to the -- to

19   the entire line of questioning. I think it's

20   inappropriate.

21   But you're welcome to have the

22   question read back or ask it again.

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1   THE WITNESS: I, as a person who

2   is going to ultimately potentially file an

3   estimation report, made the judgment call

4   that I'd rather risk not being able to -- I'd

5   rather risk not being able to control for the

6   industry and occupation mix of Claimants and

7   those trends demographically than not being

8   able to reliably quantify the number of

9   exposures that were being disclosed.

10   I was forced into having to make a

11   trade-off I would not want to make that I

12   don't think the cost-benefit analysis

13   supports. But I'm very much putting at risk

14   being able to properly control for the

15   demographic trends by constrained 2014.

16   But I had to give something up. I

17   had a Court order. So I decided what would

18   create an expectation the least harmful

19   within that month.

20   MR. GUERKE: Based on the time,

21   Dr. Mullin, I'm going to pass the witness.

22   Thank you very much.

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1   THE WITNESS: Thank you.

2   --oOo--

3   EXAMINATION BY COUNSEL FOR

4   CERTAIN MATCHING CLAIMANTS

5   --oOo--

6   BY MR. HOGAN:

7   Q.   Good afternoon, Dr. Mullin. It's

8   Daniel Hogan on behalf of the Certain Matching

9   Claimants. I will try not to take too much of your

10   time, but I appreciate your time today.

11   A.   Good afternoon.

12   Q.   I'd ask you to direct your attention

13   to Paragraph 16 of your declaration. I'm going to

14   attempt to endeavor to limit it -- my questions to

15   this paragraph.

16   If you would, the first sentence

17   provides that The Trust data are also needed to

18   assess whether the Debtors entered into settlements

19   aware of the totality of alternative exposures.

20   Would you agree with me that that's a

21   temporal exercise?

22   A.   What do you mean by "temporal

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1   exercise"?

2   Q.   Well, the statement, in -- in and of

3   itself, is a statement about what the Debtors were

4   aware of.

5   An awareness is a state of mind.

6   Would you agree?

7   A.   "Knowledge" in this sense is probably

8   the word I would use.

9   Q.   Okay. And from a temporal aspect,

10   there's a point in time at which somebody is either

11   aware or has knowledge of something or they don't

12   have knowledge of something.

13   Would you agree?

14   A.   Correct.

15   Q.   Okay. And so from -- from this

16   statement's standpoint, at some point in the

17   Trust -- or in -- in the Debtors' database, there

18   is a determination about what the Debtor knew and

19   when they knew it.

20   Would you agree?

21   MR. EVERT: Object to the form of

22   the question.

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1   THE WITNESS: I don't think, in

2   their database, that information is there. I

3   think that's something, generally, you have

4   to go to underlying claim records for.

5   That's not, in general, available in their

6   claims database in electronic form.

7   BY MR. HOGAN:

8   Q.   Okay. So your statement is that the

9   Trust data from DCPF from Verus is needed to assess

10   whether the Debtors entered into settlements aware

11   of the totality of alternative exposures.

12   So let's just break it down.

13   At some point, there's a -- there's a

14   state of mind of the Debtors about what they knew

15   about alternative exposures. And if you look at

16   that on a timeline, there's some point at which

17   they didn't know it. And somewhere along that

18   continuum up till now, they became aware.

19   Would you agree?

20   MR. EVERT: Object to the form of

21   the question.

22   THE WITNESS: I don't agree with

Page 210

1   the temporal part. I don't know if they're,

2   even as of today, aware of the totality of

3   the exposures. So I don't -- I can't agree

4   that as of -- at some point in time, they

5   became aware of the totality.

6   This sentence is very much looking

7   at the time of settlement.

8   BY MR. HOGAN:

9   Q.   At the time of what settlement?

10   Maybe that'll help.

11   A.   When the Debtors entered into a

12   settlement with a given Claimant.

13   Q.   Okay. So you would agree with me, I

14   hope, that at the time that the Debtors entered

15   into a settlement with any particular matching

16   Claimant or any Claimant that they settled with,

17   that they -- they either knew or didn't know of

18   alternative exposures?

19   A.   There would be a set of alternative

20   exposures they would be aware of, typically, and

21   there may be zero or multiple exposures they're not

22   aware of.

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 1              Q.     Okay.  And how they came to that

 2      awareness is critical.

 3                     Yes or no?

 4                     MR. EVERT:  Object to the form of

 5        the question.

 6                     Critical to what?

 7                     BY MR. HOGAN:

 8              Q.     Critical to their understanding and

 9      determination about whether to make the settlement.

10              A.     So it's -- the -- that is not the

11      only determinant that goes into a settlement

12      decision --

13              Q.     I understand that --

14              A.     -- so --

15              Q.     -- but it is --

16              A.     -- context --

17              Q.     -- but it is one -- pardon me.

18              A.     -- it is one -- it is one element

19      that goes into a settlement.  It's not the only

20      element.  So context of many other things could

21      matter.

22              Q.     But you state that, Specifically, the
```

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1   data would also allow us to compare exposure

2   allegations to the products of the reorganized

3   entities for which the Trusts were established with

4   exposure -- with exposure those same Claimants

5   disclosed in their tort litigation against the

6   Debtors.

7   Is that a fair statement?

8   Did I read that correctly?

9   A.   Pretty close, I think.

10   Q.   You had testified earlier that you

11   largely have a mathematical model for everything;

12   isn't that right?

13   A.   Ultimately, you're going to reduce

14   things to computations if you're doing a damages

15   analysis, which is what I'm doing.

16   Q.   So have you reduced the Debtors'

17   knowledge as it relates to settlements about what

18   their knowledge of other alternative exposures

19   were?

20   MR. EVERT: Object to the form of

21   the question.

22   THE WITNESS: Not at this stage.

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1   BY MR. HOGAN:

2   Q.   Will you?

3   A.   Ultimately, my task is to give a

4   numerical quantification, so I have to reduce

5   everything to numbers eventually. So that's

6   mathematics. So, ultimately, I will be doing that

7   through mathematics.

8   Q.   So the answer is yes, you will be

9   doing that? You will be reducing the Debtors'

10   knowledge of alternative exposures at the time of

11   settlement?

12   MR. EVERT: Object to the form of

13   the question.

14   BY MR. HOGAN:

15   Q.   Is that a correct answer -- is that a

16   correct question -- do you understand the question?

17   A.   No. I think you needed another

18   phrase at the end of it for it to make sense.

19   Q.   My apologies. I'll rephrase the

20   question. I'll strike that.

21   You testified that there is a

22   mathematical model that you will reduce information

Page 214

1   to.

2   And I'm asking you about -- with

3   regard to settlements that the Debtor entered into,

4   you're going to make a determination in a

5   mathematical model which will address whether or

6   not they were aware of alternative exposures when

7   they made that settlement?

8   A.   Well, there's a factual question of

9   what fraction of them they're aware of. That's a

10   ratio --

11   Q.   Sure.

12   A.   -- so the impact of that on the

13   settlement is really going to Paragraph 17.

14   So if we're transitioning to

15   Paragraph 17, which I didn't think we were doing,

16   we're getting into the impact. The -- Paragraph 16

17   is just if you're exposed to 38 products and the

18   Debtor only knew about three of those at the time

19   they settled or maybe the Debtor knew about 38 at

20   the time they settled, that's a factual question --

21   Q.   Sure.

22   A.   -- that's all Paragraph 16 is talking

Page 215

1   about, that factual question.

2   How that enters into an estimate --

3   estimate of future liability becomes a modeling

4   question, which is moving into Paragraph 17.

5   Q.   Okay. Before we do that, let's talk

6   about what you just said about the mathematical

7   aspect of that.

8   If I take that calculus that you just

9   undertook and overlay an administrative settlement

10   on top of it, how does that factor into that

11   calculation?

12   MR. EVERT: Object to the form of

13   the question.

14   THE WITNESS: It depends on the

15   nature of the administrative settlement. It

16   becomes fact-specific.

17   BY MR. HOGAN:

18   Q.   Okay. And you understand generally

19   how administrative settlements work?

20   A.   There's a whole range of them --

21   Q.   I --

22   A.   -- I understand generally the range

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 1      of administrative settlements in the asbestos

 2      environment.

 3              Q.     Okay.  So you understand that in a

 4      large share of those administrative settlement

 5      constructs, that there weren't questions asked

 6      about alternative exposures.

 7                     Do you understand that?

 8              A.     I am aware that there are

 9      administrative settlements where that information

10      is not exchanged.

11              Q.     You're aware that there's

12      administrative settlements where that information

13      is not requested?

14              A.     I believe that's true as well.

15                     MR. HOGAN:  All right.  I don't

16         have anything else.  Thanks for your time.

17                     MR. EVERT:  All right.  Thanks,

18         everybody.

19                     (Witness excused.)

20

21                     (Deposition concluded at

22         approximately 5:11 p.m. EDT.)
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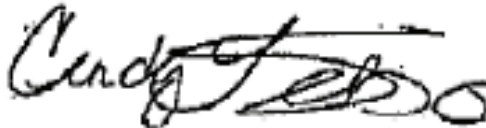
Page 217

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 1                   C E R T I F I C A T E

 2            I, Cindy L. Sebo, Nationally Certified Court

 3       Reporter herein do hereby certify that the foregoing

 4       continued deposition of CHARLES HENRY MULLIN, PH.D.

 5       was taken before me pursuant to notice, at the time

 6       and place indicated; that said witness was previously

 7       duly sworn remotely by a certified stenographer to

 8       tell the truth, the whole truth, and nothing but the

 9       truth under penalty of perjury; that the testimony of

10       said witness was correctly recorded to the best of my

11       ability in machine shorthand and thereafter

12       transcribed under my supervision with computer-aided

13       transcription; that the deposition is a true and

14       accurate record of the testimony given by the witness;

15       and that I am neither of counsel nor kin to any party

16       in said action, nor interested in the outcome thereof.

17

18

                 Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,

19               CLR, RSA, NYRCR, NYACR, CA CSR #14409,

                 NJ CCR #30XI00244600, NJ CRT

20               #30XR00019500, Washington CSR

                 #23005926, Oregon State #230105,

21               TN #CSR 998, Remote Counsel Reporter,

                 LiveLitigation Authorized Reporter

22
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 1    C. Michael Evert, Jr., Esq.

 2    cmevert@ewhlaw.com

 3                       May 9, 2023.

 4    RE: Armstrong World Industries, Inc., et al. v. Aldrich Pump

          LLC, et al.

 5        5/8/2023, Charles  Henry Mullin , Ph.D. (#5905066)

 6        The above-referenced transcript is available for

 7    review.

 8        Within the applicable timeframe, the witness should

 9    read the testimony to verify its accuracy. If there are

10    any changes, the witness should note those with the

11    reason, on the attached Errata Sheet.

12        The witness should sign the Acknowledgment of

13    Deponent and Errata and return to the deposing attorney.

14    Copies should be sent to all counsel, and to Veritext at

15    cs-ny@veritext.com.

16     Return completed errata within 30 days from

17    receipt of testimony.

18      If the witness fails to do so within the time

19    allotted, the transcript may be used as if signed.

20

21               Yours,

22               Veritext Legal Solutions
```

EXHIBIT C

1

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

 3   IN RE:                          :      Case No. 20-30080-JCW

 4   DBMP LLC,                       :      Chapter 11

 5      Debtor,                      :      Charlotte, North Carolina
                                            Thursday, April 13, 2023
 6                                   :      9:30 a.m.
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 8                        TRANSCRIPT OF PROCEEDINGS
                   BEFORE THE HONORABLE J. CRAIG WHITLEY,
 9                    UNITED STATES BANKRUPTCY JUDGE

10   APPEARANCES (via Teams):

11   For the Debtor:               Robinson, Bradshaw & Hinson, P.A.
                                   BY:  GARLAND CASSADA, ESQ.
12                                 101 N. Tryon Street, Suite 1900
                                   Charlotte, NC  28246
13
                                   Jones Day
14                                 BY:  GREGORY M. GORDON, ESQ.
                                   2727 North Harwood St., Suite 500
15                                 Dallas, Texas  75201

16                                 Jones Day
                                   BY:  JEFFREY B. ELLMAN, ESQ.
17                                 1221 Peachtree Street, N.E., #400
                                   Atlanta, GA  30361
18

19   Audio Operator:              COURT PERSONNEL

20
     Transcript prepared by:      JANICE RUSSELL TRANSCRIPTS
21                                1418 Red Fox Circle
                                  Severance, CO  80550
22                                (757) 422-9089
                                  trussell31@tdsmail.com
23

24   Proceedings recorded by electronic sound recording; transcript
     produced by transcription service.
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 1   APPEARANCES (via Teams continued):

 2   For the ACC:                  Robinson & Cole LLP
                                   BY:  NATALIE RAMSEY, ESQ.
 3                                 1201 N. Market Street, Suite 1406
                                   Wilmington, DE  19801
 4
                                   Caplin & Drysdale
 5                                 BY:  TODD PHILLIPS, ESQ.
                                   One Thomas Circle, N.W.,
 6                                 Washington, DC  20005

 7   For the FCR:                  Young Conaway
                                   BY:  TRAVIS BUCHANAN, ESQ.
 8                                 1000 North King Street
                                   Wilmington, DE  19801
 9
     For CertainTeed LLC, et al.:  Goodwin Procter LLP
10                                 BY:  HOWARD S. STEEL, ESQ.
                                   620 Eighth Avenue
11                                 New York, NY  10018

12                                 Rayburn Cooper & Durham, P.A.
                                   BY:  MATTHEW TOMSIC, ESQ.
13                                 227 West Trade Street, Suite 1200
                                   Charlotte, NC  28202
14
     For the Bankruptcy           Office of Bankruptcy
15   Administrator:                 Administrator
                                   BY:  ALEXANDRIA KENNY, ESQ.
16                                 402 West Trade Street, Suite 200
                                   Charlotte, NC  28202
17

18   ALSO PRESENT (via Teams):     SANDER L. ESSERMAN
                                   Future Claimants' Representative
19                                 2323 Bryan Street, Suite 2200
                                   Dallas, TX  75201-2689
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1 could not tell you which way I will go in an estimation

2 hearing.

3   I also don't have an opinion as to whether or not

4 there has been suppression of evidence. Those are serious

5 charges and notwithstanding the fact that Judge Hodges found on

6 the record that he had in Garlock what he did, I'm going to

7 take a very close and careful look at that. Because those are

8 very damning charges.

9   So I just want to tell you if you're worried about

10 being in the Western District of North Carolina, please

11 understand we take our cases one at a time and we've got three

12 different judges who've had these cases and you can't count on

13 any of us, totally, in agreeing with one another on, on these

14 matters at this point in time, okay?

15   So that said, I think we ought to give it a go. I'll

16 leave it to you to try to talk about how to frame this up and

17 who to pick as the mediator and we can talk about that next

18 month or I'll make myself available and set up a

19 videoconference call if you have issues. But I believe we

20 ought to at least make the effort here if for no other good

21 reason than where we're going right now is going to be a great

22 deal of work and expense and all concerned probably have better

23 things to do if we don't have to go through these, these

24 particular litigation thickets.

25   So let's just find out. We won't slow things down,

1   CERTIFICATE

2   I, court-approved transcriber, certify that the

3   foregoing is a correct transcript from the official electronic

4   sound recording of the proceedings in the above-entitled

5   matter.

6   /s/ *Janice Russell*   April 17, 2023

7   Janice Russell, Transcriber   Date

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EXHIBIT D

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

DECLARATION OF JORGE GALLARDO-GARCIA, PHD

I, Jorge Gallardo-García, PhD declare:

(1)   I am a Partner with Bates White, LLC ("Bates White"), an economic consulting firm with its primary office located in Washington, DC. The U.S. Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Court") authorized Bestwall LLC ("Bestwall") to retain Bates White in its chapter 11 case by an *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*.[2] I am duly authorized to make this Declaration as a consultant for Bestwall in this action.

Qualifications

(2)   I specialize in the application of statistics and computer modeling to economic and financial issues, and I have extensive experience working on the construction and design of complex databases for econometric and statistical analyses. I have more than 20 years of experience in the management, design, and analysis of large complex databases using statistical and econometric tools. Further, I have 15 years of experience in the management, design, and analysis of large complex asbestos personal injury and wrongful death claims' databases using statistical and econometric tools for valuation and forecasting. In particular, I have designed representative and efficient random samples of claims for multiple asbestos-related matters, and those samples have been used in central valuation analyses in those matters. I have submitted expert reports and

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[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, GA 30303.

[2]   *Ex Parte Order Authorizing the Debtor to Retain and Employ Bates White, LLC, as Asbestos Consultants as of the Petition Date*, No. 17-31795 (Bankr. W.D.N.C. Nov. 2, 2017) (Dkt. 40).

testified in U.S. Bankruptcy Court regarding the construction and reliability of asbestos claims
databases.

(3)   I received a PhD and an MA in Economics from the University of Pennsylvania, and a BS in
Economics, a BS in Business Administration, and an MA in Economics from the Instituto
Autónomo de México in Mexico City.

(4)   A complete and accurate copy of my curriculum vitae is attached as <u>Exhibit 1</u> to this Declaration.

(5)   I have personal knowledge of the facts set forth in this Declaration and, if called as a witness,
would testify competently to such facts under oath.

Background

(6)   Bestwall retained Bates White in its chapter 11 case to perform, among other things, a reliable
estimation of Bestwall's legal liability for mesothelioma claims; that is, estimating Bestwall's
share of final judgments that would be obtained by current and future Bestwall mesothelioma
claimants.

(7)   Since the commencement of Bestwall's chapter 11 case, I have been leading Bates White's work
to construct an analytical database containing information about the asbestos personal injury and
wrongful death claims filed against Bestwall and its predecessors (the "Bestwall Analytical
Database"). This Bestwall Analytical Database will be the foundation for most of the analyses
Bates White will perform in Bestwall's case, including Bates White's estimate of Bestwall's
legal liability.

(8)   I led Bates White's design, construction, and implementation of a random sample of historical
Bestwall mesothelioma claims for further review and analysis (the "Bestwall Random Sample"),
as one of the components for the Bestwall Analytical Database. The Bestwall Random Sample is
comprised of 2,407 claims, of which 35 are verdicts, 1,466 are settled claims, and 906 are
dismissed claims. I described the statistical foundation, the methodology, and the design for the
Bestwall Random Sample in my June 29, 2021 Declaration (the "June Declaration").[3] In the June
Declaration, I also explained that the Bestwall Random Sample was designed to be a
representative and efficient sample that can provide a reliable characterization of Bestwall's

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[3]   Declaration of Jorge Gallardo-García, PhD, June 29, 2021 (Dkt. 1924-G).

mesothelioma resolution history. The opinions I offered in the June Declaration concerning the reliability and efficiency of the Bestwall Random Sample remain unchanged.

(9)   It is my understanding that Bestwall's counsel provided the list of 2,407 Bestwall claims comprising the Bestwall Random Sample to the Official Committee of Asbestos Personal Injury Claimants (the "ACC") and the Future Claimants' Representative (the "FCR" and, together with the ACC, the "Claimant Representatives"). It is my further understanding that Bestwall's counsel also provided to the Claimant Representatives information about how Bates White designed the Bestwall Random Sample and that such information was then provided to the FCR's consultant, Ankura Consulting Group, LLC ("Ankura"). According to an email from the FCR's counsel,[4] Ankura, on behalf the Claimant Representatives, randomly selected 500 settled mesothelioma claims (the "ACC/FCR Additional Claims") that were not already part of the Bestwall Random Sample.[5] The email from the FCR's counsel further represented that the ACC/FCR Additional Claims were drawn from the settled claims not sampled in the Bestwall Random Sample using a stratified random sampling technique in which Ankura first assigned the non-sampled settled claims to groups based on claim amount and then drew claims randomly from certain groups using simple random sampling.[6] Upon review of the ACC/FCR Additional Claims, Bates White has determined that all those claims appear in the Bestwall claims database with settlements for less than $400,000 each.

(10)   Taken together, the Bestwall Random Sample and the ACC/FCR Additional Claims include a total of 1,966 settled mesothelioma claims. Thus, accounting for the 35 verdicts that were randomly selected in the Bestwall Random Sample, there are a total of 2,001 Bestwall verdict and settled mesothelioma claims within the combined samples (the "Combined Random Sample").[7] The Combined Random Sample, when weighted appropriately, is also a

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[4]   Sharon M. Zieg, Young Conaway Stargatt & Taylor LLP, email message to Davis L. Wright and Natalie D. Ramsey, Robinson & Cole LLP; James M. Jones, Jennifer L. Del Medico, Gregory M. Gordon, Jeffrey B. Ellman, and Jeff A. Kaplan, Jones Day; Garland Cassada and Stuart Pratt, Robinson Bradshaw; Erin Edwards, Edwin Harron, Elisabeth Bradley, and Paul Loughman, Young Conaway Stargatt & Taylor LLP; Richard Schneider, King & Spalding; with copy to Anne M. Steadman, Young Conaway Stargatt & Taylor LLP (July 8, 2021), attached as Exhibit 2 to this Declaration.

[5]   Thus, the set of ACC/FCR Additional Claims do not overlap with the Bestwall Random Sample.

[6]   I understand that Ankura separated the settled claims that were not part of the Bestwall Random Sample into groups defined by cutoffs of $50,000. Then, the ACC/FCR Additional Claims were randomly selected from the groups with cutoff values up to $400,000. At this time, certain questions remain about details of the stratified random sample methodology the ACC and FCR consultants used in selecting the ACC/FCR Additional Claims. For purposes of this Declaration and for designing the subsample described herein, I accept the FCR's counsel's representations as accurate.

[7]   2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the ACC/FCR Additional Claims.

representative sample of Bestwall's mesothelioma verdicts and settlement history because the Bestwall Random Sample is a representative sample of that resolution history and the ACC/FCR Additional Claims were drawn randomly, as described by the FCR's counsel. The Combined Random Sample, however, is less efficient as it includes more claims than necessary given that representativeness was already provided by the Bestwall Random Sample.

(11)   While both the Bestwall Random Sample and Combined Random Sample are reliable random samples for performing analyses related to Bestwall's liability estimation, Bestwall's counsel requested that I prepare a third sample that accounts for the ACC/FCR Additional Claims. In particular, Bestwall's counsel requested that, using the Combined Random Sample, Bates White prepare a random sample of approximately 1,500 verdict and settled claims (the "Joint 10% Random Sample"). As explained below, the claims in the Joint 10% Random Sample were randomly selected from the 2,001 Bestwall verdict and settled mesothelioma claims in the Combined Random Sample, which include the ACC/FCR Additional Claims.

Overview

(12)   I make this Declaration at the request of Bestwall's counsel in connection with Bestwall's *Motion to (A) Approve the Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence* filed in the above-referenced chapter 11 case. This Declaration describes the Joint 10% Random Sample for use in Bestwall's estimation proceeding.

(13)   The Joint 10% Random Sample was constructed by random sampling from the 2,001 verdict and settled cases in the Combined Random Sample. Like for the Bestwall Random Sample, Bates White followed well-established and generally accepted methods of statistical sampling when designing the Joint 10% Random Sample. This included accounting for Bates White's use of stratified random sampling for the Bestwall Random Sample and Ankura's reported use of stratification and supplemental random sampling methods for the ACC/FCR Additional Claims.

(14)   A stratified random sample of Bestwall mesothelioma claims can be designed to be representative of claims settled with different amounts by ensuring that the resulting sample includes sufficient examples from the whole distribution of amounts. I explained this in detail in my June Declaration. The Joint 10% Random Sample preserves the stratification structure that was in place for the Bestwall Random Sample and accounts for the ACC/FCR Additional Claims. Further, with detailed information about the methodology followed by Ankura in

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selecting the ACC/FCR Additional Claims,[8] the Joint 10% Random Sample can be used as representative of Bestwall's mesothelioma verdicts and settlements history and can be used for robust statistical analyses in this matter.

Random Sampling Techniques

(15) As explained in my June Declaration, sampling is a useful strategy if gathering and reviewing information for the whole population by conducting a census is not an option, for example, due to the financial cost or time delay associated with such an exercise. Because a sample includes only a fraction of the whole population, it invariably increases the analytical burden and can reduce the precision of results when compared to performing the same analysis on data for the whole population. Thus, any sample of a population should be designed in a manner that reduces the analytical burden and the uncertainty in the results. Such a sample should include elements from all segments of the target population, with sufficient numbers to allow for robust inferences. In order to draw a representative random sample that can be used to make robust inferences about the population, the sampling technique chosen in a specific situation must take into account the characteristics of the population and the level of precision desired.

(16) Stratified random sampling is a technique that involves dividing the target population based on known characteristics into smaller non-overlapping groups such that every element of the population belongs to one and only one group. Then, within each group, simple random sampling is applied, where each element within the group has an equal probability of being sampled.[9]

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[8]   At this time, Bates White has not received the sampling weights Ankura calculated for each of the settled claims not in the Bestwall Random Sample. Additionally, Bates White has not received information on the exact stratification followed by Ankura. However, based on representations from the FCR's counsel, the Joint 10% Random Sample is a representative sample of Bestwall's mesothelioma verdicts and settlements history. Should those representations prove incorrect, I reserve the right to update my opinions in this Declaration.

[9]   Stratified random sampling is used in a wide range of fields and applications by economists, statisticians, researchers, and statistical agencies. For example:

The Current Population Survey (CPS), published by the Bureau of Labor Statistics, is one of the most recognized surveys in the United States (https://www.bls.gov/cps/). The CPS technical documentation describes the stratified sampling design for this survey (*see* https://www.bls.gov/cps/sample_redesign_2014.pdf).

The American Community Survey (ACS) is conducted by the Census Bureau (https://www.census.gov/programs-surveys/acs). Its "Design and Methodology" publication describes how it uses a stratification strategy based on a measure of the size of the *Census Block* (*see* https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_previous.pdf).

For textbook examples of the theoretical foundation and applications of stratified random sampling methods *see*:

The Joint 10% Random Sample

(17)   As described in detail in my June Declaration, Bates White designed and identified the Bestwall Random Sample as a stratified random sample representative of Bestwall's historical mesothelioma claims that were resolved through verdict, settlement, or that were dismissed by the claimants.

(18)   Bestwall's asbestos tort experience shows an uneven distribution of the number of claims it resolved, including the divergence of settlement values, and the rarity of cases resolved through verdict and by settlements over $1 million. My June Declaration provides a detailed description of Bestwall's distribution of its mesothelioma settlement amounts and rarity of verdicts. For example, of the approximately 15,000 settled mesothelioma claims in Bestwall's tort history, more than 60% settled for $50,000 or less while less than 1% were settled for amounts of more than $1 million. Further, the 35 mesothelioma verdicts (7 plaintiff verdicts and 28 defense verdicts) Bestwall experienced in its tort history represent only about 0.23% of the mesothelioma claims that Bestwall resolved through verdict or settlement.

(19)   Therefore, to ensure that the Joint 10% Random Sample includes sufficient observations of claims with different claimant and claim characteristics, especially those that are rare—e.g., verdicts and claims with high settlement values—I maintained the same stratification used to draw the Bestwall Random Sample.

(20)   The Joint 10% Random Sample is a subsample drawn from the Combined Random Sample which incorporates the Bestwall Random Sample and the ACC/FCR Additional Claims, and that can be used as a representative sample of Bestwall's historical mesothelioma verdicts and settlements population.

(21)   Specifically, the Joint 10% Random Sample was designed as follows. First, Bates White pooled the 2,001 Bestwall verdict and settled claims from the Bestwall Random Sample and the ACC/FCR Additional Claims into a single set of Bestwall claims (the Combined Random Sample). Second, Bates White classified each of the 2,001 claims in this combined set using the same stratification for verdict and settled claims used for the Bestwall Random Sample.[10] That is,

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Paul S. Levy and Stanley Lemeshow, *Sampling of Populations: Methods and Applications, 4th ed.* (Hoboken, N.J.; Wiley, 2013).

William G. Cochran, *Sampling techniques, 3rd ed.* (New York; Wiley, 1977).

[10]   As explained in my June Declaration, for purposes of asbestos trust discovery, dismissed claims were not included in the 1,501 random sample described in such declaration and are also not included in the Joint 10% Random Sample described herein.

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the pooled set of 2,001[11] mesothelioma verdict and settled claims from the Combined Random
Sample were parsed into 157[12] non-overlapping groups as follows:

- o Verdicts (including plaintiff and defense verdicts)

  - For simplification, these claims were assigned to only one group.

- o Settlements

  - Bates White separated settled claims into 156[13] non-overlapping groups based on the
    period of claim resolution,[14] injured party/claimant gender,[15] settlement amount
    category,[16] and an indicator for law firms with the majority of claims resolved
    through group settlements.[17]

(22) Third, within each group defined above, Bates White randomly sampled claims with equal
probability.[18]

- o For simplicity and computational convenience, all 181 claims in the groups including
  verdicts and settlements of more than $1 million were included in the Joint 10% Random
  Sample. This is because, if these 181 claims were assigned to groups using the same
  factors used for the rest of the settlements, the number of claims in those resulting groups
  would be small. This would result in having to include all claims within those groups in a
  representative sample to account for differences across those claims, as those claims
  present large variation across claimant characteristics of interest for analysis. Further, as

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[11]   2,001 = 35 verdicts + 1,466 settled claims from the Bestwall Random Sample + 500 settled claims from the
       ACC/FCR Additional Claims.

[12]   This is comprised of one group for verdicts and 156 groups for settlements.

[13]   Bates White divided settled claims into 3 categories by claim resolution period, 2 categories by injured
       party/claimant gender, 13 categories by settlement amount, and 2 categories by the indicator for law firms with
       the majority of claims resolved through group settlements. Therefore, there were a total of 156 groups for
       settled claims (156 = 3 × 2 × 13 × 2). The definitions of these categories are described in the next footnotes.

[14]   The resolution years in the Bestwall database were divided into three periods: through 2000, from 2001 through
       2010, and from 2011 through Bestwall's bankruptcy petition date (November 2, 2017).

[15]   Claimants were identified as male or female based on the gender field included in the database.

[16]   Settlement amounts were divided into 13 categories, based on cut-off levels observed in the data at $10,000,
       $25,000, $50,000, $75,000, $100,000, $200,000, $300,000, $400,000, $500,000, $1 million, $2 million,
       $5 million, and greater than $5 million.

[17]   Bates White classified claim records based on whether a claim was represented by a plaintiff law firm with
       which Bestwall entered into settlement agreements to resolve multiple claims at once, as part of inventory deals,
       docket clearing deals, or matrix agreements. That classification had two categories: (1) claims represented by
       law firms whose group settlements accounted for 50% or less of their Bestwall settled claims, and (2) claims
       represented by law firms whose group settlements accounted for more than 50% of their Bestwall settled
       claims.

[18]   The random sampling algorithm was designed to select a minimum of two claims from each group.

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explained in my June Declaration, because these cases were important in terms of liability concerns for Bestwall, importance sampling techniques also result in their inclusion in the sample.

o Bates White then drew the rest of the random sample from each defined group that contained one or more of the remaining 1,820 (= 2,001 − 181) claims.

- Because 181 claims (verdicts and settlements for more than $1 million) out of the approximate 1,500 target sample size[19] were already selected, 1,319 claims remained to be drawn. To approximate the distribution from the 2,001 target population, which includes the ACC/FCR Additional Claims, Bates White drew 72.5% of the claims in each group, with the resulting sample size rounded to the nearest integer.[20] The rounding in the number of claims resulted in an additional 1,320 claims drawn in this stage, only one more claim than the initial target.

(23) The resultant Joint 10% Random Sample includes 1,501 claims: 35 verdicts and 1,466 settled claims. Of the 1,466 randomly selected settled claims, 358 were part of the ACC/FCR Additional Claims. Thus, 72% of the ACC/FCR Additional Claims were randomly selected for inclusion in the Joint 10% Random Sample.[21] Further, the percentage of claims in amount groups to which Ankura added claims (those with settlements of up to $400,000) increased from about 71% in the Bestwall Random Sample to 76%[22] in the Joint 10% Random Sample. Because the 1,501 claims in the Joint 10% Random Sample were randomly selected from the verdict and settled claims from the representative Combined Random Sample using stratified random sampling, the resulting sample is also a representative random sample that can be reliably used for analysis.

(24) To summarize, the Joint 10% Random Sample is a representative random subsample from the representative Combined Random Sample, which is composed of the Bestwall Random Sample and the ACC/FCR Additional Claims.

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[19]   The 1,500 target represents about 10% of the approximately 15,000 resolved mesothelioma claims.

[20]   The 72.5% is the result of calculating the percentage that the 1,319 claims still to be drawn (1,319 = 1,500 − 181) represent out of the remaining target population of 1,820 (1,820 = 2,001 − 181); i.e., 72.5% = (1,500 − 181) ÷ (2,001 − 181).

[21]   72% = 358 ÷ 500.

[22]   These percentages assume that Ankura included the amount $400,000 in the boundary for the top group to which they added claims. If Ankura defined that top group as "less than $400,000" (excluding the amount $400,000 in the boundary), the percentage represented by the supplemented groups increased from 69% in the Bestwall Random Sample to 74% of the Joint 10% Random Sample.

(25) My understanding that the claim documents for both the Bestwall Random Sample and the ACC/FCR Additional Claims (and, therefore, for the Joint 10% Random Sample) have already been collected.

(26) Bates White's work on this matter is ongoing. I reserve the right to update or supplement my Declaration at the request of counsel, or in the event that I receive any new information that has a material impact on my opinions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 28, 2021

_____
Jorge Gallardo-García, Ph.D.
Partner
Bates White, LLC

<u>Exhibit 1</u>

JORGE RAÚL GALLARDO-GARCÍA, PHD

Partner

AREAS OF EXPERTISE

- **Product liability forecasting**
- **Statistical analysis**
- **Insurance allocation**
- **Applied econometrics**
- **Financial reporting**
- **Labor and health economics**

SUMMARY OF EXPERIENCE

Jorge Gallardo-García has authored and submitted expert reports and declarations and provided deposition testimony in several litigation matters. He has extensive experience in statistical modeling and data analysis and performs economic analysis, valuation, forecasting, sample design, and research, as well as discovery support. He has worked on numerous engagements involving product liability issues, in the context of bankruptcy procedures, insurance coverage disputes and settlement support, financial reporting, and strategic consulting. In addition, he has presented results of his work at national conferences on asbestos litigation topics and actuarial methods.

Prior to joining Bates White, Dr. Gallardo-García conducted empirical research on social program evaluation, labor and health economics, and demography. As part of his research, he simulated policy experiments for evaluating effects of different government health policies may have on health outcomes.

EDUCATION

- PhD, Economics, University of Pennsylvania
- MA, Economics, University of Pennsylvania
- MA, Economics, ITAM, México City, México (*summa cum laude*)
- BS, Business Administration, ITAM, México City, México (*summa cum laude*)
- BS, Economics, ITAM, México City, México (*magna cum laude*)

SELECTED BATES WHITE EXPERIENCE

- Retained as a complex database construction and statistics expert on behalf of the debtor in the matter *In re DBMP LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.
- Retained and authored declarations as a complex database construction and statistics expert on behalf of the debtor in the matter *In re Bestwall LLC* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.

- Retained and authored declarations as a complex database construction and statistics expert on behalf of Truck Insurance Exchange in the matter *In re Kaiser Gypsum Company, Inc., et al.* pending in the US Bankruptcy Court for the Western District of North Carolina, Charlotte Division.

- Retained and authored declarations as a complex database construction and statistics expert on behalf of certain insurance carriers in the matter *Rapid American Corporation, et al., v Travelers Casualty and Surety Company, et al.* in the US Bankruptcy Court for the Southern District of New York.

- Engaged as expert by John Crane Inc. and authored declarations in relation to Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuits it filed against certain law firms in connection with the firms' conduct in previous personal injury and wrongful death cases alleging exposure to John Crane's asbestos-containing products.

- Authored expert reports and declarations and provided deposition and trial testimony on behalf of the Debtors in the matter *In re Garlock Sealing Technologies, LLC*, No. 10-BK-31607 (US Bankruptcy Court for the Western District of North Carolina). Analyzed large, complex data sets and developed robust random samples that were used to assess the value of pending and future asbestos-related personal-injury claims. The resulting database constructed in this matter was described by the presiding Judge as "…the most extensive database about asbestos claims and claimants that has been produced to date. It is the most current data available and is the only data that accurately reflects the pool of claims against Garlock."

- Submitted a declaration on behalf of insurance companies in relation to the matter *In re Pittsburgh Corning Corporation*, No. 00-22876-TPA (US Bankruptcy Court for the Western District of Pennsylvania). Discussed the overlap between the claimants who cast a ballot in the PCC bankruptcy and the claimants who appear in the publicly available Garlock Analytical Database.

- Produce annual and quarterly estimates of companies' potential asbestos and other tort-related expenditures, and author opinion letters to help clients ensure compliance with Sarbanes-Oxley, SEC, and other comprehensive reporting requirements.

- Led team supporting the asbestos claims valuation and forecasting expert in arbitration on behalf of Cooper Industries in *Pepsi-Cola Metropolitan Bottling Co. et al. v. Cooper Industries et al.*

- Led team in support of expert in asbestos claims valuation for financial reporting purposes on behalf of certain Halliburton stockholders (US District Court, Northern District of Texas) regarding Halliburton's financial disclosures of its asbestos liabilities after its acquisition of Dresser.

- Led team supporting the expert in asbestos claims valuation, estimation methodology, and asbestos reinsurance billing on behalf of American Re-Insurance Company and ACE Property and Casualty Company (New York Court of Appeals) regarding the proper reinsurance bill associated with USF&G's reinsurance of its asbestos-related payments to Western MacArthur.

- Estimated and simulated future asbestos-related expenses in litigation contexts.

- Implemented insurance allocation of asbestos-related losses in financial reporting, invoicing, and litigation contexts.

- Designed and implemented statistically representative samples for claim file audits regarding asbestos claims. Samples were used in the estimation of future asbestos-related expenses and insurance allocations in litigation and consulting contexts.

- Directed protocol design and database construction based on data collected through claim file reviews regarding asbestos claims. The products were used to estimate future asbestos-related expenses and insurance allocations in litigation and consulting contexts.

ACADEMIC EXPERIENCE

- At the University of Pennsylvania, conducted empirical research on infant health, labor market participation, and healthcare insurance availability

- Participated as part of the external evaluation team at the University of Pennsylvania in the largest experiment-designed social program, the Progresa/Oportunidades from México

- Collaborated as a teaching assistant for the Microeconomic Theory course of the PhD in Economics program at the University of Pennsylvania

- Held recitation sessions on Introductory Macroeconomics at the University of Pennsylvania

- Conducted economic research as visiting researcher at Centre for Economic Research (CIE), ITAM, México City, México

- Taught Applied Econometrics as an invited lecturer at ITAM, México City, México

- Conducted research on inflation as a visiting researcher at the Economic Research Department in Banco de México, México

- Participated as Economic Advisor on topics involving electricity demand estimation at Miguel Estrada Iturbide Foundation, Congress of México, México City, México

- Participated as Economic Analyst at the Centre for Economic Analysis and Research (CAIE), ITAM, México City, México

DISTINCTIONS AND HONORS

- First place in the research category of the 2006 Banamex Economics Award, one of the most prestigious prizes to economic research in México that has been awarded by the Banco Nacional de México since 1951. This international competition is focused on conducting research on development economics and public policy applicable to México. The panel of judges includes the Secretary of Finance, the Governor of the Central Bank, deans of the economics departments from the most prestigious universities in México, and members of the Economics Research Department of Banamex.

- Dissertation Fellowship, Department of Economics, University of Pennsylvania.

- Mellon Award for Latin American Demographic Studies, University of Pennsylvania.

- Inaugural recipient, President Emerita Judith Rodin Graduate Fellowship Award.

- University Fellowships, Department of Economics, University of Pennsylvania.

- Academic Excellence Scholarship, CONACYT, México City, México.

PUBLICATIONS

- "Are Conditional Cash Transfers Effective in Urban Areas? Evidence from Mexico," joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd, and Viviana Vélez-Grajales, in Education Economics, Taylor and Francis Journals, vol. 20, no. 3 (2012): 233–59.

- "*Oportunidades* Impact on Children and Youths Education in Urban Areas after One-year of Program Participation," (in Spanish) with Petra E. Todd, Jere R. Behrman and Susan W. Parker, in *External Evaluation of the Impact of Oportunidades Program 2004: Education*, eds. B. Hernández-Prado, and M. Hernández-Avila, Chapter 3, Vol. 1, 167–227 Cuernavaca, México: National Institute of Public Health, 2005.

SELECTED SPEAKING ENGAGEMENTS

- "The Future of Mesothelioma in the US and the Increasing Portion of Diagnoses Not Related to Asbestos Exposure: Estimation and Forecasting." 1st Annual Asbestos Litigation Strategies ExecuSummit, Dec. 2–3, 2014.

- "Emerging Trends in Asbestos Reserving." Casualty Actuarial Society 2014 Casualty Loss Reserve Seminar, Sept. 15, 2014.

- "An Asbestos Defendant's Legal Liability—the Experience in Garlock's Bankruptcy Asbestos Estimation Trial." Bates White webinar, July 29, 2014.

- "By the Numbers: The Future of Mesothelioma in America." Perrin Conferences Cutting-Edge Issues in Asbestos Litigation Conference, Mar. 18, 2014.

RESEARCH PAPERS

- "Health Insurance and Pregnancy Outcomes: An Analysis of Fertility, Prenatal Care and Employment in México," PhD Dissertation, University of Pennsylvania, 2006

- "How School Subsidies Impact Schooling and Working Behaviors of Children and Youth in Urban México," joint with Jere R. Behrman, Susan W. Parker, Petra E. Todd and Viviana Vélez-Grajales (working paper, University of Pennsylvania, 2005)

- "Forecasting Inflation with Factor Analysis: A Two Countries Application," Banco de México and University of Pennsylvania, 2003

- "Interest Rate Parity and Risk Premium in Mexico," ITAM, 2001, México City, México

- "Evidence of Long Memory in the Mexican Currency Market," ITAM, 2001, México City, México

LANGUAGES

- Spanish (native)

Exhibit 2

From:	Zieg, Sharon <SZIEG@ycst.com>
Sent:	Thursday, July 8, 2021 11:49 AM
To:	'Wright, Davis L.'; Jones, James M.; Ramsey, Natalie D.; Del Medico, Jennifer L.; Edwards, Erin; Gregory M. Gordon; Jeffrey B. Ellman; Cassada, Garland; Harron, Edwin; Bradley, Elisabeth; Kaplan, Jeff A.; Schneider Richard (King & Spalding - Atlanta, GA); Pratt, Stuart; Loughman, Paul
Cc:	Steadman, Anne M.
Subject:	RE: Bestwall - Sampling Meet & Confer

In follow-up to our call yesterday regarding the negotiation of the 502(d) order, the following is a description of how the additional 500 claims were selected:

- Ankura divided the population of settled claims into non-overlapping groups, using cutoffs that were multiples of $50k
- Ankura randomly selected additional claims so that the overall sample size (Bates + Ankura/LAS) for each of the 5 groups between $150K and $400K, is 110
- Next, Ankura randomly sampled from the three most underrepresented groups (other than the "less than $50K" group) until the overall sampling rate (Bates + Ankura/LAS) in each of the three groups was 17%
- Finally, Ankura randomly sampled 39 claims from the "less than $50K" group

Regards,
Sharon

Sharon M. Zieg, Partner
Young Conaway Stargatt & Taylor, LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801
P: 302.571.6655 | F: 302.576.3350
SZIEG@ycst.com | www.youngconaway.com | vCard

This message may contain confidential attorney-client communications or other protected information. If you believe you are not an intended recipient (even if this message was sent to your e-mail address), you may not use, copy, or retransmit it. If you believe you received this message by mistake, please notify us by return e-mail, and then delete this message. Thank you for your cooperation.

From: Wright, Davis L. <DWright@rc.com>
Sent: Tuesday, July 6, 2021 9:13 PM
To: Jones, James M. <jmjones@JonesDay.com>; Ramsey, Natalie D. <NRamsey@rc.com>; Del Medico, Jennifer L. <jdelmedico@JonesDay.com>; Edwards, Erin <eedwards@ycst.com>; Gregory M. Gordon <gmgordon@jonesday.com>; Jeffrey B. Ellman <jbellman@jonesday.com>; Garland Cassada (GCassada@rbh.com) <GCassada@rbh.com>; Harron, Edwin <eharron@ycst.com>; Bradley, Elisabeth <EBradley@ycst.com>; Kaplan, Jeff A. <jkaplan@jonesday.com>; Schneider Richard (King & Spalding - Atlanta, GA) <dschneider@kslaw.com>; Pratt, Stuart <SPratt@robinsonbradshaw.com>; Loughman, Paul <PLoughman@ycst.com>; Zieg, Sharon <SZIEG@ycst.com>
Cc: Steadman, Anne M. <ASteadman@ycst.com>
Subject: Re: Bestwall - Sampling Meet & Confer
Jim,

Following last week's meet and confer and further discussions with LAS and the FCR, we would propose the following options for addressing the scope of the 502(d) proposal:

1. The Committee and the FCR would be willing to consider a smaller sample size of approximately 1,500 to 1,600 claims files (out of the total 2,907 Sample Resolved Mesothelioma Files) as the scope of the 502(d) production.

1

The Committee/FCR would provide a spreadsheet of the claimants that would form the sample. The Debtor, the Committee, and the FCR would all have to agree that this would be the sample for estimation.

2. The 502(d) order would apply to the claims files of all claimants identified in the Bates Reliance Materials and the Debtor would produce all documents, including privileged documents, related to those claim files. The Committee would be amenable to granting an extension on the production of the Additional 500 claims files, however these additional files would not be subject to the 502(d) Order; or

3. The Debtor would provide all documents for all 2,907 claim files (less the 200 or so for which there is allegedly no documentation) pursuant to the 502(d) order.

With respect to each of the above options, the Committee and the FCR reserve all rights with respect to seeking additional 502(d) documents or claims files depending on the outcome of the trust-related litigation pending in Delaware and/or any decision by the Debtor or its agents to modify the scope of the sample size, utilize a different sample or sample size, or modify the individuals assigned to the sample. We can discuss further on tomorrow's call but thought it would make sense to provide the Debtor with insight on our current thinking.

Best,
Davis
Davis Lee Wright

Robinson & Cole LLP
1201 North Market Street
Suite 1406
Wilmington, DE 19801
Direct 302.516.1703 | Fax 302.516.1699
dwright@rc.com | www.rc.com

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Los Angeles | Wilmington | Philadelphia | Albany | New London

From: "Jones, James M." <jmjones@JonesDay.com>
Date: Tuesday, July 6, 2021 at 2:25 PM
To: "Wright, Davis L." <DWright@rc.com>, "Ramsey, Natalie D." <NRamsey@rc.com>, "Del Medico, Jennifer L." <jdelmedico@JonesDay.com>, "Edwards, Erin" <eedwards@ycst.com>, Gregory Gordon <gmgordon@jonesday.com>, Jeffrey Ellman <jbellman@jonesday.com>, "Garland Cassada (GCassada@rbh.com)" <GCassada@rbh.com>, "eharron@ycst.com" <eharron@ycst.com>, "Bradley, Elisabeth" <EBradley@ycst.com>, "Kaplan, Jeff A." <jkaplan@jonesday.com>, "Schneider Richard (King & Spalding - Atlanta, GA)" <dschneider@kslaw.com>, "Pratt, Stuart" <SPratt@robinsonbradshaw.com>, "Loughman, Paul" <PLoughman@ycst.com>, Sharon Zieg <szieg@ycst.com>
Cc: "Steadman, Anne M." <ASteadman@ycst.com>
Subject: RE: Bestwall - Sampling Meet & Confer
I can make that work.

James M. Jones **(bio)**
Partner
JONES DAY® - One Firm Worldwide℠
250 Vesey Street
New York, NY 10281-1047
Office +1.212.326.7838

2

From: Wright, Davis L. <DWright@rc.com>
Sent: Tuesday, July 6, 2021 2:22 PM
To: Ramsey, Natalie D. <NRamsey@rc.com>; Del Medico, Jennifer L. <jdelmedico@JonesDay.com>; Edwards, Erin <eedwards@ycst.com>; Gordon, Gregory M. <gmgordon@JonesDay.com>; Ellman, Jeffrey B. <jbellman@JonesDay.com>; Garland Cassada (GCassada@rbh.com) <GCassada@rbh.com>; Edwin J. Harron <eharron@ycst.com>; Bradley, Elisabeth <EBradley@ycst.com>; Kaplan, Jeff A. <jkaplan@jonesday.com>; Schneider Richard (King & Spalding - Atlanta, GA) <dschneider@kslaw.com>; Pratt, Stuart <SPratt@robinsonbradshaw.com>; Loughman, Paul <PLoughman@ycst.com>; Sharon Zieg <szieg@ycst.com>; Jones, James M. <jmjones@JonesDay.com>
Cc: Steadman, Anne M. <ASteadman@ycst.com>
Subject: RE: Bestwall - Sampling Meet & Confer

 ** External mail **

All,
We think we need some additional time to address some issues on our side. Could we reschedule this for 1:30 pm tomorrow?
Thanks,
Davis
Davis Lee Wright

Robinson & Cole LLP
1201 North Market Street
Suite 1406
Wilmington, DE 19801
Direct 302.516.1703 | Fax 302.516.1699
dwright@rc.com | www.rc.com

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Los Angeles | Wilmington | Philadelphia | Albany | New London
-----Original Appointment-----
From: Wright, Davis L.
Sent: Friday, July 2, 2021 10:44 AM
To: Wright, Davis L.; Ramsey, Natalie D.; Del Medico, Jennifer L.; Edwards, Erin; Gregory M. Gordon; Jeffrey B. Ellman; Garland Cassada (GCassada@rbh.com); Edwin J. Harron; Bradley, Elisabeth; Kaplan, Jeff A.; Schneider Richard (King & Spalding - Atlanta, GA); Pratt, Stuart; Loughman, Paul; Zieg, Sharon; Jones, James M.
Cc: Steadman, Anne M.
Subject: Bestwall - Sampling Meet & Confer
When: Tuesday, July 6, 2021 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: https://robinsoncole.zoom.us/j/99440279877?pwd=UXlMWkJ3OGVVRWNzOE51cWVTT01nUT09

Davis Lee Wright is inviting you to a scheduled Zoom meeting.

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Meeting ID: 994 4027 9877

Passcode:334727

Dial In Passcode: 334727

Join by Telephone

Phone one-tap: US: +13017158592,,99440279877# or +13126266799,,99440279877#

Dial: US: +1 301 715 8592 or +1 312 626 6799 or +1 646 876 9923

Meeting ID: 994 4027 9877

Dial In Passcode: 334727

International numbers

Join from an H.323/SIP room system

H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)

H.323 Meeting ID: 994 4027 9877 (Passcode: 334727)

SIP: 99440279877@zoomcrc.com (Passcode: 334727)

If you have difficulty logging into this webinar/meeting please contact the Robinson+Cole help desk at 1-888-727-2457.

EXHIBIT C

EXHIBIT E

1

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

 3   IN RE:                          :    Case No. 20-30080-JCW

 4   DBMP LLC,                       :    Chapter 11

 5      Debtor,                      :    Charlotte, North Carolina
                                          Thursday, February 9, 2023
 6                                   :    9:30 a.m.
     : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :
 7
     OFFICIAL COMMITTEE OF           :    AP 22-3045 (JCW)
 8   ASBESTOS PERSONAL INJURY
     CLAIMANTS, and SANDER L.        :
 9   ESSERMAN, etc.,
                                     :
10      Plaintiffs,
                                     :
11           v.
                                     :
12   CERTAINTEED LLC (f/k/a
     CERTAINTEED CORPORATION)        :
13   (a/k/a "OLD CERTAINTEED"),
                                     :
14      Defendant,
                                     :
15   : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

16   DBMP LLC,                       :    AP 20-3004 (JCW)

17      Plaintiff,                   :

18           v.                      :

19   THOSE PARTIES LISTED ON         :
     APPENDIX A TO COMPLAINT and
20   JOHN AND JANE DOES 1-1000,      :

21      Defendants,                  :

22   : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :

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 1   THE ARMSTRONG WORLD            :      Case No. 22-00302 (JCW)
     INDUSTRIES, INC. ASBESTOS
 2   PERSONAL INJURY SETTLEMENT     :       (Transferred from the
     TRUST, et al.,                         District of Delaware)
 3                                  :

         Plaintiffs,
 4                                  :

             v.
 5                                  :

     DBMP LLC,
 6                                  :

         Defendant.
 7                                  :

     : : : : : : : : : : : : : : : : : : : : : : : : : : : : : : :
 8


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


11   APPEARANCES:

12   For Debtor/Defendant,         Robinson, Bradshaw & Hinson, P.A.
     DBMP LLC:                      BY:  GARLAND CASSADA, ESQ.
13                                       M. BENNETT WRIGHT, ESQ.
                                    101 N. Tryon Street, Suite 1900
14                                  Charlotte, NC  28246

15                                  Jones Day
                                    BY:  GREGORY M. GORDON, ESQ.
16                                  2727 North Harwood St., Suite 500
                                    Dallas, Texas  75201

17


18
     Audio Operator:               COURT PERSONNEL
19


20   Transcript prepared by:       JANICE RUSSELL TRANSCRIPTS
                                    1418 Red Fox Circle
21                                  Severance, CO  80550
                                    (757) 422-9089
22                                  trussell31@tdsmail.com


23


24   Proceedings recorded by electronic sound recording; transcript
     produced by transcription service.
25
```

3

```
 1  APPEARANCES (continued):

 2  For Debtor/Defendant,        Jones Day
    DBMP LLC:                    BY:  JEFFREY B. ELLMAN, ESQ.
 3                               1221 Peachtree Street, N.E., #400
                                 Atlanta, GA  30361
 4
                                 Jones Day
 5                               BY:  JAMES M. JONES, ESQ.
                                 250 Vesey Street
 6                               New York, NY  10281

 7  For Plaintiff, ACC:          Robinson & Cole LLP
                                 BY:  DAVIS LEE WRIGHT, ESQ.
 8                               1201 N. Market Street, Suite 1406
                                 Wilmington, DE  19801
 9
                                 Winston & Strawn LLP
10                               BY:   DAVID NEIER, ESQ.
                                      CRISTINA CALVAR, ESQ.
11                               200 Park Avenue
                                 New York, NY  10166-4193
12
                                 Caplin & Drysdale
13                               BY:  JAMES P. WEHNER, ESQ.
                                 One Thomas Circle, N.W.,
14                               Washington, DC  20005

15                               Hamilton Stephens
                                 BY:  ROBERT A. COX, JR., ESQ.
16                               525 North Tryon St., Suite 1400
                                 Charlotte, NC  28202
17
                                 NATHANIEL ROSE, ESQ.
18
    For Plaintiff, Future        Young Conaway
19  Claimants' Representative,    BY:  SEAN GREECHER, ESQ.
    Sander L. Esserman:               SHARON ZIEG, ESQ.
20                               1000 North King Street
                                 Wilmington, DE  19801
21
                                 Alexander Ricks PLLC
22                               BY:  FELTON E. PARRISH, ESQ.
                                 1420 E. 7th Street, Suite 100
23                               Charlotte, NC  28204

24

25
```

4

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 1  APPEARANCES (continued):

 2  For Defendants, CertainTeed    Goodwin Procter LLP
    LLC, et al.:                   BY:  HOWARD S. STEEL, ESQ.
 3                                      STACY DASARO, ESQ.
                                   620 Eighth Avenue
 4                                 New York, NY  10018

 5                                 Rayburn Cooper & Durham, P.A.
                                   BY:  JOHN R. MILLER, JR., ESQ.
 6                                 227 West Trade Street, Suite 1200
                                   Charlotte, NC  28202
 7
    For Certain Matching           Waldrep Wall
 8  Claimants:                     BY:  DIANA SANTOS JOHNSON, ESQ.
                                   370 Knollwood Street, Suite 600
 9                                 Winston-Salem, NC  27103

10
    APPEARANCES (via telephone):
11
    For Certain Matching           Hogan McDaniel
12  Claimants:                     BY:  DANIEL K. HOGAN, ESQ.
                                   1311 Delaware Avenue
13                                 Wilmington, DE  19806

14  For Plaintiff, ACC:            Winston & Strawn LLP
                                   BY:  CARRIE HARDMAN, ESQ.
15                                 200 Park Avenue
                                   New York, NY  10166-4193
16

17                                 SANDER L. ESSERMAN
                                   Future Claimants' Representative
18                                 2323 Bryan Street, Suite 2200
                                   Dallas, TX  75201-2689
19

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 1 subpoena. The Delaware Court transferred the subpoena

 2 proceedings to this Court. In the meantime, I, I think it was

 3 early October, you actually heard the motions to quash. No

 4 mention at that hearing of any PII and exposure fields that we

 5 needed to be concerned about.

 6   In the meantime, as indicated before, the DCPF

 7 scrubbed and produced, first, what we call the stub production.

 8 These were the --

 9   THE COURT: Uh-huh (indicating an affirmative

10 response).

11   MR. CASSADA: -- Matching Claimants who didn't oppose

12 the subpoenas and then after your Honor entered the order the

13 DCPF produced the remaining data, again scrubbed of any PII.

14 The cost to DBMP is, roughly, $86,000, your Honor. You can see

15 those, those two figures are on the timeline.

16   Your Honor may recall that in the original request

17 DBMP did request not only information about the claims made and

18 what exposures were indicated in those claims, but did request

19 a litany of, of personal information. And this, this was

20 requested in the Bestwall subpoena as well. There was a

21 anonymization process there that was suggested to take place

22 after the production where the personal information would be

23 separated from the exposure information. That process is

24 actually, has been undertaken in, in the Bestwall case.

25   Your Honor, when Judge Connolly quashed the subpoena

1   CERTIFICATE

2   I, court-approved transcriber, certify that the

3   foregoing is a correct transcript from the official electronic

4   sound recording of the proceedings in the above-entitled

5   matter.

6   /s/ *Janice Russell*   February 13, 2023

7   Janice Russell, Transcriber   Date

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EXHIBIT F

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

_____

                                          Deposition of:

                                          MARK EVELAND

In re

ALDRICH PUMP LLC, et al.,   Chapter 11

                Debtors.   Case No. 20-30608

                                          (Jointly
                                          Administered)

_____

ARMSTRONG WORLD INDUSTRIES, INC.
ASBESTOS PERSONAL INJURY   Miscellaneous
SETTLEMENT TRUST, et al.,   Proceeding

                Plaintiffs,   No. 22-00303(JCW)

        -vs-   (Transferred from
                                          District of
ALDRICH PUMP LLC, et al.,   Delaware)

                Defendants.

_____

_____

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)   Miscellaneous
ASBESTOS PI TRUST, GI HOLDINGS   Proceeding
INC. ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT   No. 23-00300(JCW)
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS   (Transferred from
PERSONAL INJURY TRUST, QUIGLEY   District of
COMPANY, INC. ASBESTOS PI TRUST,   New Jersey)
T H AGRICULTURE & NUTRITION,
L.L.C. ASBESTOS PERSONAL INJURY
TRUST, and YARWAY ASBESTOS
PERSONAL INJURY TRUST,

                Petitioners,

        -vs-

ALDRICH PUMP LLC, et al.,

                Respondents,

VERUS CLAIM SERVICES, LLC,

                Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

                Interested Party.

        T R A N S C R I P T of Deposition

Proceedings held in the above-entitled matter, as taken

by and before MARY ADAMCIK, a Certified Court Reporter

and Notary Public of the State of New Jersey, held at

the law offices of ANSELMI & CARVELLI, ESQS., 56

Headquarters Plaza, West Tower, Fifth Floor,

Morristown, New Jersey, on Tuesday, May 16, 2023,

commencing at 9:20 a.m.

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   3

```
 1    A P P E A R A N C E S:

 2

 3            JONES DAY
              BY:  MORGAN R. HIRST, ESQ.,
              110 North Wacker Drive
 4            Suite 4800
              Chicago, IL  60606
 5            312-782-3939
              mhirst@jonesday.com
 6            Representing Debtors Aldrich Pump, LLC, et al.

 7

 8            ANSELMI & CARVELLI, LLP
              BY:  ANDREW E. ANSELMI, ESQ.,
              56 Headquarters Plaza
 9            West Tower,Fifth Floor
              Morristown, NJ  07960
10            973-635-6300
              aanselmi@acllp.com
11            Representing Verus Claim Services, LLC.

12

13            LOWENSTEIN SANDLER, LLP
              BY:  MICHAEL A. KAPLAN, ESQ.,
              One Lowenstein Drive
14            Roseland, NJ  07068
              973-597-2302
15            mkaplan@lowenstein.com
              Representing Verus Claim Services, LLC.

16

17            ROBISON & COLE, LLP
              BY:  AMANDA PHILLIPS, ESQ.,
18            One Boston Place
              26th Floor
19            Boston, MA  02108
              617-557-5916
20            aphillips@rc.com
              Representing the ACC.

21

22

23

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25
```

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   4

```
 1    TELEPHONIC APPEARANCES:

 2

         JONES DAY
 3       BY:  BRAD B. ERENS, ESQ.,
         110 North Wacker Drive
 4       Suite 4800
         Chicago, IL  60606
 5       312-782-3939
         Representing Debtors Aldrich Pump, LLC, et al.

 6

 7       CAPLIN & DRYSDALE, ESQS,
         BY:  JEANNA RICKARDS KOSKI, ESQ.,
 8       One Thomas Circle NW
         Suite 1100
 9       Washington, DC  20005
         202-862-5069
10       jkoski@capdale.com
         Representing the ACC.

11

12       ROBINSON & COLE, LLP
         BY:  RYAN M. MESSINA, ESQ.,
13       One Boston Place
         26th Floor
14       Boston, MA  02108
         617-557-5916
15       Representing the ACC.

16

         LOWENSTEIN SANDLER, LLP
17       BY:  NICHOLAS D. VELEZ, ESQ.,
         One Lowenstein Drive
18       Roseland, NJ  07068
         973-597-2302
19       Representing Verus Claim Services, LLC.

20

21

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```

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   5

```
1                        I N D E X

2
     WITNESS          DIRECT    CROSS    REDIRECT    RECROSS
3

4   MARK EVELAND:
        By MR. HIRST        6        --        --          --
5

6

7
                      E X H I B I T S
8
     No.                                          Ident.
9

10   Exhibit 1      Supplemental Declaration         15
                    of Lynda A. Bennett, 9 pgs.
11
     Exhibit 2      Subpoena to Produce Documents,   22
12                  Information, or Objects or to
                    Permit Inspection of Premises
13                  in a Bankruptcy Case (or
                    Adversary Proceeding), 23 pgs.
14
     Exhibit 3      Reply Declaration of             30
15                  Mark T. Eveland, 8 pgs.

16   Exhibit 4      Declaration of Mark T.           71
                    Eveland, 10 pgs.
17
     Exhibit 5      Declaration of Mark Eveland      81
18                  Pursuant to Rules 2014 and 2016
                    of the Federal Rules of
19                  Bankruptcy Procedure and
                    Section 328 of the United States
20                  Bankruptcy Code in Support of the
                    Ex Parte Application of the
21                  Official Committee of Asbestos
                    Personal Injury Claimants to
22                  Retain and Employ Verus LLC as
                    PIQ Data Administrator for the
23                  Personal Injury Questionnaire
                    Responses, 16 pgs.
24

25                  (Exhibits attached herein.)
```

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   6

```
 1   M A R K   E V E L A N D,

 2        with a business address of 3967 Princeton

 3        Pike, Princeton, New Jersey  08540,

 4        having first been duly sworn, testified as follows:

 5   DIRECT EXAMINATION BY MR. HIRST:

 6        Q.   Good morning, Mr. Eveland.

 7        A.   Good morning.

 8        Q.   We met out in the hallway.  My name is Morgan

 9   Hirst.  I represent the debtors in this case.

10             Have you been deposed before, sir?

11        A.   Yes.

12        Q.   About how many times?

13        A.   Once that I recall.

14        Q.   Okay.  Was it a deposition in your capacity as

15   an employee or officer of Verus?

16        A.   It was.

17        Q.   Okay.  And what was the case about that you

18   were deposed in?

19        A.   It was an insurance recovery dispute.

20        Q.   How many years ago was it?

21        A.   At least a decade ago.

22        Q.   Okay.  So I'll give you at least a reminder of

23   some of the rules of the road today.

24             Important thing will be audible responses to

25   my questions.  She can't take down head nods or sighs
```

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   7

1   or things like that, so if you would just audibly

2   respond. I will do my best not to talk over you, if

3   you could do your best not to talk over me, and she'll

4   get a clear record. Andrew and I may talk over each

5   other, but that's a different issue.

6   If you answer my question, I am going to

7   assume you understood it. If you don't understand my

8   question, ask me to rephrase or tell me you don't

9   understand it, and I'll do my best to rephrase it for

10 you.

11   Mr. Anselmi and others in the room, and maybe

12 even on the phone, may make objections from time to

13 time. I am going to anticipate you are going to answer

14 the question unless you are instructed otherwise.

15   If you need a break at any point, let us know.

16 It's not an inquisition, it's a deposition, so we'll

17 obviously take a break. I just ask if there is a

18 question pending, answer the question and we'll take

19 the break after.

20   Is there anything, Mr. Eveland, that would

21 prevent you from testifying truthfully today or

22 accurately?

23   A.   No.

24   Q.   And did you prepare for your deposition today?

25   A.   I did.

1   Q.   What did you do?

2   A.   I reviewed my Declaration and various other

3   papers in the case.

4   Q.   Do you know how many Declarations you

5   reviewed?

6   A.   I filed two Declarations in this case. I

7   reviewed the Declaration of Dr. Muller (phonetic), his

8   deposition transcript, and I believe the report filed

9   by Dr. Wyner.

10   Q.   And when you say Dr. Muller, is that Dr.

11   Mullin?

12   A.   Mullin, sorry.

13   Q.   No problem. He won't be insulted.

14   Did you also meet with counsel, sir?

15   A.   I did.

16   Q.   Who did you meet with?

17   A.   Mr. Anselmi and Mr. Kaplan and Mr. Wellbrook,

18   as well.

19   Q.   When did you have that meeting?

20   A.   Friday afternoon, I believe.

21   Q.   Was that in person or via some other --

22   A.   It was a videoconference.

23   Q.   About how long was your meeting with counsel?

24   A.   I don't recall precisely. Maybe 90 minutes.

25   Q.   Did you talk to anyone else at Verus in

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1   preparation for today's deposition?

2   A.   No.

3   Q.   Have you ever spoken to Dr. Wyner, Abraham

4   Wyner?

5   A.   I have met him.

6   Q.   In connection with his work in this case or

7   separately?

8   A.   No, I met him years ago in connection with

9   another case.

10   Q.   Okay. Have you spoken to him at all in

11 connection with this case we are all here for?

12   A.   I have not.

13   Q.   Mr. Eveland, you're the chief executive

14 officer of Verus, LLC. Is that the proper name or --

15   A.   Yes.

16   Q.   Okay. And if you could describe for us what

17 Verus does.

18   A.   We are a litigation support firm, so we

19 provide litigation support for firms that are involved

20 in mass tort and class action litigation, early-stage

21 litigation all the way through administration of

22 settlement funds and distribution of funds.

23   Q.   And the firms that Verus provides services

24 for, are they both plaintiffs' firms, defendants'

25 firms, primarily one or the other?

1   A.   The settlement administration work is usually

2 being retained by trustees, so essentially neither.

3 It's kind of in the middle, in that gray area between

4 the two parties.

5   Q.   Yes.

6   A.   And on the early-stage litigation support,

7 it's primarily plaintiff firms.

8   Q.   And Mr. Eveland, if you could just describe

9 briefly your educational background beginning with

10 college.

11   A.   Okay. I attended Pennsylvania State

12 University, where I obtained a bachelor's degree in

13 political science and history. I went on to graduate

14 school, a Ph.D. program in philosophy. I am an APD, I

15 did not defend my dissertation.

16   Q.   Are you a statistician, Mr. Eveland?

17   A.   I am not.

18   Q.   And I assume you're not an economist, either?

19   A.   I am not.

20   Q.   Your degree sounded a lot like mine other than

21 the part with the APD, so do you have any special

22 training or experience in statistics?

23   A.   No.

24   Q.   How about in sampling?

25   A.   No.

1   Q.   And why don't you describe for me your work

2   history beginning after -- well, just your work history

3   after college.

4   A.   Okay.   Well, when I left graduate school, I

5   was -- my first real job was with a management

6   consulting firm, Peterson Consulting.   They had a

7   client, and my first engagement that they assigned me

8   to was with a client called Center For Claims

9   Resolution, which was a captive organization that

10 managed the liabilities for 20 major asbestos

11 defendants at the time.   This was 1992 or early 1993.

12   I worked with them for a couple of years,

13 primarily on that engagement as well as a handful of

14 others.   And the CCR, as it was known, eventually hired

15 me inhouse, where I rose to become the director of

16 their operations.   I was intimately familiar with all

17 of the aspects of managing those liabilities.

18   When the CCR eventually dissolved in 2001,

19 because of many of the members filing for Chapter 11

20 protection, I went to work shortly thereafter to launch

21 a class action administration firm called RG3 Claims --

22 or RG2 Claims, sorry.   I worked with them for about a

23 year and then founded Verus in 2003.   I've been with

24 Verus ever since.

25   Q.   And is your title -- or putting aside your

1   title, has your responsibilities with Verus largely

2   been the same since you founded the company 20 years

3   ago?

4   A.   Pretty much, yeah.

5   Q.   Has it changed in any material way?

6   A.   The company is a lot bigger than it was in

7   2003 but --

8   Q.   How many employees does Verus have today?

9   A.   Just right around 90.

10   Q.   Okay. And in addition to employees, do you

11   guys regularly employ contractors or nonemployees?

12   A.   We do employ contractors for certain

13   functions.

14   Q.   About how many contractors that aren't

15   full-time employees are working for Verus as of now?

16   A.   Approximately 25 as of now.

17   Q.   Now, part of Verus's work, as I understand it,

18   is providing claims administration processing services

19   to asbestos trusts, if I've got that correct?

20   A.   That's correct.

21   Q.   And as it relates to that work, how many

22   trusts does Verus provide those services for? And I

23   don't need an exact number, just a rough estimate.

24   A.   Two dozen, a little more than that.

25   Q.   Okay. And you are aware that in this case --

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1 or relating to this Subpoena proceeding, the Subpoena

2 that was directed to Verus sought information

3 concerning eight of the trusts that Verus provided

4 services for. Is that right?

5   A.   I am aware of that, yes.

6   Q.   Now, we'll get to the Subpoena in this case,

7 but Verus has received other Subpoenas before in the

8 20 years you had the company. Correct?

9   A.   We have, yes.

10   Q.   Do you have any idea of approximately how many

11 Subpoenas you have received in that time?

12   A.   Including Subpoenas for individual things

13 filed? Countless. Countless. No real estimate.

14   Q.   And at least in some cases, Verus has provided

15 responses to those Subpoenas. Is that fair to say?

16   A.   In some cases, yes.

17   Q.   In some of those cases, has Verus moved to

18 quash those Subpoenas?

19   A.   Yes.

20   Q.   And has Verus been successful in some of those

21 cases?

22   A.   We have.

23   Q.   Who has the primary responsibility at Verus

24 for dealing with a Subpoena when it comes in?

25   A.   It's principally me.

1   Q.   Lucky you.

2   And what is that role when a Subpoena arrives

3   at Verus? What do you do?

4   A.   Well, the first step is to contact the counsel

5   for the trust whose records are being sought, make them

6   aware, notify them of the fact that we have received a

7   Subpoena. If it's been directed at Verus, we'll then

8   retain outside counsel to defend us in that Subpoena

9   and file the necessary motions.

10   Q.   Are there any instances where Verus doesn't

11 seek to quash or -- seek to quash that you can

12 remember?

13   MR. ANSELMI: Objection to form.

14   MS. PHILLIPS: I'm sorry, the ACC

15 joins in any objections made by the trusts today.

16   A.   We receive a lot of Subpoenas that are not

17 directed at Verus, in which case we just refer them on

18 to trust counsel and they take the necessary actions.

19   Q.   Okay. How about for Subpoenas directed to

20 Verus? Can you ever think of any instance where Verus

21 didn't seek to quash a Subpoena that was directed at

22 Verus?

23   A.   I can't recall any as I sit here today.

24   Q.   And actually, that raised a point that led to

25 another question.

1   You mentioned countless Subpoenas that Verus

2   has received. On a rough order of magnitude, how many

3   of those are actually directed to Verus versus a Verus

4   trust?

5   A.   A lot of the Subpoenas that we receive are for

6   individual cases. Most of those are directed at the

7   trust.

8   Q.   Okay.

9   A.   We have probably received these broad

10 third-party Subpoenas in other pending bankruptcy

11 cases, probably a dozen Subpoenas that were directed at

12 Verus.

13   Q.   Okay. Let me start marking some exhibits

14 here. I am going to hand you what we will mark as

15 Exhibit 1. There you go, Mr. Eveland.

16   (Exhibit 1 marked for identification.)

17   MS. PHILLIPS: I would like to make a

18 standing objection. Is that okay with you? The ACC

19 objects to any and all objections made by the trust

20 today.

21   MR. HIRST: Absolutely. Sure.

22   MR. ANSELMI: The trust or Verus.

23   MS. PHILLIPS: The trust or Verus,

24 yes.

25   MR. HIRST: Yes, that's fine. The ACC

1 can have a standing objection that they join counsel

2 for Verus on any objections he makes.

3   MS. PHILLIPS: And counsel for the

4 trust, if the trusts eventually do make any objections.

5   MR. HIRST: Sounds good.

6

7 BY MR. HIRST:

8   Q.   All right. Mr. Eveland, I have handed you

9 what we have marked as Exhibit 1. This is actually a

10 Declaration by an attorney named Lynda Bennett, who I

11 believe works at Michael's firm.

12   I am actually interested in the chart that's

13 attached as Exhibit A, and the title of it is Subpoenas

14 Involving Verus or Verus Trusts.

15   Do you see that?

16   A.   I do see that.

17   Q.   Did you have any role in creating this table

18 in here that's Exhibit A to Exhibit 1?

19   MR. KAPLAN: Objection to form. To

20 the extent that it calls for work product or common

21 interest communications between the Verus Trust and

22 Verus, I would advise that we are not waiving any such

23 privilege, and Mr. Anselmi can make the appropriate

24 instruction from there.

25   MR. ANSELMI: I agree. I make the

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1   same objection. If it's a yes-or-no question --

2   MR. HIRST: It's a yes --

3   MR. ANSELMI: -- I think that's fair,

4   but beyond any content, I would instruct him not to

5   answer.

6

7   BY MR. HIRST:

8   Q.   So why don't we start there, Mr. Eveland, and

9   see if we can work around the objections.

10   My question is solely did you have any role in

11 creating this chart we see as Exhibit A to Exhibit 1?

12   A.   No.

13   Q.   Okay. And I just do want to look at a few of

14 the entries here to see if you recognize the cases

15 referenced or the Subpoenas referred to.

16   The very first one on page one of this

17 document, it refers to a case called Congoleum Corp.

18 versus ACE American Insurance, and it describes the

19 discovery sought as all documents and data relating to

20 122,000 claimants. It then appears the Subpoena was

21 issued back in 2009.

22   Do you recall this Subpoena?

23   A.   I don't have any specific recall of it.

24   Q.   It mentions 122,000 claimants on order of

25 magnitude for Subpoenas that Verus receives. Is that a

1   typical volume of information sought?

2   MR. ANSELMI: Objection to form.

3   A.   It's fairly typical.

4   Q.   So I may not have heard your answer right. Do

5   you have any specific memory of the Subpoena at all?

6   A.   I remember receiving a Subpoena. I don't

7   recall the specifics of it.

8   Q.   Okay. Do you recall whether Verus responded

9   to that Subpoena by providing any information?

10   A.   I don't recall if there was a production that

11   was ordered in that case.

12   Q.   Okay. Let's go down to the next one then,

13   Federal Mogul Insurance Litigation. Claim submissions,

14   files, claim status, and settlements related to Wagner

15   claimants about 109,000, and it's dated May of 2010.

16   Do you have any recollection of this Subpoena?

17   A.   I do recall that one.

18   Q.   Okay. And what do you recall about it?

19   A.   I recall receiving it. I recall that went on

20   for a while. I don't recall the specifics of what the

21   outcome was.

22   Q.   And when you say you recall it went on for a

23   while, I am assuming you are referring to litigation

24   related to that Subpoena?

25   A.   Yes, litigation related to that Subpoena.

1   Q.   Do you recall whether Verus produced any

2   information in response to the Federal Mogul Subpoena

3   for Exhibit 1?

4   A.   I recall there was a production. I don't

5   recall the specifics.

6   Q.   Actually, let me make sure, because we have

7   the Verus trusts here and we have Verus. Do you recall

8   if the Verus trusts made any productions separate and

9   apart from Verus in response to the Federal Mogul

10 Subpoena?

11   A.   I wouldn't know if they made any separate

12 productions.

13   Q.   Okay. Do you recall whether Verus produced

14 all the information sought by the Subpoena or a sample

15 of the information sought or do you recall anything

16 about what Verus produced in response to this Subpoena?

17   A.   I recall that the production was much narrower

18 than the original Subpoena. I don't recall the scope.

19   Q.   And was that the result of a Court Order

20 narrowing the Subpoena or was that a result of

21 negotiations with the party seeking the information

22 that narrowed result?

23   A.   I don't recall.

24   Q.   Okay. You'll be thrilled to know I am not

25 actually going to go through all of these, but I do

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1   want to turn to the last page of Exhibit 1. At the top

2   there is a case referenced, In Re Rapid-American

3   Corporation, and their first two claim files and other

4   information on 455,000 specific individuals identified

5   on attachment to Subpoena. The date of the issuance is

6   July 2017.

7   Do you recall this Subpoena, Mr. Eveland?

8   A.   I do.

9   Q.   What do you recall about it?

10   A.   I recall receiving it. I recall it was

11   very -- a fairly broad Subpoena. I recall referring it

12   on to the trusts as soon as we received it.

13   MR. ANSELMI: I just want to put a

14   caution out here before the next question. Be careful

15   about any conversations you had with counsel for the

16   trust, because those are protected, if there is going

17   to be more questions about this.

18   MR. HIRST: There will be more

19   questions, but I don't think they'll call for specific

20   information.

21

22   BY MR. HIRST:

23   Q.   Do you recall whether or not Verus provided

24   any information in response to the Rapid Subpoena?

25   A.   I don't recall that we did.

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1   Q.   Okay. Do you recall whether the trust

2   produced any information in response to the Rapid

3   Subpoena?

4   A.   That I don't know.

5   Q.   First to claim files and other information on

6   455,000 specific individuals. What is your

7   understanding as to what claim files is referring to?

8   MR. ANSELMI: Objection to form.

9   A.   My understanding of what a claim file refers

10   to is all of the contents of the original proof of

11   claim and any supplemental information related to that

12   claim and our review of that claim.

13   Q.   We'll get back to that in a bit.

14   Actually, I do want to go back to one other

15   Subpoena back two pages. There is actually three

16   references to this case or a similar case named

17   Garlock. Do you see that?

18   And I am looking at page three of six at the

19   top, Mr. Eveland, of Exhibit 1. Page three of six on

20   the top.

21   A.   Page three? Okay.

22   Q.   Do you see the second entry there is

23   Garlock -- In Re Garlock Sealing Technologies?

24   A.   I do see that.

25   Q.   Okay. And there it refers to the discovery

1   sought in the trust as a complete database of all

2   asbestos claims. Do you see that?

3   A.   I see that.

4   Q.   And that's dated February of 2012. Do you

5   recall this Subpoena?

6   A.   I have a vague recollection of that Subpoena.

7   Q.   Okay. What do you recall from your vague

8   recollection?

9   A.   I recall receiving it.

10   Q.   Okay. Do you recall anything about your

11   response to that Subpoena, Verus's response?

12   A.   Nothing specific.

13   Q.   Okay. Do you recall whether or not Verus

14   produced information in response to that Subpoena?

15   A.   I do not recall producing information in

16   response to that.

17   Q.   Do you recall anything else about the Garlock

18   Subpoena referenced here in Exhibit 1?

19   A.   No.

20   Q.   You can put Exhibit 1 away, Mr. Eveland.

21   Let's actually talk about the Subpoena you received in

22   this case. This is Exhibit 2.

23   (Exhibit 2 marked for identification.)

24   Q.   I am handing you what I have marked,

25   Mr. Eveland, as Exhibit Number 2, which is a copy of

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1   the Subpoena that I think I actually issued to you in

2   this case on July 5th, 2022.

3   MR. ANSELMI: Very neat signature,

4   yeah.

5   MR. HIRST: I know. Well, thanks to

6   the computer inputting it for me.

7

8   BY MR. HIRST:

9   Q.   Have you seen this Subpoena before,

10 Mr. Eveland?

11   A.   I have.

12   Q.   And what role did you have in responding to

13 this Subpoena on Exhibit 2?

14   A.   I retained outside counsel, and outside

15 counsel took it from there.

16   Q.   Any other role not involving counsel that you

17 had in responding to Exhibit 2?

18   A.   I oversaw the matching exercise to compare the

19 key. I am forgetting the term they used for it, the

20 list of pseudonyms to our databases to determine how

21 many matching claims there were.

22   Q.   Okay. And let's break that down a little bit.

23 Matching Key, is that what you're referring to --

24   A.   Yes.

25   Q.   -- that was provided by Bates White?

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1   A.   Correct.

2   Q.   And you said you oversaw that work, so what

3   exactly did Verus do to compare the Matching Key to

4   your own databases?

5   A.   Our analyst team took that Matching Key,

6   created a database table from it, and compared that,

7   matched it by the information on that Matching Key to

8   the records in the claims databases for the -- I

9   believe it was eight trusts that were included in the

10   Subpoena.

11   Q.   And who specifically from your analyst team

12   was involved in performing that work?

13   A.   I don't recall everyone who may have been

14   involved in it.

15   Q.   How many people?

16   A.   There were at least two people who were

17   involved in that.

18   Q.   Are they full-time Verus employees?

19   A.   One of them is.

20   Q.   And is the other one a contractor?

21   A.   No, but part-time.

22   Q.   Do both still work for Verus today?

23   A.   They do.

24   Q.   And what are their names?

25   A.   A gentleman by the name of Mark Zabel and Lynn

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1   Burdwood. There may have been others, but those two I

2   know were involved.

3   Q.   Do Mr. Zabel and Miss Burdwood -- did I get

4   that right? Do they regularly assist in responding to

5   Subpoenas that Verus receives?

6   A.   Only when we are required to produce.

7   Q.   And you mentioned -- and I'm paraphrasing

8   here, so please correct anything I get wrong, but you

9   mentioned that they ran some sort of search against

10   some of the Verus trusts to see where the matches

11   between the Matching Key and the trusts were. Is that

12   correct?

13   A.   That's correct.

14   Q.   Okay. How many databases did your team run

15   that search against?

16   A.   It's eight different trusts, so there were

17   eight different searches involved.

18   Q.   And so I am clear, to search all of the eight

19   trust databases that are implicated here, you can't do

20   a single query across a master database? It's got to

21   be individual queries across the eight trust databases?

22   A.   There is a master table of all the injured

23   parties, but the trust claims are stored in a separate

24   schemas.

25   Q.   So the master table of all of the claimants,

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1 describe that for me. What is that, and what

2 information -- what categories of information are

3 captured in the master table?

4   A.   It's not really claimants, it's injured

5 parties. So it's every unique individual who's alleged

6 an asbestos related injury, and it's basically just the

7 demographic information; name, social, date of birth.

8 Not much else besides that.

9   Q.   Did you -- in performing the work you just

10 described, comparing the Matching Key that was provided

11 by Bates White to the data that Verus had, did you run

12 a search of that master table?

13   A.   That's a starting point.

14   Q.   And then after that, you ran a search against

15 each of the eight individual trust databases?

16   A.   To determine if -- yes.

17   Q.   And you are aware here that the Matching

18 Key -- and, actually, let's look at the Subpoena so we

19 make sure we get our terminology.

20   If you turn to -- let me use some of the page

21 numbers at the very top, Mr. Eveland, to try and

22 coordinate us. So at the very top, it says page 31 of

23 47.

24   A.   Okay.

25   Q.   Do you see that?

1   A.   I do.

2   Q.   And down there in paragraph six, you'll see in

3   the second line the reference to the Matching Key we

4   have been talking about. And is what you see there in

5   paragraph six consistent with the way we have been

6   using the term "Matching Key" together?

7   A.   Yeah. Mm-Hmm.

8   Q.   Okay. And do you recall the Matching Key in

9   this case included approximately 12,000 names or 12,000

10 individual claimants, I guess. Is that correct?

11   MR. ANSELMI: Objection to form.

12   MR. HIRST: It was a terrible

13 question, so let me start over again.

14   Q.   Do you recall that the Matching Key that was

15 provided to you by Bates White in this case included

16 approximately 12,000 last names and Social Security

17 numbers?

18   A.   That's my recollection, yes.

19   Q.   And then in paragraph seven, Mr. Eveland, at

20 the next page, there is a reference in paragraph seven

21 about midway down to matching the claimants. Do you

22 see that?

23   A.   I do.

24   Q.   And do you have an understanding of what

25 matching claimants refers to?

1   A.   Give me a moment to read this.

2   Q.   Of course.

3   A.   Okay.

4   Q.   And, actually, let me ask a better question.

5   Do you understand that the matching claimants

6   here is referring to essentially those hits from the

7   Matching Key that match with one of the Verus trust

8   databases. Is that correct?

9   A.   I do understand that, yes.

10   Q.   And do you recall approximately how many of

11   the 12,000 individuals in the Matching Key were a match

12   with one of the Verus trust databases?

13   MR. ANSELMI: Objection to form.

14   A.   I don't recall the precise number. I believe

15   that's in my Reply Declaration.

16   Q.   And we'll go through that in a second.

17   Let's also talk about the categories of

18   information sought by the Subpoena. If you move on,

19   it's page 36 of 47 on the top. It's paragraph ten. It

20   says page nine on the bottom. This is still Exhibit 2.

21   If you see at the top there, you see the

22   letters A through G?

23   A.   I see that.

24   Q.   Okay. And you understand that these are the

25   categories -- or these are the data fields, I guess,

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1   requested to be produced by Verus concerning the

2   matching claimants. Is that correct?

3   A.   That's my understanding.

4   Q.   Okay. And for these categories of

5   information, A through G, does Verus maintain

6   claimant-level electronic information matches, each of

7   these fields?

8   MR. ANSELMI: Objection to form.

9   A.   We maintain electronic information that

10   relates to each of these fields but for A, which came

11   from the Matching Key.

12   Q.   And A is claimant pseudonym, which was a

13   random number assigned by Bates White as part of the

14   Matching Key. Is that correct?

15   A.   That's correct.

16   Q.   Okay. And let ask a more precise question.

17   For the eight trust databases that are

18   implicated by this Subpoena, do those databases include

19   electronic information for each of the categories --

20   other than category A, each of the categories sought in

21   paragraph ten of the Subpoena?

22   A.   It will include electronic information related

23   to each of those categories, yes.

24   Q.   All right. Put Exhibit 2 to the side for the

25   moment. We may go back to it.

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1   Verus moved to quash these Subpoenas.

2   Correct? That's why we're here?

3   A.   That is correct.

4   Q.   Okay. And you signed -- as I think you

5   mentioned in your prep, you had some Declarations

6   related to the motion practice. Correct?

7   A.   Correct.

8   Q.   Let's look at some of those. We'll start

9   with -- we are going to mark this as Exhibit 3.

10   (Exhibit 3 marked for identification.)

11

12   BY MR. HIRST:

13   Q.   All right. The court reporter handed you,

14   Mr. Eveland, what we marked as Exhibit 3. This is the

15   second, I think, of the two Declarations you filed

16   relating to the Motion to Quash here. It's called

17   Reply Declaration of Mark T. Eveland

18   dated October 11th, 2022. Is that correct?

19   A.   That is correct.

20   Q.   And if you turn to the last page, you'll see

21   your signature. Not as pretty as my electronic one we

22   saw earlier, but is that your signature on the last

23   page?

24   A.   It is. It is what it is.

25   Q.   Okay. I want to spend a little time going

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1   through some of this Declaration. Let's start with

2   paragraph three, which is on page two of Exhibit 3.

3   In paragraph three you write that, "Debtors

4   contend that compliance with the Subpoena will require

5   Verus to only," quote, "extract certain data fields

6   from within the database it admits it possesses, which

7   should be an entirely automated process, and place that

8   data in an Excel or database file for production," end

9   quote.

10   And then you continued, "This is not the

11 case."

12   What is incorrect about the way you phrased

13 the debtor's contention there?

14   MR. KAPLAN: Objection to form. I am

15 going to put a standing objection so I don't interrupt

16 all of Morgan's questions here. The Verus trust

17 objection to any testimony regarding anything outside

18 the scope of the hearing or outside the briefs filed.

19 That's it. It's discovery, and I am not going to

20 interrupt what you're doing.

21   MR. HIRST: That's fine. This is one

22 of the Subpoenas that was -- I'm sorry, this is one of

23 the Declarations that was filed in support of the

24 Motion to Quash.

25

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1   BY MR. HIRST:

2   Q.   Go ahead. I can repeat the question.

3   A.   Can you repeat the question?

4   Q.   Sure.

5   So I just read to you paragraph three of your

6   October 11th, 2022, Declaration, where you indicate

7   that the debtor's contention about the compliance with

8   the Subpoena is incorrect, and what I want to

9   understand there is what is incorrect about the quote

10 from paragraph three?

11   A.   Specifically the parenthetical which states,

12 "This should be an entirely automated process." That

13 is not the case.

14   Q.   And I do want to get to that in a second.

15   Anything else besides the fact that you

16 disagree that this is an entirely automated process

17 that is incorrect about the debtor's contention in

18 paragraph three?

19   MR. ANSELMI: Objection to form.

20   A.   Nothing specific.

21   Q.   Okay. So obviously if you disagree that it

22 should be entirely automated, you disagree with the

23 fact that the debtors contend this should be an

24 entirely automated process, so I assume that means it

25 is not an entirely automated process to respond to this

1   Subpoena?

2   A.   You would assume correctly.

3   Q.   Okay. And what is it about responding to this

4   Subpoena that would be anything other than an entirely

5   automated process?

6   A.   Specifically certain categories of information

7   sought may contain personal identifying information of

8   other parties other than the injured party, and we

9   cannot automate the redaction of that information.

10   Q.   Anything else besides that? And I want to

11   talk about that.

12   A.   That's the heart of it.

13   Q.   Okay. If we can go back then to Exhibit 2,

14   the Subpoena itself, and back to that paragraph 10 we

15   looked at before, which is on page -- it says page 36

16   of 47 at the top -- the very top. It should start with

17   the letter A at the top.

18   MR. ANSELMI: Number 10?

19   MR. HIRST: It's number 10, yeah. It

20   starts with letter A. Again, this is Exhibit 2, page

21   36 of 47 at the top.

22

23   BY MR. HIRST:

24   Q.   You referenced, Mr. Eveland, that some of the

25   fields of information sought include personal

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1   identifying information of others beyond the individual

2   claimants themselves, are contained in some of the

3   fields.

4   I think I paraphrased there, but is that an

5   accurate statement about your testimony there?

6   A.   It's an accurate paraphrase of what I said,

7   yes.

8   Q.   That's the best I can do.

9   Okay. Which of the fields here in Exhibit 2,

10   paragraph 10, are implicated -- or scratch that.

11   Which of the fields here in paragraph 10

12   potentially contain that type of information?

13   MR. ANSELMI: Objection to form.

14   A.   I can't say there is a specific field, but it

15   is item G on the list, and specifically calls for all

16   exposure-related fields, which -- which doesn't exclude

17   fields not specifically listed in the Roman numerals

18   below.

19   Q.   Okay. So to be clear, letter B, claimant's

20   law firm with email and address of contact person, that

21   particular field does not include -- scratch that. Let

22   me try this again.

23   Letters B through F here in paragraph 10 of

24   Exhibit 2, you don't have any concerns that those

25   fields include any personally identifying information

1   of individuals other than the claimants?

2   MR. ANSELMI: Objection to form. And

3   I promise, I am trying to be helpful here. I just

4   don't want get to confused as to fields with these

5   subparts. These are subparts to this Subpoena.

6   MR. HIRST: Correct.

7   MR. ANSELMI: And I don't want there

8   to be an incorrect assumption that they are fields.

9   MR. HIRST: Let me try and clean that

10 up so it's clear.

11

12 BY MR. HIRST:

13   Q.   The categories of information sought in

14 paragraphs 10B through 10F. Do you see that,

15 Mr. Eveland?

16   A.   I see that.

17   Q.   Okay. To be clear, it's your testimony that

18 those requests do not implicate any confidential or

19 personally identifiable information of any

20 non-claimants?

21   A.   I would dispute the application of the term --

22 or your phrase doesn't include any confidential

23 information.

24   We are held to very strict confidentiality

25 provisions in our contracts, in trust distribution

1   procedures, and in electronic filing agreements between

2   the trust, Verus, and the law firms submitting these

3   claims. So all of this information under those

4   agreements is confidential.

5   Q.   Let me ask the question in a different way.

6   You spoke a second ago about what parts of the

7   Subpoena require anything other than an automated

8   process to collect the information. Correct?

9   A.   Yes.

10   Q.   Okay. The information that's requested from

11 paragraphs 10B through 10F, those are not among the

12 categories of information that require anything other

13 than an automated process to collect?

14   MR. ANSELMI: Objection to form.

15   A.   Can you repeat that?

16   Q.   Sure, I can try.

17   You testified about your disagreement with the

18 debtor's statement that the process of responding to

19 Subpoenas is entirely automated. Right?

20   A.   I did, yes.

21   Q.   All right. And you specifically identified, I

22 believe, a moment ago that the fields that require

23 something other than an automated process to collect

24 and review were the exposure-related fields requested

25 in paragraph 10G of the Subpoena. Is that correct?

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1   A.   That is correct.

2   Q.   Okay. So am I correct then that for

3   paragraphs 10B through 10F, for the categories of

4   information sought by those subparagraphs of the

5   Subpoena, Verus can run an entirely automated process

6   to collect and produce that information?

7   A.   After writing the necessary scripts, yes, we

8   could automate the extraction of those categories of

9   information.

10   Q.   And writing necessary scripts, what does that

11   entail?

12   A.   That entails a database analyst writing a

13   query to extract those fields related to those

14   categories of information.

15   Q.   And is this something your database analysts

16   regularly perform, writing scripts?

17   A.   On a routine basis.

18   Q.   Do you know approximately how long it takes a

19   database analyst to write a script to query information

20   like that sought in paragraphs 10B through 10F?

21   MR. ANSELMI: Objection to form.

22   A.   I don't know exactly precisely how long it

23   would take.

24   Q.   Hours?

25   A.   A few hours, maybe, for a simple query to

1   access that information.

2   Q.   Okay. Let's move on then and keep Exhibit 2

3   nearby because we are going to come back to it, but I

4   want to go back to Exhibit 3, your October 11th, 2022,

5   Declaration. I want to skip ahead to paragraph seven,

6   and that's page three on the top.

7   In paragraph seven you write, "While the

8   debtor's Subpoena specifies certain data fields to be

9   produced, it casts a broad net for all exposure-related

10 data without limitations."

11   Do you see that?

12   A.   I do see that.

13   Q.   Okay. And that is what we have just been

14 referring to in the Subpoena, Exhibit 2, paragraph 10G.

15 Is that right?

16   A.   That's right.

17   Q.   Okay. Let me first ask, going back to the

18 Subpoena, Exhibit 2, and specifically focusing on

19 paragraph 10G, and I do want to focus on the subparts

20 of 10G here, the Romanettes one through five. Do you

21 see that?

22   A.   I do see that.

23   Q.   Okay. And for these five categories of

24 information requested, the specific ones in subparts G

25 one through G five. Does Verus maintain that data in

1   electronic form, data responsive to those requests in

2   electronic form?

3   A.   Can you repeat that question so I understand?

4   Q.   Sure.

5   So in Exhibit 2, paragraph 10G, that's one

6   through five. Does Verus maintain electronic

7   information that is responsive to those five requested

8   categories of information?

9   A.   We do.

10   Q.   Okay. And you referenced earlier the concern

11   about claimant -- scratch that.

12   You referenced earlier the concern about

13   information concerning other individuals other than the

14   claimants being found in exposure fields. Is that

15   correct?

16   A.   That's correct.

17   Q.   Okay. For the specific subparts in paragraphs

18   10G one through 10G five, are you aware of information

19   about individuals other than the individual claimant

20   being contained in the Verus electronic data that is

21   responsive to these five categories?

22   MR. ANSELMI: Objection to form.

23   A.   Could you -- could you repeat or rephrase that

24   question?

25   Q.   Sure, I can. Let's break it down one by one.

1   10G one requests that Verus produce for each

2   of the matching claimants the date exposure began. For

3   the electronic data fields that Verus possesses that's

4   responsive to paragraph 10G one, have you seen any

5   claimant -- or I'm sorry, have you seen any information

6   from anyone other than the individual claimant

7   implicated?

8   MR. ANSELMI: Objection to form.

9   Q.   You can go ahead.

10   A.   Not in that specific data point.

11   Q.   10G two requests for the matching claimant's

12   information about the date exposure ended for the

13   electronic information maintained in Verus's databases.

14   Have you seen any information regarding other claimants

15   other than the matching claimant in the field for date

16   exposure ended?

17   MR. ANSELMI: You're asking if he's

18   seen it to date?

19   MR. HIRST: Let's start with seen it

20   to date.

21   A.   I have not.

22   Q.   Okay. Are you aware of any such information

23   being included in that field within the Verus

24   databases?

25   A.   I am not.

1   Q.   Do you have any concerns sitting here today

2   that such information may be included in the Verus

3   databases for the date exposure ended?

4   A.   Not as I sit here today.

5   Q.   Paragraph 10G three requests that Verus

6   provide for the matching claimants information

7   concerning the manner of exposure, and your testimony,

8   I think, is that Verus does have electronic information

9   that's responsive to the request in 10G three. Is that

10   correct?

11   A.   It's correct. Given my interpretation of what

12   you're driving at with manner of exposure, it would be

13   correct that we would have information related to that.

14   Q.   And for the electronic information that Verus

15   has that's responsive to 10G three, have you seen

16   information concerning claimants other than the

17   matching claimants contained within those fields of

18   information?

19   A.   I have.

20   Q.   Okay. And specific in response to this

21   individual Subpoena or just generally in your

22   experience with Verus?

23   A.   Generally in my experience with Verus.

24   Q.   And how frequently do you see that? What

25   percentage of claimants have information concerning

1   other individuals in the manner-of-exposure fields?

2   MR. ANSELMI: Objection to form.

3   A.   I couldn't put a percentage on it.

4   Q.   So that is one field in particular that you

5   would maintain you would need to individually review

6   that field of information before producing it?

7   A.   I would, yes.

8   Q.   Let's go to 10G four. 10G four asks Verus to

9   produce for the matching claimants the occupation and

10   industry when exposed. Do you see that?

11   A.   I see that.

12   Q.   Okay. Does Verus maintain electronic

13   information for the matching claimants for the

14   occupation and industry when exposed?

15   A.   Most trusts require that information.

16   Q.   Any of the trusts implicated by this Subpoena

17   that don't require that information?

18   A.   I don't recall.

19   Q.   For the information that Verus possesses

20   that's responsive to 10G four for the matching

21   claimants, have you observed any information about

22   other individuals within those fields?

23   A.   I don't have any specific recollection of

24   seeing such information, but I can't rule it out.

25   Q.   Sitting here today, do you have any concern

1   that there is information about other individuals

2   contained within those fields that are responsive to

3   the occupation and industry-when-exposed request?

4   A.   I have some concern to the extent that in

5   certain cases those may be narrative fields where

6   claimants can put any response they want into those

7   fields.

8   Q.   For those fields of information that you're

9   aware of, have you ever seen -- putting aside this

10 Subpoena, have you ever seen in the occupation and

11 industry fields that Verus maintains information

12 concerning other individuals other than the individual

13 claimant?

14   A.   I don't have any specific recollection.

15   Q.   Okay. The last one in 10G is requests for the

16 matching claimants Verus produced, the products to

17 which the claimant was exposed. Do you see that?

18   A.   I do.

19   Q.   Is that a field of information -- does Verus

20 maintain electronic information that's responsive to

21 that request in 10G five?

22   A.   We do.

23   Q.   Okay. Have you seen for the matching

24 claimants in the fields -- the electronic fields that

25 Verus does maintain that are responsive to 10G five,

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1   have you seen information concerning other individuals

2   other than the matching claimant?

3   MR. ANSELMI: Can I lodge an objection

4   and I can ask him to leave the room? Because I really

5   need a clarification on something, and I don't want it

6   to be seen as telling him something, so if you want

7   him --

8   MR. HIRST: Why don't we let him

9   answer the question?

10   MR. ANSELMI: Sure.

11   MR. HIRST: If he doesn't understand

12   it, he can let me know and --

13   MR. ANSELMI: Then I would like to ask

14   that question of you afterwards.

15   THE WITNESS: I believe you asked for

16   the matching claimants, have I seen any information --

17

18   BY MR. HIRST:

19   Q.   Correct.

20   A.   I have not, because I have not reviewed the

21   specific information for the matching claimants.

22   Q.   Okay. How about let's take outside the

23   matching claimants. For in the various databases

24   generally, for those fields that you have identified

25   that include responsive information for the products to

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1   which an individual claimant is exposed, have you seen

2   in those fields information concerning other

3   individuals other than the particular claimant in

4   question?

5   MR. ANSELMI: Objection to form. You

6   are talking about other cases?

7   MR. HIRST: Yup. Other cases.

8   A.   I don't have any specific recollections but,

9   again, these are -- these are narrative or memo fields,

10 so the claimants can respond with practically any

11 information, so I can't rule it out.

12   MR. HIRST: Okay. If you want to take

13 a break now?

14   MR. ANSELMI: Sure. Sure.

15   (Discussion held off the record.)

16   (Recess taken.)

17

18 BY MR. HIRST:

19   Q.   Back to the Subpoena again, Mr. Eveland, which

20 is Exhibit 2, and back to paragraph 10G. That's 36 of

21 47 at the top.

22   Now, I think you testified and pointed out

23 that paragraph 10G itself asks for all exposure-related

24 fields without limitation. Correct?

25   A.   That's correct.

1   Q.   Not just the subparts --

2   A.   Yes.

3   Q.   -- in Romanettes one through five?

4   A.   That is my understanding.

5   Q.   To be clear, how many fields of information

6   are contained in the Verus trust databases that you

7   believe are potentially responsive to exposure -- or

8   are potentially exposure-related fields?

9   MR. ANSELMI: Objection to form.

10   A.   There are dozens. Literally dozens.

11   Q.   And what are they?

12   A.   It varies from trust to trust because the

13   exposure requirements are not the same for each trust,

14   so certain trusts require different information. And

15   it would include, beyond what's listed here, things

16   such as your internal claims analyst's notes and

17   communications related to exposure issues and policy

18   related matters, communications with counsel

19   representing the trusts.

20   Q.   Anything else you can recall that falls into

21   an exposure-related field?

22   A.   Names of coworkers, information extracted from

23   Affidavits of Exposure. There is a host of different

24   fields that could be in play here.

25   Q.   And you testified that depends -- or that

1   varies trust to trust?

2   A.   It varies from trust to trust.

3   Q.   All right. Let's go back to your Declaration,

4   Exhibit 3.

5   MR. ANSELMI: The Reply Declaration?

6   MR. HIRST: Correct.

7   Q.   I'll have you turn to paragraph 10, which is

8   at page three. It looks like you are there,

9   Mr. Eveland.

10   So this goes back to a question I had asked

11 earlier. So in paragraph 10, you write that for the

12 approximately 12,000 claimants on the Matching Key,

13 that corresponds to 63,000 unique claims filed with the

14 trust. Do you see that?

15   A.   I see that.

16   Q.   Okay. And so when you say 63,000 unique

17 claims, what are you referring to?

18   A.   Well, the Matching Key contained approximately

19 12,000, the name -- the last name and Social Security

20 number of approximately 12,000 injured parties. Those

21 injured parties could have filed with one or more of

22 the eight trusts for which the debtor is seeking

23 information.

24   And when we completed the matching, it turned

25 out that there was multiple of claims that on average

1   each of those individuals filed more than one claim.

2   We matched over 63,000 claims across those eight

3   different trust databases.

4   Q.   Okay.   So I want to make sure I understand how

5   it works.   So if me, Morgan Hirst, if I'm a claimant, I

6   could have up to eight unique claims across the eight

7   databases for which the Subpoena seeks information?

8   A.   That is possible.

9   Q.   And if Mr. Anselmi, on the other hand, is a

10   claimant and he only has claims on two of the trusts,

11   that would be two unique claims the way you're using it

12   here in paragraph 10?

13   A.   That is correct.

14   Q.   Okay.   Okay.   So now I am going to make the

15   two political science majors do a bit of math here.

16   MR. ANSELMI: He's a philosophy major.

17   MR. HIRST: That's true so --

18   THE WITNESS: Even worse.

19   MR. KAPLAN: I'm a political science

20   major.

21

22   BY MR. HIRST:

23   Q.   So given there are 63,000 unique claims

24   across the eight trust databases, would you agree with

25   me that means at a minimum there is approximately 8,000

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1   individual claimants on the Matching Key who match up

2   with at least one of the trust databases?

3   MR. ANSELMI: Objection to form.

4   A.   I don't know how you got to the 8,000.

5   Q.   And I'll try and explain it. So if all of the

6   individual -- if all the matching claimants had filed

7   claims against each of the eight trusts implicated,

8   that would be -- if I am doing my math right, eight

9   trusts -- that would be approximately just under 8,000

10   claimants total, if they had filed claims against all

11   eight of the trusts in all cases. Is that correct? Is

12   that the way you're using the eight claims here?

13   A.   Correct. Correct.

14   Q.   Okay. All right. So later in this paragraph

15   you write, "The exposure records related to these over

16   63,000 unique claims numbers" -- I'm sorry, I read that

17   wrong. Let me try that again.

18   "The exposure records related to these over

19   63,000 unique claims number approximately 200,000."

20   Do you see that?

21   A.   I see that, yes.

22   Q.   Okay. So you referenced some of the exposure

23   fields before and that they vary across the databases,

24   but I just want to make sure I understand paragraph 10

25   here.

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1   There is approximately 200,000

2   exposure-related data fields that are implicated by the

3   Subpoena here?

4   MR. ANSELMI: Objection to form.

5   Q.   Is that correct?

6   A.   You referenced fields.

7   Q.   Yup. I did reference fields. Is that

8   incorrect?

9   A.   That would be incorrect.

10   Q.   Okay. So tell me what the 200,000 -- the

11   200,000 number is for the exposure records. What does

12   that consist of?

13   A.   Those are unique. In my lingo, I refer to

14   them as base exposure records.

15   So each individual claimant can provide more

16   than one exposure record. And an exposure record is

17   basically a date of first exposure, date of last

18   exposure, a job site, an occupation. That's the base

19   exposure record.

20   There could be other records related to those

21   base exposure records, and a claimant who was exposed

22   over a period of decades could have worked at multiple

23   job sites and multiple occupations, so you could see

24   how you could have a series of those base exposure

25   records related to a unique claim.

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1   Q.   And do you know one way or the other whether

2   the 200,000 exposure records that you reference here in

3   paragraph 10, do all of those records include

4   information responsive to the Subpoena, Exhibit 2?

5   MR. ANSELMI: Objection to form. Same

6   objection you and I talked about.

7   A.   Could you repeat the question?

8   Q.   Sure. And let's clear it up, because I want

9   to be specific.

10   In paragraph 10, you are specifically

11 referring to the 12,000 matching claimants in this --

12 sorry, the 12,000 individuals in the Matching Key

13 provided as part of the Subpoena that's Exhibit 2.

14 Correct?

15   A.   That is correct.

16   Q.   Okay. And you reference that they're -- for

17 those individuals, there are 200,000 exposure records.

18 Correct?

19   A.   Correct.

20   Q.   And that was information you were able to

21 gather from the work your team did in querying the

22 Matching Key. Is that right?

23   A.   That is correct.

24   Q.   Okay. So my question is this. Is it your

25 testimony that all 200,000 exposure records that you

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1 were able to locate included information that is

2 responsive to the Subpoena, Exhibit 2?

3   MR. ANSELMI: Objection to form.

4   A.   Those are the base records. That's not the

5 sum total of the exposure information related to those

6 claims, but those are the base records which would

7 contain certain elements of what's responsive to the

8 Subpoena.

9   Q.   Then you go on to state that these 200,000

10 records are the rough equivalent of over 3300 pages of

11 densely printed tabular information just for the

12 exposure data. Do you see that?

13   A.   I see that.

14   Q.   How did you reach that determination?

15   A.   By doing some quick math on how many rows I

16 could print on a piece of paper.

17   Q.   How many rows did you assume you could print

18 on each page?

19   A.   I don't recall. I would have to do that

20 division in my head, and I am terrible at doing math in

21 my head. Probably in the range of 50 or 60.

22   Q.   So then turning to paragraph 11, Mr. Eveland,

23 in Exhibit 3. The last sentence you write, "Complying

24 with the Subpoena will, therefore, be labor intensive

25 and expensive."

1   A.   Well, which page were you referring to again?

2   Q.   I'm sorry, the next page, last sentence.

3   "Complying with the Subpoena will, therefore, be labor

4   intensive and expensive."

5   And please read all of paragraph 11, but am I

6   correct that what you were referring to as the labor

7   intensive and expensive activities is reviewing the

8   approximately 3300 pages of exposure-related data that

9   you identified in paragraph 10?

10   A.   In part that is the most labor intensive

11   aspect of it.

12   Q.   What else is there besides that part that's

13   also labor intensive?

14   A.   Well, I mentioned earlier the confidentiality

15   provisions that were bound to in our various documents

16   related to the administration of these trusts; the

17   PDP's, the trust agreements, the electronic filer

18   agreements between the law firms, the trust in Verus,

19   and our contracts with the trusts.

20   Those confidentiality provisions require us to

21   exercise a very high level of details to make sure that

22   we, are in order to produce, not producing anything

23   that should not be. So that's one element.

24   There's a high level of review that would be

25   required to make sure that we are responding in full,

1   but not responding with any information that should not

2   be included.

3   Q.   Well, other than reviewing the 3300 pages that

4   you referenced, what else to comply with paragraph 10

5   of Exhibit 2, the Subpoena, would you need to do to

6   satisfy those confidentiality obligations in the PDP's

7   and your agreements with the trusts?

8   A.   I believe I have already answered that

9   question, in that we would have to do the quality

10   control review to make sure that we were not including

11   any records in the response that should not be

12   included.

13   Q.   And what would that consist of? What would

14   that quality control check -- what would it consist of

15   or what does it consist of?

16   A.   That's an analyst who did not do the original

17   extraction of the data, double-checking that analyst's

18   work to make sure that they can confirm that the data

19   included in the extraction does not include any records

20   beyond what should have been included.

21   Q.   And what does that double-check consist of?

22   A.   Writing some control queries to make sure that

23   the counts agree with what the original analyst

24   produced.

25   Q.   And we talked about --

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1   A.   It may go beyond that, but at a high level,

2   that's what it would consist of.

3   Q.   Writing a piece of computer code?

4   A.   Writing computer code to confirm record counts

5   and such.

6   Q.   Does it include any manual reviews?

7   A.   It may require some sampling and reviewing of

8   samples.

9   Q.   For the Subpoena at Exhibit 2, have you done

10   any approximation for how long that quality check that

11   you just described would take?

12   A.   I have not.

13   Q.   And you testified earlier that writing code of

14   this type takes a few hours?

15   A.   The query --

16   MR. ANSELMI: Objection to form.

17   A.   I testified earlier the query to get at those

18   few fields that would not potentially include personal

19   identifying information or privileged confidential

20   information that would be corresponding internally with

21   trust counsel, et cetera, that those fields -- and I

22   think it was G -- or paragraph 10 in the Subpoena,

23   B through F. That's a pretty simple query. That would

24   take a few hours to write.

25   Q.   And by the same token, for paragraphs 10B

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1   through 10F, the quality control check you just

2   referenced, how long would -- how long does it take to

3   write computer code to do the quality control check for

4   those fields?

5   A.   Probably a similar amount of time.

6   Q.   How about for the specific fields in 10G one

7   through five?

8   A.   That gets more complex because we are talking

9   about differences in the database schema across the

10 trusts that are at issue here, so I can't really say

11 without looking at or talking to the analysts that

12 would be involved in this how long that might take.

13   Q.   But that would still involve querying -- I'm

14 sorry, that would still involve writing code -- that

15 would still involve writing code. Is that correct?

16   A.   Yes.

17   MR. ANSELMI: For the quality control?

18   Q.   For the quality control?

19   A.   For the extraction, and the quality control to

20 make sure the extraction did not include any

21 information beyond what was being requested, yes. That

22 is still writing computer code.

23   Q.   Okay. Back to the Subpoena, your Reply

24 Subpoena, Exhibit 3, and paragraph 12 now, which is

25 right in front of you.

1   In there -- and I am looking at the end of

2   this paragraph near the bottom of the page. You write,

3   "The total labor for identifying claimant records and

4   extracting, reviewing, and redacting data for other

5   recent third-party Subpoenas has ranged from 350 hours

6   to over 975 hours, at a cost to the trusts ranging from

7   approximately 51,000 to over 162,000."

8   Do you see that?

9   A.   I do see that.

10   Q.   Okay. Now, you do understand pursuant to the

11   Subpoena in this case and the Court's Order in this

12   case that the debtors, my client, are responsible for

13   reimbursing Verus and the trusts for any costs in

14   responding to the Subpoena. Is that correct?

15   A.   I understand that.

16   Q.   Okay. Now, in paragraph 12, for these other

17   recent Subpoenas, third-party Subpoenas you referred

18   to, what are they? What Subpoenas are you referring

19   to?

20   A.   Sorry, could you ask that again?

21   Q.   Sure.

22   You reference the costs relating to complying

23   with other recent third-party Subpoenas here in

24   paragraph 12, and I wanted to know what Subpoenas

25   you're referring to.

1   A.   At the low end of the range, I believe that

2   was the Subpoena that was related to the Bestwall case.

3   That was not served on Verus or the Verus trusts, but

4   we were involved in producing information for other

5   parties who were involved in that case.

6   And at the top end of the range, that was a

7   civil investigative demand filed by the Department of

8   Justice, if I am recalling correctly.

9   Q.   Okay. Let's start with the Bestwall one on

10   the low end of the range. You mentioned the Subpoenas

11   were not directed to Verus or any Verus trusts?

12   A.   That's correct.

13   Q.   But you, nevertheless -- or Verus,

14   nevertheless, was involved in assisting others in

15   responding to the Subpoena?

16   A.   Yes.

17   Q.   Okay. Who was Verus involved in assisting in

18   responding to Subpoenas in the Bestwall bankruptcy?

19   A.   We were working on behalf of the trust to

20   produce records in coordination with the debtor in that

21   case that were Subpoenaed directly from the plaintiff

22   firms. It was producing the records that they had --

23   copies of all the records they had submitted to the

24   various trusts involved there.

25   Q.   How many plaintiffs' firms were involved?

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1   A.   I don't recall how many firms it was.

2   Q.   Was it more than ten?

3   A.   It was a fairly small number of claims. I

4 don't know if it was more than ten. Law firms,

5 specifically.

6   Q.   Okay. Approximately how many claims were

7 involved?

8   A.   It was fewer than 700, if I am remembering

9 correctly. Sorry, you asked claims?

10   Q.   Yeah.

11   A.   It was fewer than 700 injured parties. It was

12 approximately six to 7,000 unique claims.

13   Q.   And what types of information were you

14 producing in response to that Subpoena?

15   A.   Copies of the proofs of claims submitted to

16 the trusts and their supporting documentation.

17   Q.   And what is the supporting documentation?

18   A.   Medical records, exposure records such as

19 Affidavits, deposition transcripts. A host of

20 different things.

21   Q.   So this was not simply querying a database,

22 this was producing actual records and files and

23 documents?

24   A.   That's correct.

25   Q.   And this Bestwall Subpoena, this is the

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1 Subpoena that took approximately 350 hours at a cost of

2 approximately $51,000?

3   A.   Correct.

4   Q.   Okay. Was that $51,000 reimbursed by

5 Bestwall?

6   A.   We invoiced them. I don't recall if they have

7 paid it yet.

8   Q.   They are in bankruptcy, so you've got to be

9 careful.

10   All right. The CID from the DOJ, and I don't

11 want specifics about what the topic was. I am

12 interested, though, in what types of information were

13 produced in response to that Civil Investigative

14 Demand?

15   A.   I don't recall all the details of what was --

16 the specifics of what was produced, but it was data.

17 There were no documents involved there.

18   Q.   Do you recall, was it claimant-level data?

19   A.   It was claimant-level data.

20   Q.   Do you recall approximately how many

21 claimants, we'll start with, were involved?

22   A.   Off the top of my head, I do not.

23   Q.   How about how many claims were involved?

24   A.   It was all -- it was all claims paid over a

25 period of years. It was a -- it was a fairly large

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1 number of claims, but I don't recall the exact count.

2   Q.   And is this all claims paid by Verus or by a

3 particular Verus trust?

4   A.   By the trusts who were subject to that CID.

5   Q.   How many trusts were subject to it?

6   A.   I do not recall.

7   Q.   More than five?

8   A.   Probably.

9   Q.   There were eight trusts that are subject to

10 the Subpoena here in Exhibit 2. Was it the -- how did

11 the number implicated by the CID that you are referring

12 to compare to the number here?

13   A.   I seem to recall it's in the same ballpark. I

14 just don't recall exactly how many.

15   Q.   And how many years of paid -- strike that.

16   How many years of information did the CID

17 seek?

18   A.   It was several years.

19   Q.   So CID sought electronic information about

20 several years of all payments made by approximately

21 eight trusts?

22   A.   I don't recall the specifics. I wouldn't say

23 all claimants. There were other criteria applied, so

24 it wasn't every claim paid by those subject trusts.

25   Q.   And I know you don't have a specific

1 recollection how many claims were involved, but on a

2 magnitude are we talking a million claims?

3   A.   No.

4   MR. ANSELMI: Objection to form.

5   Q.   Half a million claims?

6   A.   I --

7   MR. ANSELMI: Same objection.

8   A.   I don't remember.

9   Q.   Over a hundred thousand claims?

10   A.   It was probably in excess of a hundred

11 thousand.

12   Q.   In responding to that CID, was Verus -- did

13 Verus have to undertake any manual review of the

14 information before it was produced?

15   A.   There was some manual review.

16   Q.   Do you recall what that consisted of?

17   A.   No, I don't recall.

18   Q.   Okay. Did Verus have to perform some of the

19 same quality checks you testified about earlier?

20   A.   Yes, we did.

21   Q.   And is this the CID -- the CID, is this

22 what -- is this the 975 hour and $162,000 Subpoena, I

23 guess it was, that you referred to in paragraph 12?

24   A.   That is correct.

25   Q.   Okay. And I know the answer to this one, but

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1   I am guessing the DOJ did not reimburse the trust for

2   that?

3   A.   Not one dime.

4   Q.   Besides the Bestwall Subpoena and this DOJ

5   CID that you referred to, are there any other Subpoenas

6   or document requests that you are referring here to in

7   paragraph 12, when you refer to other recent

8   third-party Subpoenas?

9   A.   Those are the two that represent the top end

10   and bottom end of the range.

11   Q.   Okay. Going back to this DOJ Civil

12   Investigative Demand you have been testifying about.

13   We talked a lot this morning about the exposure-related

14   fields implicated by the Aldrich Subpoena. Were there

15   any exposure-related fields implicated by the DOJ's

16   Civil Investigative Demand you have been testifying

17   about?

18   MR. ANSELMI: Objection to form.

19   A.   Could you ask that again?

20   Q.   Sure.

21   You have testified a lot about

22   exposure-related fields. Correct?

23   A.   Correct.

24   Q.   Okay. Did the DOJ's Civil Investigative

25   Demand seek Verus to produce any information from

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1   exposure-related fields in the trust databases?

2   A.   I don't recall that it did.

3   Q.   And the Bestwall Subpoena, the DOJ CID, when

4   you responded to those information requests and

5   Subpoenas, did your current staff at Verus do the work

6   to respond to those requests?

7   A.   Yes, they did.

8   Q.   You didn't hire outside third parties to do

9   so?

10   A.   No.

11   Q.   Were you able to continue to meet Verus's

12   other contractual requirements to its clients while

13   responding to these Subpoenas and CIDs?

14   MR. ANSELMI: Objection to form.

15   A.   Could you ask that again?

16   Q.   Sure.

17   Were you able to continue to satisfy your

18   contractual obligations to Verus's clients while

19   responding to the DOJ CID and the Bestwall Subpoena you

20   referred to in paragraph 12?

21   MR. ANSELMI: Objection to form.

22   A.   Those responses -- those productions did put a

23   strain on the system and delay deliverables for certain

24   contracts.

25   Q.   What was delayed by that?

1   A.   In some cases it was the review of claims,

2   taking claims analysts out of their regular work to

3   assign them these projects. They obviously could not

4   be reviewing claims and adjudicating them to liquidate

5   those claims, so it delayed payment of certain claims

6   that would ultimately qualify.

7   It delayed our contractual milestones with our

8   trusts and, therefore, our ability to get paid for our

9   work on those trusts, and the data analysts involved

10   were delayed in delivering for certain reporting

11   contracts we have with certain of our trusts.

12   Q.   You said delayed the payment of claims. Do

13   you know how many claims were delayed as a result of

14   the work your team was forced to do in response to the

15   Subpoena in the CID?

16   MR. ANSELMI: Objection to form.

17   A.   I don't recall off the top of my head.

18   Q.   Do you know the magnitude of the delay, how

19   long the delays in payments were?

20   A.   Both of those projects stretched on for over a

21   month, so it was in excess of a month.

22   Q.   So it's your testimony that individual

23   claimant's payments were delayed by a month as a result

24   of the Subpoena and the CID you referred to in

25   paragraph 12?

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1   A.   A month, possibly longer.

2   Q.   But you don't know how many particular

3   claimants were implicated by that?

4   A.   Not in those particular cases, no.

5   Q.   Okay. And we are talking about thousands of

6   claimants?

7   A.   Probably, given the number of people involved

8   in that, yes.

9   Q.   Did you receive any complaints from claimants

10   and their families or their lawyers?

11   A.   On a daily basis.

12   Q.   Did you receive complaints from claimants and

13   lawyers on a daily basis even when you were not

14   responding to Subpoenas?

15   MR. ANSELMI: Again, objection to

16   form.

17   A.   Less frequently.

18   Q.   You mentioned the delayed contractual

19   milestones. What contractual milestones were delayed

20   by the Bestwall Subpoena and the DOJ CID?

21   A.   Well, our claims analysts who were

22   adjudicating claims, when we finish our review of a

23   claim, we get paid for the review work that we have

24   done. If we can't -- if we're not reviewing claims,

25   we're not getting paid for that work.

1   Q.   So do you know how many claims -- do you know

2   how many claims were delayed -- how many review of

3   claims were delayed by the Bestwall Subpoena and the

4   DOJ CID?

5   MR. ANSELMI: Objection to form.

6   A.   I do not have an exact number.

7   Q.   Do you have a rough approximation?

8   MR. ANSELMI: Objection to form.

9   A.   As I sit here today, no.   I haven't gone back

10 and looked at that.

11   Q.   Did you lose any staff as a result of the work

12 they had to do on the Subpoenas or the CIDs?   Did

13 anybody resign?

14   A.   As a direct result of that work?   There was

15 turnover during that time period, but I don't know that

16 anybody said specifically that they were resigning as a

17 result of that work, that particular project.

18   Q.   In the 20 years that you have run Verus, has

19 any staff member ever said -- ever resigned and given

20 as a reason the work they were forced to do in

21 responding to Subpoenas or information requests?

22   MR. ANSELMI: Objection to form.

23   A.   I have heard complaints about overtime.

24   Q.   And I assume it's fair to say there is plenty

25 of activities that involve overtime work besides

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1   Subpoenas or information requests for Verus. Is that

2   accurate?

3   MR. ANSELMI: Objection to form.

4   A.   There are other instances where overtime

5   occurs, but these put additional overtime burdens on

6   the staff.

7   Q.   Okay. Back to Exhibit 3, paragraph 20. So I

8   am on --

9   A.   Which is Exhibit 3?

10   Q.   Your Reply Declaration. I want to go to page

11   seven of eight on the top, Mr. Eveland, paragraph 20.

12   This is a paragraph by Bates White.

13   So you write here in paragraph 20 that you are

14   aware -- or that, "While it is true that Bates White

15   does not process trust claims, it does work for

16   numerous asbestos defendants and insurance carriers."

17   Do you see that?

18   A.   I see that.

19   Q.   And you write, "Therefore, its interests,"

20   referring to Bates White, "and the interests of its

21   clients are potentially adverse to those of Verus's

22   trust clients, to which Verus bears contractual and

23   other obligations."

24   Do you see that?

25   A.   I see that.

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1   Q.   And you believe that -- you believe Bates

2   White's interests are adverse to Verus and the Verus

3   trusts?

4   A.   Potentially so.

5   Q.   Why do you think that?

6   A.   Because the trust has an obligation to

7   maintain the confidentiality of the information

8   submitted by claimants for adjudication of their

9   claims. Disclosing that information to other parties

10   creates risk that that confidentiality could be

11   breached.

12   Q.   Are you aware of any instances where Bates

13   White has breached confidentiality of trust data or

14   trust claimant data it's received?

15   A.   I am not aware of any, but that doesn't reduce

16   the risk to zero.

17   Q.   Well, you providing -- doesn't the trust even

18   providing the information to Verus creates some risk of

19   exposure of that data, doesn't it?

20   MR. ANSELMI: Objection to form.

21   A.   It does, but I control that risk.

22   Q.   So this is more an issue that you know what

23   you control at Verus, you don't know what the controls

24   are at Bates White?

25   A.   I do not know.

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1   Q.   Okay. You don't have any specific reason to

2   believe, though, that Bates White is doing anything to

3   misuse or expose claimant-level data, do you?

4   A.   No, I do not.

5   Q.   Okay. Now, the debtors here, my clients here,

6   are asbestos defendants. You are aware of that.

7   Correct?

8   A.   I am aware of that.

9   Q.   Do you believe Verus has interests that are

10 potentially adverse to my clients?

11   A.   Not specifically.

12   Q.   So I guess I am trying to understand the

13 difference between your statements about Bates White

14 and its adversity to the Verus trust clients and your

15 concern there, and the fact that you don't believe that

16 Verus can be adverse to the debtors. How do you

17 explain to me the difference between the two?

18   A.   Well, perhaps I didn't follow your question

19 there.

20   Q.   Sure, so let me ask it again.

21   So you understand that my clients are asbestos

22 defendants?

23   A.   I do.

24   Q.   Okay. And given Verus's role, do you believe

25 Verus -- Verus's interests are potentially adverse to

1   the debtors in this case?

2   A.   It would trace back to that whole -- that same

3   concern about confidentiality and the risk of

4   information being shared beyond the walls of people who

5   are supposed to have access to it or could potentially

6   breach.

7   Q.   Is there anything other than -- other than the

8   sharing of data to any third party, is there anything

9   else that you believe causes potential adversity

10   between the debtors and Verus in this case?

11   MR. ANSELMI: Objection to form.

12   A.   Nothing that comes to mind.

13   Q.   Okay. I want to mark your other Declaration

14   concerning the Motion to Quash as Exhibit 4, although I

15   can promise you we will spend less time with that.

16   (At this point in the proceedings,

17   Mr. Kaplan exited the deposition room.)

18   MR. ANSELMI: Let the record reflect,

19   I think, Nicholas Velez from Lowenstein Sandler is now

20   on the phone in the absence of Michael Kaplan.

21   (Exhibit 4 marked for identification.)

22

23   BY MR. HIRST:

24   Q.   Mr. Eveland, I am handing you what we have

25   marked as Exhibit 4. This is your August 19th, 2022,

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1   Declaration in support of Verus's Motion to Quash.

2   Do you recognize this document, sir?

3   A.   I do.

4   Q.   That was one of the documents you looked at in

5   preparation for today's deposition?

6   A.   Yes.

7   Q.   And that is your signature, again, at the last

8   page, page nine?

9   A.   It is.

10   Q.   Okay. Just a few questions about this one. I

11 want to start with paragraph seven, page three of the

12 Declaration here, Exhibit 4.

13   And, again, so we get our time right,

14 Exhibit 4 here was filed on August 19th, 2022, and the

15 Reply Declaration we are looking at, at Exhibit 3, was

16 filed about two months later on August -- I'm sorry,

17 October 11th.

18   Here in Exhibit 4, the August 19th

19 Declaration, in paragraph seven you refer to Bates

20 White as a competitor. Do you see that?

21   A.   I do see that.

22   Q.   Okay. Do you still believe Bates White is a

23 competitor of Verus?

24   A.   Not a direct competitor, but we are operating

25 within the same space of providing services in mass

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1   tort and class action litigation.

2   Q.   So what areas does Bates White compete with

3   Verus in?

4   A.   Specifically on the analytic front. Verus

5   also has a team that is involved in providing

6   estimations of liabilities for mass tort cases.

7   Q.   As it relates to processing trust claims,

8   Bates White and Verus are not competitors, are they?

9   A.   No.

10   MR. ANSELMI: Objection to form.

11   Q.   And to your knowledge, Bates White doesn't

12   process trust claims?

13   A.   To my knowledge, they do not.

14   Q.   And they don't provide claims administration

15   services to trusts?

16   A.   No, not that I am aware of.

17   Q.   Okay. Now, also in paragraph seven, you write

18   that Bates White -- you write Bates White could

19   potentially reverse engineer the data produced to

20   recreate Verus's proprietary algorithms. Do you see

21   that?

22   A.   I do see that.

23   Q.   Okay. I just want to make sure I understand

24   this subject.

25   So how would responding to the Subpoena,

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1   Exhibit 2, and the information requested there in

2   paragraph 10, how would that expose Verus's proprietary

3   algorithms to anyone?

4   A.   Data in the hands of a good statistician could

5   be used to approximate the criteria used to adjudicate

6   claims, a sufficient quantity of data.

7   Q.   But I thought we established a minute ago

8   Bates White doesn't adjudicate claims. Correct?

9   A.   They do not.

10   Q.   Okay. Do you have any reason to believe Bates

11   White would use the data here to reverse engineer

12   Verus's proprietary algorithms?

13   A.   I have no reason to believe that they would do

14   that of their own volition for their own purposes to

15   compete with us in the claims administration space, but

16   I don't know what their other clients are doing, and I

17   don't know what the other databases they're compiling

18   on using this data are used for.

19   Q.   You are aware that the Court's Order in this

20   case, which is attached to the Subpoena, includes very

21   stringent restrictions on how the data can be used.

22   Correct?

23   A.   I am aware of that.

24   Q.   Okay. So for Bates White to reverse engineer

25   Verus's proprietary algorithms using the data produced

1   in response to this Subpoena here, you would agree with

2   me they would have to violate the Court's Order.

3   Correct?

4   MR. ANSELMI: Objection to form.

5   A.   I don't know that as I sit here, that they

6   would have to violate that. I also don't know if other

7   parties could get access to this information through a

8   data breach or some other event.

9   Q.   Are you aware of any data breach incidents

10 that have happened to Bates White?

11   A.   I am not.

12   Q.   Have you ever had any data breaches at Verus?

13   A.   We have not.

14   Q.   And going back all the way to Exhibit 1. That

15 was this table that was attached to Miss Bennett's --

16   MR. ANSELMI: Yes, this is it.

17   Q.   I am specifically referring to the table here,

18 and you can go to the first page of the table.

19   Do you see there is a footnote at the bottom,

20 "Bates White was involved in the cases listed in bold."

21   Do you see that?

22   A.   I see that.

23   Q.   And it looks like of the -- it looks like

24 there is six of the nine entries on this table that are

25 bolded. Do you see that?

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1   A.   My eyesight is not the best but --

2   Q.   My counting skills aren't, either, so I think

3   it's six of the nine.

4   A.   Yeah.

5   Q.   Okay. In any of these cases where Bates White

6   was involved, to your knowledge did Bates White ever

7   attempt to reverse engineer the data produced by Verus

8   to recreate Verus's proprietary algorithms?

9   MR. ANSELMI: Objection.

10   A.   Could you ask that again?

11   Q.   Sure.

12   In any of the cases here where Verus was

13   subject to a Subpoena in the case where Bates White was

14   involved, do you have any knowledge of Bates White

15   attempting to reverse engineer Verus's proprietary

16   algorithms using the data produced?

17   A.   I have no personal knowledge of that.

18   Q.   All right. Back to your August Declaration,

19   Exhibit 4, Mr. Eveland, paragraph 13 this time. So

20   this is page five of nine at the top. It is a short

21   paragraph.

22   A.   Okay.

23   Q.   You write, "Oftentimes claimants' counsel

24   mistakenly upload the personal information and

25   confidential documents to the incorrect claimants'

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1 electronic files."

2   Do you see that?

3   A.   I see that.

4   Q.   Okay. What are you referring to there?

5   A.   I am referring to clerical errors, where we

6 may have information related to another claimant

7 commingled with information for that specific injured

8 party.

9   Q.   Okay. So to make sure I got the example

10 right. I am a claimant, Mr. Anselmi is a claimant, and

11 my lawyer uploads my personal information to

12 Mr. Anselmi's file?

13   A.   That is essentially correct, yes.

14   Q.   How often does this happen?

15   MR. ANSELMI: Objection to form.

16   A.   I couldn't put an exact number on it, but it's

17 not infrequent.

18   Q.   Does Verus take any measures on the front end

19 to ensure that my information is not uploaded into

20 Mr. Anselmi's file?

21   MR. ANSELMI: Objection to form.

22   MR. HIRST: Scrap that.

23   Q.   Does Verus take any measures to ensure that

24 the correct claimant information is included in the

25 correct claimant's file?

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   78

1   MR. ANSELMI: Same objection.

2   A.   We have -- in our review protocols, we have

3   procedures for identifying information related to other

4   claimants when we -- when we see it. It is almost --

5   it's practically impossible to prevent such commingling

6   from occurring, but our reviewers when they identify it

7   flag those discrepancies.

8   Q.   And when do reviewers undertake that process

9   you just referred to?

10   A.   It's part of the adjudication process.

11   Q.   So by the end of the adjudication process, if

12   everything has gone according to plan, there is no

13   longer incorrect claimant information in a claimant's

14   file. Is that correct?

15   MR. ANSELMI: Objection to form.

16   A.   Could you restate that question?

17   Q.   Sure.

18   The issue you identify here in paragraph 13 of

19   your Affidavit, Exhibit 4. You have set up a process

20   such by the end of the review that should no longer be

21   an issue?

22   MR. ANSELMI: Objection to form.

23   A.   That information -- or as part of our process,

24   we never delete information from a proof of claim

25   that's been submitted to the trust. If it is incorrect

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   79

1   information or it relates to another party, we will

2   flag it as such, but it is still part of the record.

3   Q.   What happens after you flag it?

4   A.   It depends on what the information is. I

5   mean, that's a very broad question.

6   Q.   Well, is it possible after you flag it --

7   using my example of my information showing up in

8   Mr. Anselmi's file. If one of your reviewers flags

9   that information, is it possible it's just going to

10 stay in that file?

11   A.   It would stay in that file as part of what was

12 submitted, but there would be a note appended somehow

13 to that claim file. Depending on what information --

14 what specific field or document it is, there would be a

15 note related to that, that it does not refer to that

16 specific injured party.

17   Q.   In the event such a note were included in

18 responding to a Subpoena like the one we are seeing in

19 Exhibit 2, would a reviewer see that when querying

20 Mr. Anselmi's file, that my information is located in

21 there?

22   MR. ANSELMI: Objection to form.

23   A.   Could you repeat that question?

24   Q.   Sure.

25   So back to the Subpoena, Exhibit 2, and back

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   80

1 | to my example of me and Mr. Anselmi. If Mr. Anselmi's

2 | information were called for in Exhibit 2, and a

3 | reviewer flagged the fact that my personal information

4 | ended up in Mr. Anselmi's file, would the individuals

5 | responsible for responding to the Subpoena, would

6 | they -- would they see that? Would they see that

7 | flagged information?

8 | A.   They would, yes.

9 | Q.   So they would have the ability to extract that

10 | out and not produce it?

11 | MR. ANSELMI: Objection to form.

12 | A.   They would have the ability to extract that

13 | out.

14 | Q.   Okay.

15 | A.   Now, that is a manual process, and even the

16 | process of flagging that information in the

17 | adjudication process is subject to human error, so it

18 | could be overlooked in that process.

19 | Q.   But you have no idea of how frequently this

20 | occurs?

21 | A.   I could not put a specific number on it, but

22 | it is not an infrequent occurrence.

23 | Q.   Are you okay? We can keep going now or take a

24 | break.

25 | MR. ANSELMI: What do you think?

1   MR. HIRST: Twenty-five minutes?

2   MR. ANSELMI: Why don't we take a

3   quick break?

4   (Recess taken.)

5   (Exhibit 5 marked for identification.)

6

7   BY MR. HIRST:

8   Q.   All right. Mr. Eveland, I am going to hand

9   you -- during the break we marked this as Exhibit 5,

10   and this is another Declaration of yours. This one was

11   actually filed in this bankruptcy case, in the Aldrich

12   Pump case, on March 8th, 2023.

13   It's called the Declaration of Mark Eveland

14   pursuant to a number of rules in support of the

15   ex parte application of the official committee of

16   asbestos personal injury claimants to retain and employ

17   Verus LLC as PIQ data administrator for the Personal

18   Injury Questionnaire responses.

19   Do you see that, sir?

20   A.   I see that.

21   Q.   Okay. And this Declaration is our most recent

22   one, filed March 8th, 2023.

23   A.   Okay.

24   Q.   Do you see that on the top?

25   A.   I see that.

MARK EVELAND   May 16, 2023
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1   Q.   Okay. And if you go to page seven of 16,

2   Mr. Eveland, it looks like you signed it on

3   February 21st, 2023. Is that correct?

4   A.   That is correct.

5   Q.   And that's your signature?

6   A.   That is my signature.

7   Q.   Okay. So in your own words, Mr. Eveland, what

8   is Verus seeking to be retained to do in the bankruptcy

9   case?

10   A.   Essentially to review the PIQs that plaintiff

11 firms have been required to produce in the -- for a

12 limited number of claimants, and to create a data set

13 that would then be used by the claims estimators.

14   Q.   And the PIQs are the Personal Injury

15 Questionnaires?

16   A.   That is correct.

17   Q.   And Verus is seeking to be retained by the ACC

18 in this case. Correct?

19   A.   That is who's asked to retain us, yes.

20   Q.   Okay. And if you look at page three of your

21 Declaration, Exhibit 5, paragraph four, Scope of

22 Service. This details specifically the tasks Verus

23 intends to perform on behalf of the committee?

24   A.   That's correct.

25   Q.   And there is, I think, nine separate specific

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   83

1   items there, A through I?

2   A.   That's correct.

3   Q.   Do you have any idea how many total hours

4   Verus anticipates spending on the work it's seeking to

5   do here as outlined in your Affidavit, Exhibit 5?

6   A.   No, I do not have an estimate of that.

7   Q.   Okay. I assume it's going to be more than ten

8   hours on that one?

9   A.   Most likely.

10   Q.   More than a hundred hours?

11   A.   Probably far in excess of that.

12   Q.   We are talking thousands of hours of work?

13   A.   Possibly, but I have not seen any of the PIQs

14   or know how many there are.

15   Q.   Okay. I have. They're long.

16   Does Verus have the necessary personnel to

17   perform the services identified in paragraph four of

18   your Declaration?

19   A.   This is -- I view this as going to be a

20   longer-term engagement, and we will hire and train

21   people.

22   Q.   How many individuals do you think you'll need

23   to hire to perform those services?

24   A.   Until I know the extent of the documents that

25   need to be reviewed and the protocols for reviewing

1   them, I don't have an estimation of that.

2   Q.   But you're confident you'll be able to hire

3   the necessary personnel in order to perform these tasks

4   you're asking the Court to approve?

5   A.   Yes.

6   Q.   And you're confident you can allocate the

7   resources needed to perform this work. Is that

8   correct?

9   A.   Given sufficient time, yes.

10   Q.   And will performing the services identified

11   here in paragraph four of your Declaration, will that

12   negatively impact in any way your duties to your

13   current clients?

14   MR. ANSELMI: Objection.

15   Q.   Or Verus's duties to its current clients?

16   A.   No.

17   MR. ANSELMI: Objection to form.

18   A.   As with any new client, we hire and staff

19   appropriately.

20   Q.   Okay. So do you foresee the work outlined in

21   paragraph four causing Verus to delay payments of any

22   trust claims?

23   A.   No. As I said previously in response to one

24   of your earlier questions, our intent is to hire and

25   staff this as a separate team.

1   Q.   So I assume the same answer to my question.

2   Do you anticipate or do you have any concern that it's

3   going to cause Verus to delay any contractual

4   milestones that it has?

5   A.   No. As I said, it's a separate -- we will

6   hire and train a separate team to perform this work.

7   Q.   And who do you understand will pay Verus for

8   the work outlined here in your Declaration, Exhibit 5?

9   A.   I understand that we would be retained by the

10 Asbestos Creditor's Committee.

11   MS. PHILLIPS: I object to this line

12 of questioning to the extent it proceeds, you know,

13 beyond the relevance of the Subpoena to the trust.

14   MR. HIRST: Okay. I think I can see

15 the relevance, but we'll figure it out.

16

17 BY MR. HIRST:

18   Q.   And do you know who ultimately pays those

19 bills on behalf of the Asbestos Creditor's Committee,

20 including the bill that Verus is potentially going to

21 be serving if they're hired for these tasks?

22   MS. PHILLIPS: Same objection.

23   A.   That I do not know, the specific entities that

24 would be paying those bills.

25   Q.   So you're not aware it's the debtors' estates

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   86

1   who would be paying Verus's bills for this work?

2   A.   I am vaguely aware of that.

3   Q.   Okay. And you're also vaguely aware that it

4   would be the debtors who would be paying Verus for any

5   of the work performed in responding to the Subpoena we

6   saw in Exhibit 2?

7   MS. PHILLIPS: Same objection.

8   A.   That is my understanding.

9   Q.   Okay. You can put number five aside.

10   Mr. Eveland, are you familiar -- and I am not,

11 but are you familiar with what SOC 2 certification

12 refers to?

13   MR. ANSELMI: Could you repeat that?

14   Q.   Are you familiar with SOC 2? S-O-C.

15   A.   I am familiar with SOC certifications.

16   Q.   And what is SOC certification?

17   A.   Service Organizational Controls to accounting

18 standards for auditing service providers.

19   Q.   Okay. And does that include -- your

20 familiarity with SOC services, does that include data

21 integrity, confidentiality, and those types of issues?

22   MR. ANSELMI: Objection to form.

23   A.   My familiarity with it, it depends on which

24 version of SOC audit is being undertaken the extent of

25 the controls that are tested.

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   87

1   Q.   Does Verus have SOC certification?

2   A.   We do have an SOC audit.

3   Q.   Okay. And what is that?

4   A.   It's an SOC 1 audit.

5   Q.   Okay. Does Verus have SOC 2 certification?

6   A.   Not currently.

7   Q.   Has Verus ever sought SOC 2 certification?

8   A.   Not currently.

9   Q.   Is Verus intending to seek SOC 2

10   certification?

11   A.   We will probably do so eventually.

12   Q.   And why is Verus interested in seeking SOC 2

13   certification eventually?

14   A.   It's part of our growth strategy as we expand

15   into new market segments and the company grows. It's

16   just an added level of certification that assures new

17   clients of Verus's capabilities.

18   Q.   How about are you familiar with HITRUST

19   certification?

20   A.   I am generally familiar with HITRUST.

21   Q.   Okay. And what's your familiarity with

22   HITRUST certification? What does that involve?

23   A.   I don't know the specifics of HITRUST, but I

24   am aware of it as a general concept.

25   Q.   So given your lack of familiarity, I assume

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   88

1   Verus does not have HITRUST certification?

2   A.   We do not currently have HITRUST

3   certification.

4   Q.   Is Verus anticipating seeking HITRUST

5   certification at any point in the future?

6   MR. ANSELMI: Objection to form.

7   A.   We have spoken with our outside audit firm

8   about seeking that in the future.

9   Q.   And why is Verus interested in seeking HITRUST

10   certification in the future?

11   A.   As a general rule, the certifications are

12   additional marketing collateral, for want of a better

13   term.

14   Q.   Do you know what is involved in becoming

15   HITRUST certified?

16   A.   I know there is a certification process that

17   would involve reviewing controls around data integrity

18   and security. I do not know all the specifics.

19   Q.   And you haven't undertaken those yet, have

20   you, sir?

21   A.   We have not undertaken the certification

22   process yet.

23   Q.   Okay. Same question on the SOC 2 side. Are

24   you aware of what is involved in obtaining SOC 2

25   certification?

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   89

1   A.   Yes, I am.

2   Q.   And what's involved in that?

3   A.   Well, it's a test of a number of different --

4   I forget what they refer to them as, but standards in

5   different categories, and there is a standard list of

6   controls that must be tested in order to seek -- to

7   obtain SOC 2 certification in each of those control

8   areas.

9   Q.   And Verus has not undertaken those tasks yet,

10 have they, sir?

11   A.   Not for SOC 2 certification.

12   Q.   Correct?

13   A.   We have an SOC 1.

14   Q.   What does two-factor authentication refer to,

15 Mr. Eveland?

16   A.   Two-factor authentication is a means of

17 controlling access to computer systems. It requires

18 not just the username and password to obtain access,

19 but also a secondary confirmation that you are who you

20 claim to be through either a code sent through a text

21 message, an email, or through an authentication

22 application.

23   Q.   And to access the Verus trust databases that

24 Verus maintains -- scrap that.

25   To access the trust databases that Verus

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   90

1   maintains, does Verus require two-factor

2   authentication?

3   A.   We do.

4   Q.   Okay. And what is the two-factor

5   authentication you require? What are the steps?

6   A.   It's a -- well, first you enter your username

7   and password, and then you have to enter a six-digit

8   code obtained through a text message or an

9   authentication application.

10   Q.   And what is a managed security service

11   provider?

12   A.   A managed security service provider?

13   Q.   Yes.

14   A.   Essentially a network administrator monitors

15   network infrastructure, firewalls, network traffic.

16   Q.   Does Verus employ a managed security service

17   provider?

18   A.   We do.

19   Q.   And who is that?

20   A.   That would be a firm called STF Consulting.

21   Q.   Okay. Does Verus require its employees to

22   complete annual cyber security training?

23   A.   Not just annual, but regular and recurring

24   throughout the year.

25   Q.   And what does that consist of?

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   91

1   A.   We require monthly training that consists

2   of -- we have a third party that we contract with

3   called KnowBe4 that provides training collateral that

4   they all have to go through on a monthly basis.

5   There is also random testing, where there

6   is -- they receive emails and text messages, things of

7   that nature, that are testing whether they respond to

8   phishing attacks and such, and if they do -- if they do

9   inappropriate click on one of those messages, they have

10 to go through additional supplemental training.

11   MR. HIRST: This might be my

12 25 minutes, Andrew, if we can take five minutes.

13   (Recess taken.)

14   MR. HIRST: This is the happiest part

15 of many depositions, because I have no more questions

16 for you.

17   THE WITNESS: Thank you.

18   MR. ANSELMI: I have no questions.

19   MS. PHILLIPS: I have no questions.

20   MR. ANSELMI: Does anyone on the phone

21 have any questions? I think that does it.

22   (Discussion held off the record.)

23   MR. HIRST: So overnight for the

24 debtors requested for the transcript.

25   MR. ANSELMI: Overnight for Verus.

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   92

1   MS. PHILLIPS: And overnight for the

2   ACC, please.

3   MR. HIRST: Anyone on the phone with a

4   transcript order? All right. Unless anyone else has

5   anything on the phone, we are going to hang up on you

6   guys.

7   (Deposition adjourned at 11:38 a.m.)

8

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MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   93

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          I, MARY ADAMCIK, a Certified Court Reporter and
Notary Public of the State of New Jersey, certify that
the foregoing is a true and accurate transcript of the
testimony taken at the place and on the date
hereinbefore set forth.
          I FURTHER CERTIFY that I am neither attorney
nor counsel for, nor related to or employed by any of
the parties to the action in which this deposition was
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MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   94

```
 1   Reference No.: 9684106

 2

 3   Case:  IN RE ALDRICH PUMP LLC, ET AL.

 4
        DECLARATION UNDER PENALTY OF PERJURY
 5
           I declare under penalty of perjury that
 6   I have read the entire transcript of my Depo-
     sition taken in the captioned matter or the
 7   same has been read to me, and the same is
     true and accurate, save and except for
 8   changes and/or corrections, if any, as indi-
     cated by me on the DEPOSITION ERRATA SHEET
 9   hereof, with the understanding that I offer
     these changes as if still under oath.
10

11        _____

12             Mark Eveland

13

14           NOTARIZATION OF CHANGES

15                (If Required)

16

17   Subscribed and sworn to on the _____ day of

18

19   _____, 20_____ before me,

20

21   (Notary Sign)_____

22

23   (Print Name)                    Notary Public,

24

25   in and for the State of _____
```

MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   95

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 1    Reference No.: 9684106
      Case:  IN RE ALDRICH PUMP LLC, ET AL.
 2

 3    Page No._____Line No._____Change to:_____

 4    _____

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10    _____

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15    Page No._____Line No._____Change to:_____

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17    Reason for change:_____

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20    Reason for change:_____

21    Page No._____Line No._____Change to:_____

22    _____

23    Reason for change:_____

24

      SIGNATURE:_____DATE:_____
25    Mark Eveland
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MARK EVELAND   May 16, 2023
IN RE ALDRICH PUMP LLC, ET AL.   96

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 1   Reference No.: 9684106
     Case:  IN RE ALDRICH PUMP LLC, ET AL.
 2

 3   Page No._____Line No._____Change to:_____

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22   _____

23   Reason for change:_____

24

     SIGNATURE:_____DATE:_____
25   Mark Eveland
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EXHIBIT G

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 1              UNITED STATES BANKRUPTCY COURT

 2          WESTERN DISTRICT OF NORTH CAROLINA

 3                  CHARLOTTE DIVISION

 4                      -  -  -

 5   IN RE:                 :   CIVIL ACTION
         ALDRICH PUMP LLC,  :
 6       et al,             :   Case no. 20-30608
             Debtors.       :
 7   ----------------------  (Jointly Administered)
     ARMSTRONG WORLD         :
 8   INDUSTRIES, INC.        :
     ASBESTOS PERSONAL       :   Miscellaneous
 9   INJURY SETTLEMENT       :   Proceeding
     TRUST,et al.            :
10           Plaintiffs,    :   No. 22-00303(JCW)
            V.              :   (Transferred from
11   ALDRICH PUMP, LLC,     :   District of
     et al.                 :   Delaware)
12           Defendants     :
     ----------------------
13   (Continued on Page 2.)

14                      -  -  -

15                  May 16, 2023

16                      -  -  -

17        Oral deposition of RICHARD WINNER,
     held in the offices of Young Conaway Stargatt
18   & Taylor, 1000 N. King Street, Wilmington,
     Delaware 19801, commencing at 8:59 a.m. on
19   the above date, before Teresa M. Beaver, a
     Professional Court Reporter and Notary
20   Public.

21                      -  -  -

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RICHARD WINNER   May 16, 2023
ARMSTRONG WORLD INDUSTRIES V. ALDRICH PUMP   2

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 1          IN THE UNITED STATES DISTRICT COURT
      FOR THE EASTERN DISTRICT OF PENNSYLVANIA
 2                      -   -   -
   AC&S ASBESTOS            :
 3 SETTLEMENT TRUST,        :  Miscellaneous
   COMBUSTION ENGINEERING   :  Proceeding
 4 524(G) ASBESTOS PI       :
   TRUST, GI HOLDINGS       :  No. 23-00300(JCW)
 5 INC. ASBESTOS PERSONAL   :
   INJURY SETTLEMENT        :  (Transferred from
 6 TRUST, GST SETTLEMENT    :  District of New
   FACILITY, KAISER         :  Jersey)
 7 ALUMINUM & CHEMICAL      :
   CORPORATION ASBESTOS     :
 8 PERSONAL INJURY TRUST,   :
   QUIGLEY COMPANY, INC.    :
 9 ASBESTOS PI TRUST, TH    :
   AGRICULTURE &            :
10 NUTRITION, L.L.C.        :
   ASBESTOS PERSONAL        :
11 INJURY TRUST, and        :
   YARWAY ASBESTOS          :
12 PERSONAL INJURY TRUST,   :
              Petitioners,  :
13         V.               :
   ALDRICH PUMP LLC,        :
14 et al.                   :
              Respondents,  :
15 VERUS CLAIM SERVICES,    :
   LLC,                     :
16         Interested       :
           Party,           :
17 NON-PARTY CERTAIN        :
   MATCHING CLAIMANTS,      :
18         Interested       :
   Party.                   :
19                      -   -   -
                 May 16, 2023
20                      -   -   -
        Oral deposition of RICHARD WINNER.
21                      -   -   -

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 1    A P P E A R A N C E S  :

 2

 3            HOGAN McDANIEL
              BY:  DANIEL K. HOGAN, ESQUIRE
 4            1311 Delaware Avenue
              Wilmington, Delaware  19806
 5            dkhogan@dkhogan.com
              Counsel for Certain Matching
 6            Claimants

 7            ROBINSON & COLE
              BY:  LAURIE KREPTO, ESQUIRE
 8            1650 Market Street
              30th Floor
 9            Philadelphia, Pennsylvania  19103
              Lkrepto@rc.com
10            Counsel for Asbestos Creditors
              Committee
11

12            YOUNG CONAWAY STARGATT & TAYLOR, LLP
              BY:  KEVIN A. GUERKE, ESQUIRE
13                      and
                  ROXANNE M. EASTES, ESQUIRE
14            1000 North King Street
              Wilmington, Delaware  19801
15            reastes@ycst.com
              kguerke@ycst.com
16            Counsel for the DCPF and the Witness

17

18            BALLARD SPAHR, LLP
              BY:  BETH MOSKOW-SCHNOLL, ESQUIRE
19            919 North Market Street
              11th Floor
20            Wilmington, Delaware  19801
              Moskowb@ballardspahr.com
21            Counsel for OCPF Trust

22

23

24
```

RICHARD WINNER   May 16, 2023
ARMSTRONG WORLD INDUSTRIES V. ALDRICH PUMP   4

```
 1    A P P E A R A N C E S   :

 2

              (VIA VIDEOCONFERENCE)
 3            ORRICK, HERRINGTON & SUTCLIFFE, LLP
              BY:  JONATHAN P. GUY, ESQUIRE
 4            1152 15th Street NW
              Washington, D.C.  20005
 5            jguy@orrick.com
              Counsel for Future Claim
 6            Representative Joseph Grier

 7
              (VIA VIDEOCONFERENCE)
 8            LOWENSTEIN SANDLER, LLP
              BY:  NICHOLAS VELEZ, ESQUIRE
 9            One Lowenstein Drive
              Roseland, New Jersey  07068
10            nvelez@lowenstein.com
              Counsel for Verus Trusts

11

12            (VIA VIDEOCONFERENCE)
              McCARTER & ENGLISH
13            BY:  SHAWN SMITH, ESQUIRE
              185 Asylum Street
14            Hartford, Connecticut  06103
              Counsel for Non-Debtor Affiliates,
15            Trane Technologies Company LLC and
              Trane U.S., Inc.

16

17            EVERT WEATHERSBY HOUFF
              BY:  CLARE M. MAISANO, ESQUIRE
18            111 S. Calvert Street
              Suite 1910
19            Baltimore, Maryland  21202
              cmmaisano@ewhlaw.com
20            Counsel for The Debtors

21

22

23

24
```

```
 1    A P P E A R A N C E S   :

 2

 3            (VIA VIDEOCONFERENCE)
         ANSELMI & CARVELLI, LLP
         BY:  ZACHARY D. WELLBROCK, ESQUIRE
 4       56 Headquarters Plaza
         West Tower, Fifth Floor
 5       Morristown, New Jersey  07960
         zwellbrock@acllp.com
 6       Counsel for Verus Claims Services, LLC

 7

 8            (VIA VIDEOCONFERENCE)
         CAPLIN & DRYSDALE
         BY:  KATY ZENDEH, ESQUIRE
 9       One Thomas Circle, NW
         Suite 1100
10       Washington, D.C.  20005
         kzendeh@capdale.com
11       Counsel for Official Committee of
         Asbestos Personal Injury Claims
12
                       -   -   -
13

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 1                    I   N   D   E   X

 2    WITNESS                                         PAGE

 3     RICHARD WINNER

 4         BY MS. MAISANO                                8

 5
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 6
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 7
       Exhibit            Subpoena                    23
 8     Winner-1
       Exhibit            Declaration of Richard      38
 9     Winner-2           Winner

10     Exhibit            Delaware Claims            121
       Winner-3           Processing Facility
11                        Invoice No. 12 dated
                          November 2, 2022
12
       Exhibit            Delaware Claims            121
13     Winner-4           Processing Facility
                          Invoice No. 13 dated
14                        January 18, 2023

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 1          DEPOSITION SUPPORT INDEX

 2

 3

 4   Direction to Witness Not to Answer

 5   Page      Line              Page       Line

 6   None

 7

 8

 9   Request For Production of Documents

10   Page      Line              Page       Line

11   None

12

13

14   Questions Marked

15   Page      Line              Page       Line

16   None

17

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19

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 1                        -   -   -

 2                RICHARD WINNER, after having

 3    been duly sworn, was examined and testified

 4    as follows:

 5                        -   -   -

 6                EXAMINATION

 7                        -   -   -

 8    BY MS. MAISANO:

 9         Q.      Good morning, Mr. Winner.

10         A.      Good morning.

11         Q.      My name is Clare Maisano.  We

12    met briefly before we started.  I represent

13    the debtors in this case and I'll be taking

14    your deposition today.

15         A.      Okay.

16         Q.      I know you've had your

17    deposition taken before but just a few rules

18    of the road --

19         A.      Okay.

20         Q.      -- so that we have a clean

21    record.

22                Please give audible responses to

23    my questions.  A nod of the head or a shake

24    of the head isn't able to be picked up on the
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1   written record.

2   If you could please let me

3   finish my question before you start to

4   answer, we might get into a conversational

5   way and it's much easier for Madam Court

6   Reporter to have us not speaking over each

7   other.

8   If you answer my question, I'll

9   presume that you understood it and so if my

10 question is unclear, if you don't understand,

11 please ask me to rephrase and I'll do that.

12   I know you have a hard stop at

13 12:45 as I understand it today?

14   A.   Yes.

15   Q.   I hopefully will get you out of

16 here well in advance of that.

17   But that said, should you want

18 to take a break, please let me know. This

19 doesn't need to be an endurance test.

20   In response to some of the

21 questions, you may hear objections from the

22 attorneys from time to time.

23   Unless you're instructed not to

24 answer by your attorney, we can note the

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 1   objection and then move on.

 2               Do you have any questions for me

 3   before we start?

 4        A.     No.

 5        Q.     Could you state your name for

 6   the record, please?

 7        A.     Richard Winner.

 8        Q.     And your business address,

 9   please?

10        A.     It's 1000 Northwest Street in

11   Wilmington, Delaware.

12        Q.     Is there anything that would

13   prevent you from testifying truthfully today?

14        A.     No.

15        Q.     How did you prepare for your

16   deposition today?

17        A.     I reviewed some documents,

18   primarily my declaration, the subpoena,

19   looked through the transcript of my previous

20   deposition and looked, skimmed through the

21   declaration for Dr. Winer and Dr. Mullen.

22        Q.     Did you meet with counsel in

23   preparation for this deposition?

24        A.     Yes, I did.
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 1        Q.      For how long did you meet with

 2   counsel?

 3        A.      We met on three separate

 4   occasions.  Roughly two hours each time.

 5        Q.      And when did you meet on those

 6   separate occasions?

 7        A.      We met last week.  I'm not

 8   sure -- I don't remember the date.  We met

 9   again on Friday and then yesterday.

10        Q.      Did you speak with anyone other

11   than counsel in preparation for your

12   deposition?

13        A.      No, I don't believe so.

14        Q.      And other than the documents

15   that you cited, any other documents you

16   reviewed in preparation for today's

17   deposition?

18        A.      No.  The invoices.

19        Q.      And so you talked about

20   reviewing your previous deposition.  Was that

21   your August 16th, 2021 deposition in the DBMP

22   matter?

23        A.      Yes, it was.

24        Q.      Have you given any depositions
```

1   since your deposition in the DBMP case?

2   A.   No, I have not.

3   Q.   So, I don't want to retread

4   everything that was in DBMP that we could use

5   in this case, also. So, I presume your

6   educational background has not changed since

7   you gave your deposition in 2021 in the DBMP

8   case?

9   A.   It has not.

10   Q.   So if I were to ask you all

11   those questions about your background and

12   education, they would be the same answers

13   today as they were in your August, 2021

14   deposition?

15   A.   Yes.

16   Q.   Has there been any change in

17   your job role at the DCPF since your August,

18   2021 deposition in the DBMP case?

19   A.   The difference, there have been

20   two additional trusts that have come on board

21   that we've started processing.

22   Q.   Okay. And what are the two

23   trusts that have come on board?

24   A.   Owens Illinois and Rapid

1 American.

2   Q.   And we can go back to those in a

3 bit.

4   At your deposition in 2021, you

5 testified that you were doing some work for a

6 DCPF, I believe it's a subsidiary called

7 NextClaim?

8   A.   Uh-huh.

9   Q.   Do you remember that testimony?

10   A.   Yes.

11   Q.   And at that time, you testified

12 that NextClaim was a relatively new entity

13 and not processing claims.

14   Is NextClaim processing any

15 claims now?

16   A.   They are not processing claims.

17 They are doing some work on some different

18 projects; mostly call center-type and support

19 with emails and that, things of that nature.

20 Administrative.

21   Q.   Is there any work that NextClaim

22 is doing currently regarding processing

23 asbestos personal injury claims?

24   A.   No.

1   Q.   And what is your role with

2   NextClaim at this time?

3   A.   I'm the chief operating officer,

4   again, would be for NextClaim as well. We

5   have other people who are overseeing this

6   project, so I don't have very much direct

7   involvement in those projects.

8   Q.   And is the CEO of NextClaim, is

9   it still Mr. Mekus?

10   A.   Yes.

11   Q.   John Mekus?

12   A.   Yes.

13   Q.   Does NextClaim offer any of the

14 same services that the DCPF does?

15   A.   I'm not sure what you mean by

16 that.

17   Q.   The DCPF processes asbestos

18 personal injury claims and as I understand it

19 some other mass tort claims?

20   A.   Uh-huh.

21   Q.   Does NextClaim do any of that

22 overlapping work?

23   A.   I don't think anything would

24 overlap with asbestos. They assist, do some

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1   like I said call center, maybe some data

2   entry. So, there is, you know, there's data

3   entry certainly in the DCPF, but as far as

4   the type and nature of the work, there's no

5   overlap between the two.

6   Q.   And putting aside the two new

7   trusts that we'll talk about in just a

8   minute, what are the asbestos personal injury

9   trusts that the DCPF processes claims for?

10   A.   All right. It's the Armstrong

11 World Industry, Babcock and Wilcox, Celotex,

12 DII and they have two entities, Halliburton,

13 Hubs and Walker, OC, Owens Corning

14 Fiberboard.

15   There's also Pittsburgh Corning,

16 WRG, USG and Federal Mogul which has four

17 entities. I believe that's everyone.

18   Q.   And you just told me that since

19 August of 2021 the DCPF started processing

20 claims for two new trusts, the Owens Illinois

21 Trust and also the Rapid American Trust;

22 correct?

23   A.   Correct.

24   Q.   When did the Owens Illinois

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1   Trust come online?

2   A.   I believe that was last October.

3   Q.   And is that when DCPF started

4   processing claims?

5   A.   Started receiving the claims,

6   yes.

7   Q.   And when did the Rapid American

8   Trust come online?

9   A.   That would have been in

10   November.

11   Q.   November of --

12   A.   Of last year.

13   Q.   Of 2022?

14   A.   Yeah.

15   Q.   Okay. And has DCPF received any

16   claims --

17   A.   Yeah.

18   Q.   -- for that one?

19   A.   Yeah.

20   Q.   And is the Owens Illinois Trust

21   data housed in the claims' online database?

22   MR. GUERKE: Objection.

23   Relevance.

24   MS. MAISANO: I think we're

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1   going to be talking about the claims' online

2   database as a whole. I just wanted to

3   establish that all the DCPF member trusts

4   have their claims in that claims' online

5   database.

6   THE WITNESS: Yes. They use

7   Trust Online for their claims.

8   BY MS. MAISANO:

9   Q.   Does Rapid American also have

10 it's data housed in the Trust Online

11 database?

12   A.   Yes, they do.

13   Q.   Is the DCPF still owned by the

14 seven asbestos trusts that you testified to

15 in your August, 2021 deposition?

16   A.   Yes.

17   Q.   Is DCPF still governed by a

18 board of directors?

19   A.   Yes.

20   Q.   Are the members of that board of

21 directors still the trustees of the seven

22 asbestos trusts that own the DCPF?

23   A.   Yes.

24   Q.   Who are the members of the DCPF

1   board of directors currently?

2   A.   Ann Farazzi and there's Jack

3   Marionneaux, Phil Pahigian, Leanne Jackson,

4   Chip Robertson, Lewis Sifford. Let me make

5   sure I got them all.

6   It's Ann Farazzi, Jack

7   Marionneaux, Leanne Jackson, Chip Robertson,

8   Lewis Sifford, Phil Pahigian and oh, Andy

9   MacQueen.

10   Q.   Thank you. Do you still report

11 to Mr. Mekus, the CEO of the DCPF?

12   A.   Yes, I do.

13   Q.   Does he still, Mr. Mekus still

14 report to the board of the DCPF?

15   A.   Yes.

16   Q.   And I'm going to refer to

17 Aldrich and Murray as the debtors in this

18 case just as shorthand.

19   Do you know if the board of the

20 DCPF had any involvement with the response to

21 the subpoenas that were served by the debtors

22 on the DCPF in this case?

23   A.   No, I'm not involved in that

24 part.

1   Q.   Do you know if Mr. Mekus had any

2   involvement with the response to the

3   subpoenas that were served by the debtors on

4   the DCPF in this case?

5   A.   No, I do not know.

6   Q.   And do you know if any of the

7   member trusts have had any involvement with

8   the responses to the subpoenas that were

9   served by the debtors on the DCPF in this

10 case?

11   A.   No, I do not know their

12 involvement.

13   Q.   Do you know if the DCPF notified

14 the client trusts about the subpoenas that

15 were served by the debtors -- the subpoena

16 that was served by the debtors onto the DCPF

17 in this case?

18   A.   I believe that the DCPF informed

19 the trust of the subpoena, but I'm not

20 involved in that process and I don't know

21 exactly how that was done.

22   Q.   Do you know if the DCPF and the

23 DCPF client trusts coordinated any responses

24 to the subpoenas that were served by the

1   debtors on the various entities in this case?

2   A.   No, I'm not involved in that.

3   Q.   Do you know whether the DCPF

4   regards any of the data requested by the

5   debtors in the subpoenas to be a trade secret

6   that belongs to the DCPF?

7   A.   I mean the data that's requested

8   -- the trust own the data. It's their data

9   for the trust, but that's a level, I don't

10   know any trade secret. They are the owners

11   of the data.

12   Q.   Who has the primary

13   responsibility for responding to subpoenas

14   and information requests that are served on

15   the DCPF?

16   A.   The mechanical parts of the

17   subpoena for doing the matching and that --

18   I'm involved with that and oversee that part

19   of the process.

20   Q.   And for the other parts of the

21   process, who would be in charge of that?

22   A.   I'm not involved in that part of

23   the process. I'm the internal side who does

24   the operations.

1   Q.   Okay. Do you know if the DCPF

2   has any contractual obligations to the DCPF

3   client trusts when responding to any

4   subpoenas or information requests?

5   A.   There is a requirement in the

6   claim processing agreements that the data is

7   confidential, we're under contract to keep

8   that information confidential.

9   So, I think there may be

10 something in the claim processing agreements.

11   Q.   Do you know what those oblig --

12 the DCPF's obligations are when it receives a

13 subpoena for information related to a DCPF

14 client trust?

15   A.   No, I'm not -- we have a legal

16 department that handles when subpoenas come

17 in. I'm not involved in that part of the

18 process.

19   Q.   How many people are involved in

20 the legal department in DCPF?

21   A.   I think currently there are

22 three individuals.

23   Q.   Are they all lawyers?

24   A.   I'm not sure.

1   Q.   Are you familiar with the DCPF

2   subpoena and authorization procedures?

3   A.   No, I am not.

4   Q.   Does the DCPF still have to send

5   subpoenas it receives to counsel at Young

6   Conaway?

7   A.   Again, I'm not involved in that

8   process. I don't know the steps that are

9   involved.

10   Q.   Okay. Do you know how many

11   claims the DCPF has processed for the DCPF

12   client trust?

13   A.   Process several million claims.

14   Q.   So I think you told me that you

15   were the, did the internal work in some of

16   the matching.

17   Can you tell me everything that

18   would encompass your role as it relates to

19   responding to the debtor's status request in

20   this case?

21   MR. GUERKE: Objection.

22   THE WITNESS: I oversee the

23   process. So, we have different parties that

24   are involved in each step, from the initial

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1   matching of the claimants, identifying those

2   that are -- what would be on the meet and

3   confer; whether they match on a Social

4   Security number, but do not match on last

5   name and going through that meet and confer

6   process.

7   Also coordinate on the notice to

8   the law firms who have claims from the

9   matching claims. And DVMP was also

10 overseeing the redaction process and eventual

11 production of the data.

12   There's also some unnoticeable

13 law firms in trying to research some of these

14 older firms in order to provide notice.

15   Q.   Why don't we take a look at

16 what's been marked as Exhibit 1.

17   There's a copy of it here in

18 front of you.

19   - - -

20   (Whereupon, Deposition Exhibit

21 Winner-1, Subpoena, was marked for

22 identification.)

23   - - -

24 BY MS. MAISANO:

1   Q.   This is the subpoena that was

2   served on the DCPF by the debtors in this

3   case.

4   Have you seen this before?

5   A.   Yeah, this looks to be the

6   subpoena.

7   Q.   And it was filed as an exhibit

8   to the DCPF joinder in the Delaware trust

9   motion to quash that was filed in Delaware.

10   You're obviously aware that DCPF

11   moved to quash the subpoena; correct?

12   A.   I know there's been legal

13   actions back and forth, but I'm not involved

14   in those operations.

15   Q.   So, just to kind of set the

16   table we can go through the subpoena and also

17   the order that governs it.

18   I would ask you to please turn

19   to Page 8 of the order. The pagination is a

20   little strange because it's been filed a

21   couple of times in court.

22   Look at the bottom of Page 8,

23   Paragraph 10, On or before the applicable

24   trust production date, DCPF, the Manville

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1   Trust and Verus shall produce to Bates White

2   (in electronic database format and with

3   respect to DCPF and Verus separately for each

4   Trust), the following information pertaining

5   to each Trust, Matching Claimant, and then

6   there's a footnote, (to the extent the

7   relevant trust databases contain such

8   information).

9   And that's called the Trust

10   Anonymized Matched Production.

11   Matching claimant, do you have

12   an understanding of what that means?

13   A.   I believe so.

14   Q.   What's your understanding of

15   what the -- matching claimant is under this

16   order?

17   A.   A matching claimant is, they

18   provide us a list with the claimant

19   pseudonym, a Social Security number and the

20   last name. And then we use that information

21   to match the claims by -- first by Social

22   Security number and then by last name.

23   So, that falls into two groups;

24   where the last name was an exact match and

1   then where the last name does not match, that

2   goes on to the meet and confer list.

3   Q.   So, in that process, the debtors

4   are providing to the DCPF Social Security

5   numbers and names. Is that your

6   understanding?

7   A.   Yes.

8   Q.   And the debtors are not asking

9   for names and Social Security numbers to be

10   provided to them by the DCPF under that

11   exchange; correct?

12   MR. GUERKE: Objection.

13   THE WITNESS: They are not

14   asking for it directly, but the information

15   they are asking for does contain that

16   information.

17   BY MS. MAISANO:

18   Q.   Okay. We'll get to -- we'll get

19   to that.

20   Is that -- is the basis of that

21   statement the -- strike that.

22   So, your -- the basis of that

23   statement that they are actually, they

24   actually are asking for some of that

1   information, does that arise from the

2   potential for some of that information to

3   inadvertently be someplace it's not supposed

4   to be in the trust data?

5   MR. GUERKE: Objection.

6   THE WITNESS: The information

7   that they are requesting in the subpoena,

8   that information in the database will contain

9   name, Social Security and other personal

10 information.

11   So, yes, the information

12 requested can contain that.

13 BY MS. MAISANO:

14   Q.   Okay. So, if we turn the page,

15 to Page 9, there are A through G and those

16 are the fields and the information requested

17 by the debtors from the DCPF; correct?

18   A.   Correct.

19   Q.   And so we can go through these

20 briefly. A, claimant pseudonym.

21   Is there a potential for names

22 or Social Security numbers to be included in

23 claimant pseudonym?

24   A.   No.

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1   Q.   B is claimant law firm with

2   email and address of contact person.

3   Is there a potential for Social

4   Security numbers or other PII to be included

5   in that category?

6   A.   Not for the claimant, no. The

7   only -- well, the only case would be

8   information where it was a pro se claimant

9   and I know the pro se claimants get added to

10 the meet and confer list.

11   So, there are times where the

12 claimant is not represented by an attorney.

13   So, the sort of law firm

14 information, that type of contact information

15 would be the claimant.

16   Q.   So, the potential there is that

17 in the event that there's a pro se claimant

18 who doesn't have a lawyer representing him or

19 her, the claimant law firm field could be

20 populated with the name of the claimant who

21 filed the trust claim? Is that correct?

22   A.   Correct.

23   Q.   And just so that we're talking

24 about the same thing, I think you mentioned

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1   before that names and Social Security numbers

2   were the two items that could be contained --

3   that could be here that the debtors might

4   have asked for even though --

5   A.   There's other -- it's not just

6   names and Socials that could be in these

7   fields. It's other personal identifying

8   information. It could be date of birth,

9   there could be addresses of the claimant.

10   These fields are free text

11 fields and so there could be various, I know

12 there's marriage dates and things like that.

13 There's personal information from the

14 claimant that is in these fields.

15   Q.   Okay. So, the address of the

16 claimant, you would consider that to be

17 personal information?

18   A.   It's personal identifiable to

19 identify who the claimant is.

20   Q.   Okay. The next on the date

21 claim filed against the trust.

22   Is that a free text field?

23   A.   No.

24   Q.   So, is there a potential for any

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1   personal identifying information to be in

2   that field?

3   A.   No.

4   Q.   Is the date claim approved by

5   the trust, if approved, a free test field?

6   A.   No.

7   Q.   Is there a potential for any PII

8   or personal information to be in that field?

9   A.   No.

10   Q.   The next one is the date claim

11 paid by trust, if paid.

12   Is that a free text field?

13   A.   No.

14   Q.   Is there any potential for any

15 PII or other personal information to be in

16 that field?

17   A.   No.

18   Q.   The next one is if not approved

19 or paid, status of claim.

20   Is that a free text field or is

21 that a dropdown?

22   A.   It's not a free text field.

23 There are certain categories.

24   Q.   So, is there the potential for

1   any personal information or PII to be in that

2   field?

3   A.   No.

4   Q.   So then G we get to all exposure

5   related fields. And there's a footnote

6   before we get to the subcategories under G.

7   And the footnote says, To the

8   extent that any names or any SSNs appear in

9   any exposure-related field, the Manville

10   Trust, DCPF and Verus may redact such names

11   and SSNs prior to production of the trust

12   anonymized production. In addition, prior to

13   the delivery of the trust anonymized matched

14   production to the other retained experts,

15   Bates White shall search for and permanently

16   delete any such names and SSNs that may be

17   inadvertently included in the trust

18   anonymized matched production.

19   So, do you understand that to

20   mean that DCPF will take the first pass at

21   redaction and then Bates White takes the

22   second pass at redaction or what's your

23   understanding of what that footnote obligates

24   the parties to do?

1   MR. GUERKE: Objection.

2   THE WITNESS: This footnote --

3   we have an obligation to, for the DCPF to

4   keep this information confidential. So, it's

5   our obligation to do this redaction

6   regardless of whether or not some other

7   entity is also going to look at it.

8   Once the data leaves our

9   control, there's security risks and we lose

10   control of that data.

11   So, it's our duty and our

12   obligation to redact and remove that

13   information prior to it being produced.

14   BY MS. MAISANO:

15   Q.   And that's an obligation that

16   the DCPF takes seriously?

17   A.   Very seriously.

18   Q.   The DCPF would take all measures

19   possible to ensure that no information that

20   shouldn't leave its control does leave its

21   control?

22   A.   Yes. In this production, we

23   would look through those, where it says all

24   exposure fields, the various fields and

1   manually look through and remove the names,

2   the Social, those pieces of information that

3   we've previously talked about.

4   It's a -- it's a burdensome

5   endeavor and it takes many hours. But that's

6   what we have done and would do in this case,

7   is gone through that process and look through

8   all of the fields on all of the exposure

9   records that could contain that information

10   and redact.

11   Q.   Is the date exposure began a

12   free text field?

13   A.   No.

14   Q.   So, there would not be potential

15   for any PII or other information to be in

16   that field?

17   A.   Correct.

18   Q.   Is the date exposure ended a

19   free text field?

20   A.   No.

21   Q.   And so is there potential for

22   any PII or Social Security numbers to be in

23   that field?

24   A.   No.

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1   Q.   Manner of exposure, is that a

2   free text field?

3   A.   There's no field manner of

4   exposure.

5   Q.   Okay.

6   A.   So, manner of exposure, there's

7   many different fields in the database and the

8   exposure that go towards the manner of

9   exposure.

10   And some of those fields are

11   free text fields.

12   Q.   You said there are many fields.

13   Can you give me an estimate of how many

14   fields would encompass manner of exposure?

15   A.   I'm not sure of the exact

16   number, but I believe there's over 20 fields.

17   Q.   And how many of those are free

18   text fields?

19   A.   Again, I'm not sure of the exact

20   number.

21   There's -- the four main fields

22   that we talked about in my declaration,

23   there's also some additional fields that are

24   free text that could have personal

1   identifiable information.

2   Q.   And what sort of personally

3   identifiable information could appear when

4   we're looking at these fields are under

5   manner of exposure?

6   A.   In some of these fields, they

7   are asking how the injured party was exposed.

8   And so -- and some of this

9   exposure is secondary exposure.

10   So, they'll explain in maybe a

11   husband or a wife explaining their exposure,

12   they'll list the person they were exposed to

13   by name. In some cases they will include

14   Social Security numbers, date of birth.

15   There's also people will give their exposure

16   and list co-workers that they were exposed to

17   or co-worker information.

18   There's also where they were

19   exposed. They may list their address. If it

20   was a home exposure, they may list their

21   personal residence. There's also date of

22   birth that is in there as well.

23   So, there's -- it all goes to

24   sort of people trying to describe how they

1   were exposed. And this other PI information

2   is included in those descriptions.

3   Q.   Occupation and industry when

4   exposed, is that -- are those free text

5   fields or -- strike that.

6   Is occupation and industry when

7   exposed, is that a free text field?

8   A.   It can be. It gives them the

9   option to write down their industry, their

10   occupation, but they can write whatever their

11   occupation is so it is a free text field.

12   Q.   So, there are no options for

13   occupation and industry that are dropdown

14   menus or that are populated and they would

15   just select one?

16   A.   There are. There's industries

17   where -- that's what I said, sort of a

18   combination. You could pick and then you

19   could always pick other and then be able to

20   write in the specific industry or occupation.

21   Q.   Do you know, among the claims

22   that the DCPF processes, how many claimants

23   select just a dropdown and how many select

24   the other and then do a free text field?

1   A.   I do not know.

2   Q.   So what potential PII could be

3   included in occupation and industry when

4   exposed?

5   A.   Again, any time you're dealing

6   with a free text field, there could be some

7   information in there.

8   Sometimes, even to the extent of

9   their -- they enter information into an

10 incorrect field. So, by having a free text

11 field, they can enter in whatever they want.

12 Sometimes they'll enter information maybe

13 inadvertently. But I don't know specifically

14 what would be in those fields, but there is

15 that possibility.

16   Q.   And then the last one is

17 products to which exposed.

18   Is that a free text field?

19   A.   Yes.

20   Q.   Is that a free text field for

21 every trust that the DCPF processes claims

22 for?

23   A.   Yeah, I believe it is a free

24 text field for all of the trusts.

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1   Q.   So, the trusts don't have

2   dropdown menus for the products --

3   A.   No.

4   Q.   -- in terms of choosing. Okay.

5   We can put the subpoena aside

6   for a second and then we'll take a look at

7   your declaration, which has been marked as

8   Exhibit 2.

9   - - -

10   (Whereupon, Deposition Exhibit

11   Winner-2, Declaration of Richard Winner, was

12   marked for identification.)

13   - - -

14   BY MS. MAISANO:

15   Q.   I presume you're familiar with

16   this document?

17   A.   Yes.

18   Q.   Who drafted your declaration

19   that was filed on July 26th, 2022?

20   A.   I worked with the DCPF counsel

21   to -- in drafting this declaration.

22   Q.   Did you work with anybody else?

23   A.   Not that I'm aware of.

24   Q.   In Paragraph 1, the last

1 sentence says, The statements in this

2 declaration are based on my personal

3 knowledge or information collected at my

4 direction.

5   What information was collected

6 at your direction relative to this

7 declaration?

8   MR. GUERKE: Objection.

9   MS. MAISANO: Basis?

10   MR. GUERKE: Vague, open ended.

11   THE WITNESS: I think the

12 information potentially that would have been

13 collected were maybe information on specific

14 counts or how many claimants and how many

15 matching claims.

16   But I can't think of anything

17 else.

18   Q.   Do you know who collected that

19 information for you?

20   A.   I would have asked our data

21 analyst for that information.

22   Q.   Was it one data analyst or more

23 than one?

24   A.   Probably just have been one.

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1   Q.   Do you remember who that data

2   analyst was?

3   A.   Todd Hampton would probably be

4   the person.

5   Q.   And other than that claim

6   information, any other information that was

7   collected for you in connection with this

8   declaration?

9   A.   Not that I can think of, no.

10   Q.   Was there any additional

11   information collected at your direction in

12   this case that was not collected in

13   connection with your declaration in the DBMP

14   case?

15   A.   Again, not that I'm aware of.

16   Q.   Did anyone from the DCPF review

17   a draft of your declaration before it was

18   filed?

19   A.   Not that I'm aware of.

20   Q.   If we go to Paragraph 7 of your

21   declaration, you talk about some of the PII

22   that could be implicated by a trust claimant

23   submission.

24   And you note name, Social

1   Security number, date of birth, other

2   personal demographic information about

3   claimants, such as dates of death, if

4   applicable, and medical records.

5   You also noted that trust

6   submissions include medical records that can

7   detail sensitive personal information that is

8   unrelated to asbestos injuries and other

9   private health information.

10   You also noted that claimants'

11   submissions to the DCPF client trusts often

12   include confidential information, including

13   claimant's finances or their spouses and

14   dependents.

15   Did I read that correctly? I

16   didn't go through all of it.

17   A.   Yeah.

18   Q.   Are you aware that the subpoenas

19   issued by the debtors in this case and served

20   on the DCPF do not request any of that

21   information?

22   MR. GUERKE: Objection.

23   THE WITNESS: They may not

24   specifically request it. But the information

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1   they are requesting does contain this

2   sensitive information.

3   BY MS. MAISANO:

4   Q.   And when we talk about PII, is

5   it safe to say that when we're referring to

6   PII or when you're referring to PII, you're

7   referring to all of these things that you

8   listed out in Paragraph 7; name, Social

9   Security numbers, dates of birth and all of

10 that medical information?

11   A.   Yes. The SPI or personal

12 identifiable information, the definition of

13 personal identifiable information continues

14 to change and it continues to broaden.

15   So, yes, these pieces of

16 information and the medical information would

17 be considered personal identifiable

18 information.

19   Q.   In Paragraph 8 you note that,

20 Given the extraordinary sensitivity of this

21 information, it is essential that claimants

22 trust that the DCPF will take all appropriate

23 measures to protect their claims submissions.

24   When you're referring to this

1   information, does that refer back to all of

2   the categories we just talked about in

3   Paragraph 7?

4   A.   All of the information that the

5   claimant submits, not just this PII

6   information, is confidential information that

7   we have a duty to protect.

8   Q.   So, even if a claimant submitted

9   information to the DCPF that was disclosed in

10 say a public court filing, would you consider

11 that to be sensitive or confidential

12 information?

13   A.   Per the trust distribution

14 procedures, per our agreements with the

15 trust, all -- the DCPF, would consider all of

16 that information to be sensitive information

17 and confidential that we would be required to

18 protect.

19   Q.   Even if the claimant had

20 disclosed that information publically

21 previously?

22   A.   Whatever happens outside of the

23 DCPF, what we're responsible for and the

24 claims we have, we're responsible for that

1 data.

2   Q.   If we move on to Paragraph 11 of

3 your declaration, you talk about the Trust

4 Online platform that we had a chance to talk

5 about a little bit earlier.

6   DCPF developed the Trust Online

7 platform in 2006. Is that right?

8   A.   Correct.

9   Q.   And is that where all of the

10 DCPF's asbestos trust claim information is

11 currently held?

12   A.   Trust Online is used for the

13 submission and review of claims for each of

14 the trusts.

15   There may be some additional

16 data that is used in the review of the

17 claims. That's not a part of Trust Online.

18   For some of these trusts,

19 there's prepetition information, claims that

20 have been previously paid, things of that

21 nature, that are used to match a claim in

22 Trust Online that says this claim may have

23 been paid prepetition so there may be some

24 other database or things in the prepetition

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1   that you would go and be able to do your

2   research to see if this was the same

3   individual who was previously paid.

4   Q.   So, does DCPF store any asbestos

5   claimant data anywhere other than in Trust

6   Online?

7   A.   The Trust Online is where we

8   store the claim data related to specific

9   claims.

10   Q.   So, all of the -- all of that is

11   in one place?

12   A.   The claims that are submitted

13   for each of the trust are stored in Trust

14   Online, yes.

15   Q.   And in Paragraph 11, you

16   reference Trust Online's secure data portal.

17   What kind of security does that

18   entail?

19   A.   Trust Online, we have robust

20   security. We have a security committee. We

21   have -- there's many factors on the security.

22   So, there's, you know, we have

23   two factor, you know, in order to access

24   Trust Online for any law firm that wants to

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1   access Trust Online, they have to -- we

2   independently verify them prior to giving

3   them access to Trust Online.

4   All the roles and permissions

5   that are -- that a user would have assigned

6   in Trust Online are based on their

7   responsibilities and we have extensive

8   auditing of that.

9   We have next generation

10   firewalls with subscription services. So,

11   they are continually updated throughout the

12   day as the provider identifies new risks out

13   there in the world.

14   There's encryption, all the

15   documents are encrypted, all the names of the

16   database are encrypted. The Social Security

17   numbers are not stored in Trust Online. They

18   are moved to a separate encrypted isolated

19   table.

20   Then there's always the normal

21   virus protection, vulnerability testing, a

22   robust patch management. It's a very

23   detailed security for Trust Online.

24   Q.   Okay. You reference in

1   Paragraph 11, claimant's legal

2   representatives.

3   I presume that means their

4   lawyers; correct?

5   A.   Correct.

6   Q.   Does that also mean nonlawyer

7   staff of the claimant firms?

8   A.   The way Trust Online works is we

9   set up a firm administrator and give them

10 access to that firm's account.

11   Then the firm administrator is

12 responsible then for setting up access to

13 individuals at their firm with Trust Online.

14   Q.   In Paragraph 12, you noted that

15 DCPF implemented Trust Online in 2006 and

16 since then, the DCPF continues to devote

17 substantial resources to enhancing and

18 updating it.

19   What are those substantial

20 resources?

21   A.   We update Trust Online pretty

22 much every month, once a month we'll have an

23 enhancement, an update to the system.

24   And so it includes adding new

1   functionality, new security measures. It

2   also involves updating.

3   There's -- in any system,

4   there's underlying software and things that

5   are used and as the system ages, that

6   software components have to be replaced.

7   So, it's a continual effort to

8   bring the current system up and to maintain

9   the current system to the proper level

10 security but also implement new security and

11 enhancements to meet the ever-changing risks

12 that are out there.

13   Q.   In Paragraph 13 you talk about,

14 Data security enhancements are a core

15 component of these regular updates. Data

16 security technology is constantly evolving

17 and DCPF routinely updates Trust Online to

18 implement state-of-the-art data security

19 measures. DCPF deploys security updates to

20 Trust Online at least quarterly and even more

21 frequently.

22   What specific security updates

23 to Trust Online does DCPF deploy at least

24 quarterly?

1   A.   DCPF, one, there's -- each of

2   the servers, the equipment, the software,

3   there's matching that gets done.

4   So, they are routinely, we have

5   a routine patch management, you know, every

6   month the system is updated and the software

7   is patched.

8   There's also additional security

9   functionality that's added to the system.

10   For example, one of the things

11   we do for law firms is we monitor the amount

12   of documents that get viewed in a particular

13   amount of time.

14   And we have a setting that

15   limits them to a certain amount and we get

16   warnings if they are approaching their limit.

17   Sometimes they may be doing a

18   project that they need access to the

19   documents, but that's to prevent somebody

20   from, if someone at a law firm account got

21   compromised and someone tried to go in and

22   download a bunch of different documents, we

23   would get a flag that says hey, you know,

24   someone is trying to download an inordinate

1   number of documents and we'll get the heads

2   up on that, even before it turns off their

3   ability and we'll reach out to the firms to

4   see what the issue is.

5   There's various encryptions that

6   we do, encrypting the last name, not only in

7   rest but encrypting the documents as well.

8   So that the only -- that only

9   Trust Online is able to unencrypt a document.

10   If somebody is able to get to the documents

11   themselves, they would not be able to open

12   the documents.

13   So, it's a continuing process.

14   Always look out there to see what the threats

15   are, to see what updates they had and

16   implement those into Trust Online.

17   Q.   So, if -- the example you just

18   gave me a minute ago about the law firm,

19   would that be a law firm downloading its

20   claimant's documents?

21   A.   It's not just downloading. It's

22   just even viewing it, opening up a document

23   and looking at it online.

24   The documents can contain quite

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1   a bit of sensitive information.

2   So, we can restrict -- we keep

3   track of that to provide another layer of

4   security.

5   Q.   And who monitors that law firm

6   activity at DCPF?

7   A.   We have a web support department

8   that would get notice of that.

9   Q.   And in Paragraph 14, you

10   reference comprehensive security measures and

11   state that claimant data are protected by a

12   series of confidential and proprietary

13   security measures.

14   Can you provide me with any

15   information on those measures, other than

16   that they are confidential and proprietary?

17   A.   We talked -- I talked briefly,

18   you know, about protecting Social Security

19   numbers, by moving them off the system. You

20   know, encrypting like we said the documents,

21   encrypting the last name throughout the

22   database.

23   There's various -- limiting who

24   can see the data, who can see what data.

1   There's certain medical information that is

2   summarized and only certain people based on

3   needs are able to review that information and

4   all that is monitored by roles and

5   permissions and we have a system that, in

6   order to grant that anybody, a different

7   level of access, all of those are audited at

8   100 percent to ensure it was properly done

9   and then every month, those roles then are

10   also audited -- I think actually it's

11   quarterly -- to see if anybody has a

12   nonstandard role, someone may have worked on

13   the project and then they were given a higher

14   level.

15   And so the manager continually

16   has to approve a given individual to have a

17   higher level role than would be typical for

18   that job title.

19   So, there's many, many security

20   measures, all the way through to, you know, a

21   separate audit of the check file prior to

22   making payments.

23   Q.   And so the auditing that you're

24   talking about, is that an internal DCPF

1   process or is that something that's done by

2   an outside entity?

3   A.   We have an internal audit.

4   Q.   And so following up on what we

5   were just talking about later on in that

6   paragraph, you say in your declaration that

7   the DCPF employees are essentially only able

8   to access the information that they need to

9   do their jobs. And that DCPF maintains

10 supplemental security protocols to prevent

11 misuse of claimant information.

12   How many employees does the DCPF

13 have?

14   A.   Currently we have I think it's

15 around 230.

16   Q.   Does everyone who works at DCPF

17 have access to claimant data?

18   A.   No.

19   Q.   Can you give me an estimate of

20 how many of the 230 DCPF employees have

21 access to claimant data as part of their job?

22   A.   I don't know the exact number.

23   The majority of the employees

24 are involved in the review process. So they

1   would have access.

2   Q.   Can you provide me an example of

3   an employee whose role would not permit him

4   or her to have access to claimant data at

5   DCPF?

6   A.   There may be some support

7   functions in the mailroom and things like

8   that who don't have access into Trust Online.

9   Q.   Is access to claimant data sort

10   of an all or nothing proposition at DCPF or

11   are there granular levels to access to

12   different levels of claimant data among the

13   employees?

14   A.   It's very granular, based on

15   each person's responsibilities.

16   Q.   So, for example, there could be

17   some employees who they all have access to

18   claimant data, but perhaps they access it at

19   varying levels?

20   A.   Correct. There's different

21   levels of access and there's different

22   than -- levels of ability on what they can

23   do, you know, a reviewer who can review,

24   whether or not it's someone else who can sort

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1   of verify. Each of those individual tasks is

2   a separate role that's assigned to the

3   individual and that's also done for each of

4   the different trusts.

5   So, maybe a reviewer who has the

6   ability to review in a specific trust and

7   that's their only access.

8   Q.   So, there are some DCPF

9   employees who have different levels of access

10 to client data based on what trust they are

11 working on?

12   A.   Correct. It's each trust --

13 each role is assigned to the individual and

14 also then to each -- to whatever trust they

15 are working on. So, yes.

16   Q.   And so are employees assigned to

17 a specific trust at a specific time or do

18 people work on various trusts in the course

19 of their employment?

20   A.   Typically, what we do -- I mean

21 typically, reviewers are assigned to specific

22 trusts. There may be times based on the

23 backlogs of the trust, where they may then

24 process then for another trust. So, there

1   are some employees who are cross trained for

2   multiple trusts.

3   Q.   Okay.   Thank you.

4   Moving down that paragraph, DCPF

5   computers used to access Trust Online

6   maintain endpoint security that includes

7   local firewalls and virus protection, among

8   other things.

9   What does endpoint security

10 mean?

11   A.   Each of the computers, we also

12 use what's called Thin Clients. We use

13 laptops and Thin Clients, they are the end

14 points. On each of the end points we have

15 software that monitors that. It prevents,

16 you know, each of these endpoints. It

17 doesn't allow a user to put in a thumb drive.

18 It monitors what the users are doing on that

19 machine and has protection on the machines to

20 prevent them from, like I said, loading it on

21 a USB or doing something of that nature.

22   Q.   Does the DCPF put any

23 restrictions on non DCPF computers that are

24 used to access Trust Online?

1   A.   I'm not sure what you mean by

2   that.

3   Q.   So, DCPF, for example, you just

4   told me about a hardware restriction where

5   somebody who's utilizing a DCPF machine can't

6   pop in a thumb drive and put a whole bunch of

7   stuff on it that they shouldn't be able to

8   do.

9   For those machines for users who

10   are accessing Trust Online on non DCPF

11   equipment, are there terms of use or does

12   DCPF put any restrictions or security

13   requirements on any machines that are used to

14   access Trust Online?

15   A.   For the reviewers who access

16   Trust Online, they have to use the Trust

17   Online equipment. They have to use their

18   Thin Client. They are not able to access

19   Trust Online from home or any other location.

20   They are required to only access it through

21   the trust -- through our hardware, through

22   their Thin Client.

23   Q.   For a claimant law firm that's

24   accessing Trust Online through equipment that

1 is not the property of DCPF, are there any

2 restrictions or requirements that DCPF says

3 hey, claimant law firm, you have to have X

4 sort of hardware or be running X sort of

5 software in order to be able to access Trust

6 Online?

7   A.   There are some requirements

8 there. There are some levels of encryption,

9 SL certificates or software, you know, that

10 some of the old Microsoft is no longer

11 supported and they can no longer use that to

12 access it.

13   We also, they require two-factor

14 in order to access the system.

15   Q.   So, law firms that are trying to

16 get onto Trust Online are required to submit

17 to two-factor authentication?

18   A.   Correct.

19   Q.   And in terms of the firewalls

20 that you mentioned, does DCPF use firewalls

21 that have URL web filtering?

22   A.   We do have -- are you referring

23 to like geo blocking? It will block IP

24 addresses from other countries. So, yes, we

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1   do have that set up.

2   Q.   And do you also have firewalls

3   that have intrusion detection capabilities?

4   A.   Yes, I believe so.

5   Q.   And does the DCPF have any other

6   virus protection or other security measures

7   that it takes to ensure that the hardware in

8   the system aren't compromised?

9   A.   I'm sure there's many and I am

10 not the IT director to be able to talk about

11 all of them.

12   But we do have virus protection.

13 We do vulnerability protection. Like I said,

14 the firewalls, we have all the subscription

15 services to update the firewalls. It's a

16 very robust system.

17   But all the specifics on it, you

18 know, I'm not the person who can speak to all

19 of them.

20   Q.   I understand.

21   Does DCPF have any industry

22 standard data security certifications that

23 are validated by an external firm?

24   A.   We had a SOC audit several years

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1 ago and then what we do was we took those

2 controls and we've implemented it in-house

3 for our internal auditor and he continues to

4 audit and we've added to many of those

5 controls throughout the years and those

6 results are reported directly to the board.

7   Q.   Does the DCPF have a SOC 2

8 certification?

9   A.   It's been several years. We've

10 now moved that in-house and do it in-house,

11 but there hasn't been a SOC audit in several

12 years.

13   Q.   So within the last decade there

14 hasn't been a SOC 2?

15   A.   It's been -- I'm not sure of the

16 exact years.

17   Q.   Does DCPF have high trust

18 certification?

19   A.   I'm not sure what that is.

20   Q.   And so the DCPF, I think if I

21 understand your testimony, does not allow

22 employees to access Trust Online from a non

23 DCPF machine; correct?

24   A.   Correct.

1   Q.   So, there's no getting into --

2   actually, strike that.

3   Are DCPF employees allowed to

4   access claimant data remotely?

5   A.   The reviewers are able to access

6   working from home for Trust Online. But they

7   use the same Thin Client. They'll bring it

8   home and work it using only that Thin Client.

9   Q.   Does DCPF require any of its

10   employees to complete cyber security

11   training?

12   A.   Yes.

13   Q.   And what kind of training is

14   that?

15   A.   We have two levels of training.

16   We have, for all the employees, they receive

17   the security training once they are hired and

18   then again every year. And then there's a

19   second level of security training for people

20   in the IT department.

21   Q.   And what kind of training does

22   that entail?

23   A.   It's very broad. It's overall

24   security awareness. So, it talks about the

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1   latest threats that are out there, things to

2   be concerned about not only in the office,

3   but things that are, you know, from home.

4   Trying to -- we want our employees to be

5   focused on security, not only at the

6   facility, but in their day-to-day life.

7   So, we do all of that training.

8   We do things, we do, you know, clean desk

9   audits. We let them know, you know, always

10 to have any data or documents secure. We do

11 testing of, you know, putting out USB drives

12 as a, you know, 2023 bonuses and see if

13 anybody plugs it in.

14   So, we do a lot of training with

15 them just to be aware of security.

16   You know, even social

17 engineering and all of those things that

18 potentially could cause issues not only for

19 when they are working at the facility but

20 also in their home lives.

21   Q.   Does that also include automated

22 phishing simulations and things of that

23 nature?

24   A.   We do have our internal audit

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1   does send out these routine sort of phishing

2   emails to test and so, yeah, it includes all

3   of that.

4   Q.   I just want to talk about some

5   of the law firm access, Paragraph 15.

6   You state that only credentialed

7   law firms may access Trust Online to submit

8   claims.

9   How do you define a credentialed

10   law firm?

11   A.   When a law firm submits that

12   they want to have an account on Trust Online,

13   we have a work flow that's multiple steps.

14   So, the law firm has to provide

15   information about their firm and then we also

16   research independent verification, state

17   bars, various other third party to verify

18   that it's actually a true law firm and that

19   the law firm does exist and look to see the

20   person who was submitting that, that they are

21   a partner or a member of the firm.

22   For pro se claimants, we would

23   follow the same. We would independently

24   verify their address and every pro se

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1   claimant is actually called by the internal

2   auditor; again, as an additional step to

3   verify their authenticity.

4   Q.   Have you ever denied access to a

5   law firm that applied to the electronic claim

6   filer?

7   A.   I know there have been ones that

8   have started the process and we requested

9   additional information. They have never

10 completed it. The reasons, I'm not sure, but

11 there are some that have not completed the

12 process.

13   Q.   But there's no firm that

14 submitted everything and their -- their

15 access was denied?

16   A.   No. From this point, from

17 the -- I'm not sure what you're getting at on

18 that one.

19   We audit -- I mean we verify all

20 the information that the person submits.

21 Whether or not, I believe there are probably

22 are some claims where we then would set up

23 because they provided sufficient information

24 but they never submitted a claim.

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1   But I don't know the specifics

2   on that.

3   Q.   And so other than what you've

4   told me, is there any other due diligence

5   undertaking that the DCPF will do when

6   deciding whether to approve a law firm that

7   applies to submit claims on Trust Online?

8   A.   The process that I described is

9   the process that we -- that we go through to

10   grant them access to Trust Online.

11   Q.   And how does the DCPF ensure

12   that only the law firm representing that

13   claimant has access to a particular

14   claimant's information?

15   A.   The way it's set up for Trust

16   Online, we grant access to the firm

17   administrator and then it's the firm

18   administrator's responsibility, per the

19   electronic filer agreement that they must

20   submit to provide access.

21   So, we rely on the firm

22   administrator at the firm to be setting up

23   the accounts for people that they are

24   allowing access to their claims.

1   Q.   You anticipated my next

2   question. It was going to be whether there

3   was a terms of use agreement that the law

4   firm had to follow. And I think you said

5   that there is.

6   Are penalties assessed against a

7   law firm, a claimant law firm if their

8   personnel violate those terms of service?

9   A.   Each of the trusts -- each of

10   the trusts will look at that. And they may

11   have made -- that's something that a trust

12   would look at to see and make a decision, if

13   a particular firm was doing something that

14   would have their access suspended.

15   There may be some that has

16   occurred, I can't think of the specifics, but

17   they do look at that and look at the

18   information and see if there's any issues or

19   inconsistencies that were done by the firms.

20   Q.   Do you know any of the specific

21   terms of use that the claimant law firms have

22   to abide by in order to access Trust Online?

23   A.   I'm not familiar with everything

24   that's in the FA at the moment.

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1   Q.   Do you know what these terms of

2   use govern, what happens when an authorized

3   person from a law firm leaves that law firm?

4   A.   I'm not sure exactly what's in

5   the electronic file agreement.

6   Q.   So does DCPF review and approve

7   every user or does the law firm administrator

8   have the discretion to add and take off users

9   associated with the claimant law firm who

10   wants to access Trust Online?

11   A.   We do not involve -- we do not

12   approve the individual law firms. The firm

13   administrator takes responsibility for that,

14   for the access to their claims. They are

15   responsible for setting up the claims.

16   If a user needs their password

17   reset, they need to go to their firm

18   administrator, who will handle that and reset

19   the password.

20   Our -- what we get is working

21   with the firm administrator and setting up

22   the firm administrator account. The firm

23   administrator then is responsible for the

24   firm's claims.

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1   Q.   And I think we talked earlier

2   and you mentioned that the trust might have

3   something to do with interactions with the

4   claimant law firm if perhaps there's a

5   violation or if something is suspected.

6   Does the trust have anything --

7   does any client trust have anything to do

8   with allowing or revoking access privileges

9   for a claimant law firm or is it all handled

10   just through the DCPF?

11   A.   The actual allowing or, you

12   know, turning off access would be done at the

13   DCPF.

14   Q.   And going down to Paragraph 16,

15   we've talked about this a little earlier,

16   about Social Security numbers.

17   How does it work such that the

18   Social Security numbers are not stored with

19   or correlated with any claimant data in the

20   Trust Online databases?

21   A.   So, when a Social Security

22   number is submitted, that data is sent off to

23   a separate isolated table.

24   So, the Social Security number

1   is submitted to the table. And then it is

2   assigned, sometimes referred to as surrogate

3   key but SSNID, that's a unique identifier for

4   that Social Security number that can't be

5   traced back. You can't take that number and

6   figure out what the Social Security number

7   was.

8   So, each Social Security number

9   has it's own SSNID and then that SSNID is

10 what is used in Trust Online for checking for

11 duplicates or checking against databases to

12 see if a claim was paid prepetition.

13   So, that's the process. If

14 someone wants to come in and they want to

15 change their Social Security number, they can

16 never view the Social Security number again.

17 It's not in Trust Online. It's replaced with

18 just the last four digits of the SSN.

19   So if they wanted to make a

20 change to the SSI, they would submit a new

21 Social Security number that then would be

22 shipped off to this table and replaced then

23 with a new SSNID.

24   Q.   So, how do you match up the

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1   SSNID and the SSN? Do you use a matching key

2   or how do you --

3   A.   There's a table. There's

4   software.

5   So, when we have a -- if we were

6   to need to find out what an SSN was, for a

7   given SSNID, we have a software tool that

8   then in certain restricted individuals can

9   submit the SSNID in order to find out what

10 that original Social Security number was.

11   Q.   And I think you also mentioned

12 in your declaration that email is scanned

13 through the DCPF servers to make sure that

14 Social Security numbers that are unencrypted

15 aren't being transmitted? Do you remember

16 putting that in your declaration?

17   A.   Yeah. We do have a software

18 that will look for and identify information

19 that appears to be -- could be a Social

20 Security number.

21   Q.   Okay. So that's done

22 electronically? That's --

23   A.   That's done by a third-party

24 resource that we use for our mail.

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1   Q.   And do you know if the client

2   trusts have similar email scanning for Social

3   Security numbers built into their processes?

4   A.   I'm not sure what's done at the

5   client trust level.

6   Q.   Do you know how the DCPF servers

7   scan these emails for the unencrypted Social

8   Security numbers?

9   A.   Like I said, for the email, it's

10   a separate service. It's a separate company

11   that -- so, none of the email comes directly

12   to the DCPF. It goes to the service. The

13   service then scans it for viruses, it does

14   all the Social Security checking, it does all

15   of that before it would ever come to the

16   DCPF.

17   Q.   And so that would happen if

18   somebody tried to send an unencrypted Social

19   Security number to somebody at a DCPF email

20   address?

21   A.   Correct. It scans both incoming

22   and outgoing.

23   Q.   What would happen if somebody

24   from DCPF attempted to send an email with an

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1   unencrypted Social Security number in it?

2   A.   That email would get blocked.

3   Q.   And then would the sender be

4   notified or what would happen after that?

5   A.   I believe we do get notified if

6   a message, an incoming message would get

7   quarantined or if you tried to send it out,

8   it would say that this appears to contain --

9   and it appears to contain an SSN, I don't

10   know the exact wording of the message, but

11   you would get notice that it was blocked.

12   Q.   Paragraph 17 of your declaration

13   you talk about the data. It says, DCPF does

14   not combine or commingle one DCPF client

15   trust data with any other DCPF client trust

16   data.

17   Does the DCPF check claimant

18   data across the trust for consistency?

19   A.   The DCPF reviews each claim,

20   just the information that's contained within

21   that claim. It does not do a comparison of

22   cross claims.

23   Q.   And so that would also be not --

24   that would be not a cross trust; right?

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 1         A.    Correct.

 2         Q.    And does the DCPF perform any

 3   sort of inter-trust audits as a means for a

 4   potential fraud control?

 5         A.    There is, some of the trusts do

 6   have audits that are performed, but I'm not

 7   involved in that process.

 8         Q.    Paragraph 18 of your declaration

 9   said, DCPF has never sold or licensed access

10   to any claimant information, nor to my

11   knowledge has any Delaware trust.

12               Why did you include this in your

13   declaration?

14               MR. GUERKE:  Objection.

15               THE WITNESS:  It goes to, you

16   know, the confidentiality of this information

17   that we always are protecting the

18   information.

19   BY MS. MAISANO:

20         Q.    Are you aware of other asbestos

21   personal injury trusts that sell access to

22   claimant information?

23         A.    No, I am not.

24         Q.    Are you aware of other asbestos
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1   personal injury trusts that are licensing

2   access to claimant information?

3   A.   No, I am not.

4   Q.   Are you aware of any other

5   claims processing facilities that are selling

6   access to claimant information?

7   A.   No, I am not.

8   Q.   And are you aware of any claims

9   processing facilities that are leasing access

10   to -- or licensing access to any claimant

11   information?

12   A.   No, I am not.

13   Q.   If we jump down to Paragraph 19

14   of your declaration, you note again this,

15   that the DCPF holds extraordinarily sensitive

16   information.

17   Do you consider every data point

18   that DCPF holds as containing extraordinary

19   sensitive information?

20   A.   All the information -- there's

21   different levels of sensitivity on the

22   information, but all the information is

23   regarded as confidential and we have a duty

24   to protect, yes.

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1   Q.   And you go on to say that DCPF

2   is aware that such information is highly

3   susceptible to abuse and exploitation if it

4   is disclosed improperly, including as the

5   result of a data breach and its security

6   measures are informed by that knowledge.

7   What are some examples of abuse

8   and exploitation?

9   A.   There's certainly identity theft

10   where people can get the information, you

11   know, sufficient information. But there's

12   also a lot of -- the information is valuable

13   to hackers and others. And the more

14   information you have about an individual, the

15   easier it is to gain their confidence.

16   And so you may get an email

17   that, you know, you would just disregard in

18   that, you know, a spam email.

19   But the more they have, if they

20   have the information about the law firm or

21   the information about a settlement,

22   information about a particular case, then

23   you're building, you know, a lot of

24   information about an individual that then

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1   someone could use to potentially exploit that

2   individual, to, you know, get them to click

3   on a link that then could contain information

4   and viruses or to use that and pretend that

5   you're the person's law firm and you have

6   sufficient information you've collected to

7   gain the confidence of that person where then

8   they disclose other information.

9   So, it's not just the Social

10 Security number and the date of birth. It's

11 the more information, accurate information

12 you have about an individual, there is the

13 potential risk to that individual.

14   Q.   And even if that information is

15 already in the public domain by way of a

16 public court filing or other public records?

17   MR. GUERKE: Objection.

18   THE WITNESS: The DCPF has a

19 responsibility to protect all of that data,

20 no matter where it is.

21   The more times the data is out

22 there, the greater the risk.

23   MS. MAISANO: Off the record.

24   - - -

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1   (Whereupon, there was an

2   off-the-record discussion.)

3   -   -   -

4   BY MS. MAISANO:

5   Q.   In Paragraph 22 of your

6   declaration, you talk about the volume of

7   data sought by mass subpoenas in litigation

8   and including the data sought by this

9   subpoena and the centralized, easily

10   searchable manner in which such data must be

11   produced creates confidentiality concerns

12   that subpoenas in individual actions do not.

13   What confidentiality concerns

14   are present in a production in a litigation

15   or bankruptcy matter that are not present in

16   an individual action?

17   A.   In an individual action, the

18   information is related to an individual

19   claimant and the facts around that claim.

20   When you have a mass production,

21   there's significant information about a

22   number of claimants.

23   And so for, you know, hackers

24   and people who try to abuse this information,

1   having all of that information in one place

2   does provide a greater risk that someone will

3   try to get that information and abuse that

4   information.

5   Q.   And has the DCPF ever been

6   hacked?

7   A.   No, not that I'm aware of.

8   Q.   And so essentially it's just the

9   volume? Is that the basis of your opinion?

10   The volume of information in a mass case

11   versus related to one individual?

12   A.   I mean this information then, in

13   a mass -- for example, in this, there's --

14   it's a mass production of a large amount of

15   data that's going to many different parties

16   and the more parties that data can go to, the

17   more risk there is that something could

18   happen to that data.

19   And so it's a combination just

20   of the volume of the data, the number of

21   places that data is going to and the

22   confidentiality, the confidential nature of

23   the data that's provided.

24   Q.   So, just to be clear, the data

1   that's being provided to the debtors in this

2   case is the fields we talked about earlier;

3   correct?

4   A.   Correct.

5   Q.   And the data that's being

6   provided to the debtors in this case is going

7   to be redacted for sensitive confidential, PI

8   information by the DCPF prior to production;

9   correct?

10   A.   Correct.

11   Q.   And then the court order that

12 governs the production also imposes an

13 obligation on the debtor's expert to review

14 and redact any potential PII or sensitive

15 information from the data production in the

16 event that it got missed on the first pass;

17 correct?

18   A.   That's my understanding.

19   Q.   Okay. The trust discovery order

20 has confidentiality provisions; correct?

21   A.   Excuse me? Can you repeat the

22 question?

23   Q.   Sure. Do you know if the order

24 that governs discovery of this or the

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1   production of this data has confidentiality

2   provisions?

3   A.   I'm not familiar.

4   Q.   We can take a look at Page 12

5   and that's Exhibit 1.

6   MR. GUERKE: Are you talking

7   about the subpoena?

8   MS. MAISANO: Yes, with the

9   trust discovery order on the back of it.

10   It's Page 12 on the bottom,

11 Paragraph 13 is up top.

12   MS. MAISANO: Off the record.

13   - - -

14   (Whereupon, there was a recess

15 commencing at 10:20 a.m. and concluding at

16 10:31 a.m.)

17   - - -

18 BY MS. MAISANO:

19   Q.   Mr. Winner, we're back from a

20 short break where we attempted to

21 unsuccessfully remedy some technical problems

22 with the Zoom.

23   But before we left, we were

24 talking about the confidentiality provisions

1   that are ordered by the court --

2   A.   Uh-huh.

3   Q.   -- with regard to the production

4   of the data from the DCPF to the debtors in

5   this case.

6   Have you had a chance to review

7   Paragraph 13 of what's been marked as Exhibit

8   1?

9   A.   Yes.

10   Q.   And do you agree that there are

11   confidentiality provisions that are set forth

12   in the order that governs the production of

13   the data from DCPF to the debtors in this

14   case?

15   A.   There are provisions set forth

16   in this paragraph.

17   Q.   Related to the confidentiality

18   of the data?

19   A.   Yes.

20   Q.   Are you aware of the data use

21   restrictions that are set forth in the trust

22   discovery order that governs the production

23   of the data from the DCPF to the debtors in

24   this case?

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1   A.   Is this the same?

2   Q.   Yes. It's just the following

3   paragraph.

4   A.   Yes.

5   Q.   Are you aware that the trust

6   discovery order also mandates deletion to the

7   data produced to the debtors by the DCPF at

8   the end of the case? That's in Paragraph 15.

9   A.   I see that, yes.

10   Q.   Going back to your declaration

11   that was marked as Exhibit 2, in Paragraph 22

12   you say that the DCPF is aware that the use

13   of claimant information in individual

14   litigations generally varies significantly

15   from the use of this information in mass

16   litigations.

17   What's the basis of that

18   awareness?

19   A.   Just a general understanding

20   that an individual subpoena is dealing with

21   information and issues on an individual case

22   and on this mass subpoena, it's looking at

23   information and trying to determine

24   information about a larger population.

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1   Q.   And you also talk about mass

2   adjudications and you note that mass

3   adjudications entail fact finding as to

4   representative claimants and the extensive

5   use of sampling and other statistical

6   techniques to resolve legal and factual

7   issues on an aggregate basis.

8   Which mass adjudications are you

9   referring to there?

10   A.   Just in general. That sampling

11   is used, especially in a case where there's a

12   large number of claimants with confidential

13   information that a sampling can be used to

14   draw out inferences about the larger

15   population.

16   Q.   Can you give me an example of a

17   mass adjudication where a court made findings

18   of fact as to representative claimants?

19   A.   No, I cannot.

20   Q.   Can you give me an example of a

21   mass adjudication in which there was

22   extensive use of sampling?

23   A.   No, I'm not involved in those

24   areas.

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1   Q.   What other statistical

2   techniques to resolve factual and legal

3   issues on an aggregate basis were you

4   referring to?

5   A.   Here, I was referring to the

6   sampling. The subpoena is requiring us to

7   produce a large number of information that

8   needs to be redacted and so it has the issue

9   of using sampling to reduce the amount of

10 time it would take and the burden on the

11 facility and also the risk of having all of

12 that information out for a larger population

13 of claimants to be released out from the

14 facility.

15   It's using sampling to help

16 reduce those risks.

17   Q.   You talked about the burden on

18 the DCPF. The debtors are going to reimburse

19 the DCPF for the costs of complying with the

20 subpoena; correct?

21   A.   They are reimbursing the

22 dollars, but they are not reimbursing the

23 almost 1,100 hours that it took for the DCPF

24 to do the redaction, for example, in the

1   DBMP.

2   So, it's the amount of time that

3   it's taken, the amount of employees that get

4   pulled off their regular work in reviewing

5   claims that need to work on, you know, these

6   productions and not just the dollars.

7   Q.   Do you have any training in

8   statistics?

9   A.   Other than taking a couple of

10   classes in college, I do not.

11   Q.   Do you have any specialized

12   knowledge of sampling techniques?

13   A.   No, I do not.

14   Q.   What legal issues are the

15   debtors seeking to resolve in this case by

16   using the requested data?

17   A.   I'm not sure of all the -- what

18   their exact purpose is. I know in the

19   bankruptcy and they are using this

20   information to look at the sampling of

21   claims. But as far as the detailing, exactly

22   what they are looking for and trying to

23   prove, I do not know.

24   Q.   You wouldn't be able to speak to

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1   the factual issues that the debtors are

2   attempting to resolve in this data?

3   A.   No, I cannot.

4   Q.   In Paragraph 23 you said,

5   Because of the highly sensitive nature of the

6   claimant data it maintains, DCPF opposes the

7   disclosure of data on a wholesale basis in

8   mass litigations when only a random,

9   anonymized sampling of such data is likely

10 sufficient.

11   What do you mean by random

12 anonymized sampling of the data requested.

13   A.   It would be taking a sample, in

14 this case, I think they were talking about a

15 ten percent sample of the claims.

16   So, it would be a randomized

17 sample of that larger population and removing

18 all of the claimant identifiable information

19 from that sample.

20   Q.   But you don't have training in

21 sampling; correct?

22   A.   No, I do not. Just general

23 knowledge.

24   Q.   What do you mean by anonymizing

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 1   the data?

 2        A.      That's removing the identifiable

 3   information back to, you know, specific

 4   individuals.

 5        Q.      So, and that's -- that's what

 6   the debtors -- the debtors haven't asked for

 7   any identifying information from the

 8   claimants; correct?

 9        A.      What they've asked for, not

10   specifically, but what they've asked for does

11   include that information.

12        Q.      So, what would anonymized

13   production look like then?

14        A.      It would be removing all

15   information that could be used to identify

16   particular individuals.

17        Q.      Can you recall a case where the

18   DCPF produced data on a mass scale that was

19   all anonymized?

20        A.      Can you repeat your question?

21        Q.      Sure.  Can you recall a specific

22   case where the DCPF produced data on a mass

23   scale that was anonymized?

24        A.      I mean that was the aim, I
```

1   believe. A sample or just in general?

2   Q.   Either one.

3   A.   We produced information in DBMP

4   where we made the effort to go through and

5   remove the personal identifiable information

6   from the data set.

7   Q.   And has there ever been a

8   situation in which DCPF produced data on a

9   mass scale and then there was a data breach

10   on the recipient's end?

11   A.   I'm not aware of that.

12   Q.   Paragraph 24, you refer to a

13   mass subpoena.

14   How do you define a mass

15   subpoena in terms of how many claimants?

16   A.   I don't know that there's a

17   specific number, but when I talked about

18   here, when you're seeking information on

19   thousands or tens of thousands of claimants

20   and when for the DCPF with the, in this case,

21   the 15 different entities, each of those then

22   claimants could have, you know, up to 15 then

23   claims. It quickly gets into a large volume

24   of claims.

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1   Q.   And so you noted here that when

2   validly served with a mass subpoena seeking

3   information about thousands or tens of

4   thousand of claimants, the DCPF client trust

5   attempts to work with the party seeking

6   disclosure to A, impose meaningful

7   limitations on the use and disclosure of PII

8   and B, craft a sampling protocol that

9   satisfies that party's valid need for

10   disclosure, but limits disclosure of claimant

11   data and documents that not be used by the

12   requesting party for the purpose for which

13   disclosure is sought.

14   For part A, we've already

15   established that the debtors haven't

16   requested the PII here and so how would that

17   be applicable, subpart A to the debtor's

18   request in this case?

19   MR. GUERKE: Objection.

20   THE WITNESS: The subpoena that,

21   in this case, as I mentioned several times,

22   does have SBI data that would be required or

23   in the field that are to be produced.

24   And so that information would

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1   have to be redacted in all of those hundreds

2   of thousands of records.

3   BY MS. MAISANO:

4   Q.   So, if everybody does what they

5   are supposed to do, there won't be any PII

6   disclosed; correct?

7   A.   There would still be

8   confidential information.

9   So, the first step, the

10 redaction is to remove the PI information,

11 names, the Social Security numbers.

12   All the information is

13 confidential and so the DCPF's goal would be

14 to reduce the amount not only of the PI data,

15 but of all the claimant data.

16   It's all confidential and we

17 have a duty to protect it all. In all of

18 that, we would want to impose limitations on

19 its use and disclosure.

20   Q.   And this paragraph talks about

21 how the DCPF client trusts addressed a mass

22 subpoena.

23   What's the basis for your

24 knowledge on how the individual member trusts

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1   address mass subpoenas?

2   A.   I'm not involved in that part of

3   the process, but just, you know, in general

4   over receiving the subpoenas that the -- that

5   that is the process, that is the goal of the

6   trusts and the DCPF to try to limit the

7   amount of information that needs to be

8   disclosed.

9   Q.   Have the DCPF client trust

10 crafted sampling protocols for trust

11 discovery in other assessed bankruptcy cases?

12   A.   I'm not aware of what they

13 crafted in other.

14   Q.   This last part, limiting

15 disclosure of data and documents that will

16 not be used by the requesting party for the

17 purpose for which disclosure is sought.

18   Do you know what the purpose for

19 which disclosure is sought is in this case?

20   A.   I do not know the specific

21 requirements.

22   Q.   And so you wouldn't presume to

23 opine on all of the ways in which the debtors

24 would seek to use the data requested from the

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 1    DCPF?
 2         A.     I'm not aware of all the reasons
 3    the debtor have requested or what their uses
 4    would be.
 5         Q.     Do you recall any productions
 6    made by the DCPF in any other asbestos
 7    bankruptcy cases other than in DBMP?
 8         A.     There was a production in
 9    BestWall within the past year as well.
10         Q.     Any others that you're familiar
11    with?
12         A.     There have been ones over the
13    years.  I'm not familiar with all of them.
14         Q.     Do you remember any of them?
15         A.     I don't recall.  I know there
16    was other ones.  I think it was -- I'm not
17    sure what level or whether they ultimately
18    resulted in a production, but there was some,
19    I think General Motors, I think there was
20    some other ones, Porter Hagan, but I don't
21    recall the exact results of those.
22         Q.     In any of those requests, do you
23    know if the response was ever limited to a
24    sample?
```

1   A.   I don't recall.

2   Q.   And would you happen to know the

3   number of claimants whose trust information

4   was requested in any of those prior

5   productions?

6   A.   I do not.

7   Q.   When the DCPF responded to the

8   prior data requests in the other cases, did

9   the DCPF's staff perform the work necessary

10 to respond?

11   A.   What do you --

12   Q.   Was it only DCPF staff that

13 worked on getting the data together for

14 production or did you hire any outside

15 entities to perform it?

16   A.   No. We've not hired outside.

17 When we do these requests for -- responses to

18 subpoena, we do all of that in-house.

19   Q.   Why do you do that in-house?

20   A.   Because of the sensitivity of

21 the information, the confidentiality of the

22 information. We don't want to bring in now

23 another third party who would have access to

24 this information.

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1   So, we keep it in-house with our

2   employees.

3   Q.   Could you -- could the DCPF hire

4   outside people to work on the subpoena

5   compliance or the subpoena production and

6   just subject them to the same levels of

7   security and access that the DCPF employees

8   are subject to?

9   MR. GUERKE: Objection. Calls

10   for speculation.

11   THE WITNESS: The DCPF has

12   always handled these in-house and I don't see

13   a change to that process.

14   BY MS. MAISANO:

15   Q.   In those other cases where the

16   DCPF made a data production in these mass

17   subpoenas, was the DCPF able to meet the

18   DCPF's other contractual obligations while

19   responding to these data requests?

20   MR. GUERKE: Objection.

21   THE WITNESS: I don't recall. I

22   mean any time we respond in the subpoena, it

23   does take time from our employees and time

24   away from our main focus of reviewing and

1   processing claims. So it does take us away

2   from that, all of these productions.

3   There's been several of these

4   within the past year.

5   BY MS. MAISANO:

6   Q.   How many have been in the past

7   year?

8   A.   Well, we had the BestWall, the

9   DBMP and now we have this subpoena as well.

10   Q.   Did the work responding to the

11   subpoenas in DBMP and BestWall cause any

12   delays in claim processing at DCPF?

13   A.   Yes, there were delays.

14   We had reviewers and various

15   other departments working those thousand

16   hours that were required or almost 1,100 did

17   pull employees off of not only processing the

18   existing trusts that we had, but that was

19   coming around the same time as we were

20   bringing two new trusts up and running.

21   So, there were delays and claims

22   that were not reviewed because of the amount

23   of time that were spent on these productions.

24   Q.   In addition to the time that was

1   necessary to ramp up by bringing on two new

2   trusts?

3   A.   Yes. The -- reviewers, for half

4   of the people who worked on redacting this

5   where the reviewer in QA and during that time

6   that they spent, they were not able to

7   process asbestos claims.

8   Q.   And do you know how long those

9   delays were?

10   A.   The DCPF spent, it was hours,

11   the 1,100 hours.

12   That amount of work, I don't

13   have an exact how many exact number of claims

14   that would be, but it was a substantial

15   amount of hours over a very short period of

16   time.

17   I think it was over the second

18   production was 45 days and so taking that

19   amount of hours out of our productivity

20   certainly had an impact on the amount of

21   claims that were processed and each month we

22   set up goals based on the backlogs of all the

23   trusts and our productivity and, you know, I

24   know that we did not meet those goals that

1   month because of the resources that were

2   taken off to work on the subpoena.

3   But I don't know an exact count

4   on claims or anything of that nature.

5   Q.   So, there was a backlog prior to

6   the work that started to happen in response

7   to the request made by DBMP?

8   A.   I don't know -- each trust has a

9   certain number of claims.

10   So, there is -- we have claims

11   that are in the review queue awaiting review

12   and claims waiting in the rereview queue.

13   So, there's a certain number in

14   each of those trusts and so the DCPF applies

15   our resources based on the number of claims

16   that are in those queues in each of the

17   trusts. Each trust gets their proportional

18   share based on the claims that are in those

19   queues.

20   Q.   Do you know how the debtors got

21   to the 12,000 number of claimants that they

22   requested the data for from the DCPF?

23   A.   No, I do not.

24   Q.   So, you don't know what that

1   subset represents in terms of the debtors'

2   claims?

3   MR. GUERKE: Objection.

4   THE WITNESS: No, I do not know.

5   BY MS. MAISANO:

6   Q.   And do you know how many

7   mesothelioma claims the debtors have resolved

8   with payment since 2005?

9   A.   No, I do not know.

10   Q.   In Paragraph 25 of your

11   declaration, you talk about the potential for

12   identity theft or exploitation of senior

13   claimants.

14   Do you know how many of the

15   claimants among the 12,000 requested by the

16   debtors are senior claimants?

17   A.   No, I do not. I just know from

18   the exposure information and things that when

19   a lot of this exposure occurred, that a

20   number of the claimants are older. But the

21   exact percentages, I do not know.

22   Q.   And so you also say in Paragraph

23   25 that just mere compliance with the

24   subpoena will create a security risk.

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1   How does complying with this

2   data request create a security risk?

3   A.   Well, there's risks to the

4   individual claimants. As I talked to you

5   before about their information and as much

6   information that is out there, even if it's

7   not SBI, there is still a risk that the more

8   someone was to know about a claimant, the

9   more they could take advantage.

10   The data being out there in a

11   number of different locations is a risk.

12   There may be productions of that

13   data, but it's still a risk.

14   Every time the data -- every

15   other location that the data is, there's

16   risks for that data to be hacked; either by

17   human error or there's other things -- other

18   risks out there.

19   So, there is that additional

20   risk to all these claimants and then for the

21   DCPF, we have a requirement to protect this

22   data. We have to do everything we can to

23   protect it.

24   And if we're not protecting this

1   data, you know, the law firms and trusts

2   would lose confidence in the DCPF and also

3   potential future trust, when they are

4   deciding who to process their claims.

5   It's a risk to both the

6   claimants and to the DCPF.

7   Q.   So, is it just by virtue of the

8   information being transferred to you that

9   creates risk?

10   A.   There's risks out there.

11   And having -- there's all sorts

12 of risks out there.

13   So, even if a company that we

14 send this data to, they have the data, they

15 have, you know, the matching key that

16 potentially could compile it back and they

17 could do everything and have, you know, best

18 security measures, but there's still always

19 other issues.

20   There's other vulnerabilities.

21 There's things like, there was, you know,

22 what's called a supply chain hack where

23 you're doing everything you should be doing.

24 You're patching all your systems. But the

1   patch you're using on your software, someone

2   has infiltrated that other company. That

3   happened relatively recently with Solar

4   Winds. So a company then is patching,

5   thinking they are doing everything they are

6   supposed to and following their guidelines

7   but they still then get a vulnerability.

8   There's other vulnerabilities,

9   sort of the zero day attacks where a

10 vulnerability is found in a piece of software

11 and a piece of hardware and there's no

12 patching for it.

13   So, this is, you know, these bad

14 actors out there are only getting worse.

15 There's more and more people trying to get

16 data and so it is a risk any time you have

17 the data out there and the more places you

18 have the data, the higher the risk.

19   Q.   So, the more places the data is,

20 the higher the risk? That's the basis?

21   MR. GUERKE: Objection.

22   THE WITNESS: There is the risk

23 for, like I said, for the individual

24 claimants and then that risk, the more places

1   the data is, then there is an additional

2   risk. That's why we want to protect the data

3   as much as possible.

4   BY MS. MAISANO:

5   Q.   But so the -- but all of these

6   bad outcomes would only happen if one of the

7   end users was hacked; correct?

8   A.   I mean there could be

9   inadvertent human error, there could be --

10 once we let -- once the data leaves us, the

11 DCPF, we lose control of it. There's all

12 sorts of potential things that could happen

13 to that data.

14   And once it gets out of our

15 control, that's a risk out there.

16   Q.   And so that's why prior to

17 production, both the DCPF and the debtor's

18 experts are going to engage in this highly

19 specialized and highly intensive redaction

20 process; correct?

21   A.   That is why the DCPF is going

22 through the redaction process, is to remove

23 as much of that information as possible.

24   But again, even if remaining

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1   information is still confidential and we

2   would like to reduce that as much as

3   possible. And that's why we talk about

4   sampling and things like that to reduce as

5   much as possible the risk to the -- that this

6   data could present.

7   Q.   And so you did, speaking of the

8   sample, production of sensitive, private and

9   confidential data should be limited to the

10 production of only a random sample of claims

11 to significantly limit the scope of

12 disclosure and the review burden on the DCPF.

13   What kind of a random sample are

14 you envisioning here?

15   A.   That is not my area. There

16 would have to be other people who would be

17 involved who had more of the expertise to

18 determine what type of random sample.

19   Q.   When you're talking about

20 sensitive data, would you consider data that

21 is disclosed by a claimant in a public court

22 filing to be sensitive?

23   MR. GUERKE: Objection.

24   THE WITNESS: What I'm referring

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1   to is the data that we have in our

2   responsibility to protect it, regardless of

3   what happens in other filings or anywhere

4   else.

5   We have a duty, we have a

6   responsibility to protect the data and that's

7   what we strive to do.

8   BY MS. MAISANO:

9   Q.   So, would you consider data

10   that's disclosed by a claimant in a public

11   court filing to be confidential, even if --

12   just by virtue of it being in possession of

13   the DCPF, that in your eyes makes it

14   confidential?

15   MR. GUERKE: Objection.

16   THE WITNESS: All the data that

17   the DCPF has, we're required to keep it

18   confidential. We have a duty per the TDPs in

19   our contract with the trust. So, yes, it is

20   all confidential.

21   BY MS. MAISANO:

22   Q.   In Paragraph 26, you talk about

23   a randomized sample of claimants, such that

24   was ordered in the BestWall case.

1   What's your understanding of

2   what you called the randomized sampling of

3   claimants that was ordered in BestWall?

4   A.   I just know that at some point,

5   that the BestWall, that they had determined

6   or ruled to do a sampling. The specifics of

7   that, I don't know how that was -- or how

8   that exactly was set up or how the sampling

9   was done. Just that, you know, it was a

10   sample and by taking a sample of the claims,

11   it helps mitigate the risk and the burden on

12   the DCPF.

13   Q.   So, it's your understanding that

14   the DCPF's production in the BestWall case

15   was constrained to a sample?

16   A.   No, I don't believe it was -- I

17   think at one point it was, but I think then

18   that later changed.

19   I'm not involved in that whole

20   process, and all that back and forth.

21   But I'm not sure at the end of

22   the day whether it was a sample that was

23   actually produced.

24   Q.   How many claimants did the

1   BestWall production involve?

2   A.   Claimants? I'm not sure of the

3   exact number. I think it was somewhere

4   around 14,000.

5   Q.   So more than were requested by

6   Aldrich and Murray in this case?

7   A.   I think there's 12,000 in this

8   for Aldrich, yes.

9   Q.   You also say in Paragraph 26 the

10 debtor's purported purpose described in the

11 subpoena can be established through a

12 representative sample.

13   What is the debtor's purported

14 purpose as described in the subpoena?

15   A.   I mean the information that -- I

16 don't know the specifics on exactly what the

17 debtor is using the information for. I see

18 the fields that they are requesting.

19   So, the po -- our position would

20 be that a sampling would help mitigate this

21 risk but the exact requirements of what the

22 debtor is looking for, I do not know.

23   Q.   What is a representative sample,

24 in your view?

1   A.   The different way -- the sample

2   can be set up to look for certain

3   characteristics.

4   I mean it could be a truly

5   random sample. It could be then is a sample

6   that would take into account other factors,

7   you know, disease level or certain other

8   attributes to provide not a completely true,

9   just random sample, but a random sample

10 that's more representative of the claimant

11 population.

12   What that -- what that would be

13 in this case, I do not know.

14   But it's just distinguishing

15 between just a general random sample and

16 those that take into account certain

17 characteristics of the population in the

18 determination of the sample.

19   Q.   Do you have any training in

20 sample design?

21   A.   I do not.

22   Q.   Do you have any training in

23 sample evaluation?

24   A.   I do not.

1   Q.   Get to Paragraph 27 of your

2   declaration.

3   And this is where we -- this

4   goes back to what we were talking about

5   before in that, you believe that there is the

6   potential in the exposure fields for there to

7   be sensitive PII; correct?

8   A.   Correct.

9   Q.   And this sensitive information

10   could potentially be disclosed unless that

11   information is reviewed and redacted;

12   correct?

13   A.   Correct.

14   Q.   And so the narrative fields at

15   issue are the occupational exposure field

16   where the claimants describe how they were

17   exposed to asbestos; the debtor's exposure

18   field where claimants describe how they were

19   exposed to the debtor's product; the

20   secondary exposure field where the claimants

21   describe secondary exposure from other

22   persons and the product exposure field where

23   the claimants describe the debtor's products

24   to which they were exposed.

1   For the secondary exposure

2   field, how many claimants at -- at issue in

3   this case, meaning among the 12,000 that the

4   debtors have requested allege secondary

5   exposure?

6   A.   I do not know that percentage.

7   Q.   If you had to give an estimate

8   based on your experience in DCPF on or excuse

9   me, in DBMP, sorry about that, how many of

10   the claimant's alleged secondary exposure

11   such that that field would have been

12   populated?

13   A.   I do not know.

14   Q.   And when you're referring to the

15   narrative response fields that the claimants

16   complete that contain Social Security

17   numbers, are you referring to the claimants'

18   Social Security numbers or somebody else's

19   Social Security number?

20   A.   The Social Security number could

21   be -- I mean these are narrative fields where

22   the -- the narrative. They could enter in

23   anybody's social.

24   It could be for the secondary

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1   exposure, the person who had the secondary

2   exposure. It could also be for the

3   occupationally exposed person.

4   The claimants have the ability

5   to add on whatever information they wanted in

6   those fields.

7   So, potentially could they be

8   giving it for a co-worker, things like that,

9   it is possible.

10   But certainly for the claimant,

11   for the occupationally exposed person, there

12   could be Social Security numbers.

13   Q.   In most cases would those be

14   limited to the claimant or the person through

15   whom household or secondary exposure is

16   alleged?

17   A.   I can't say. I mean in general,

18   a lot of the exposure is household exposure.

19   So it would be, you know,

20   someone coming home with the asbestos.

21   But as far as the knowing, you

22   know, if that's always the case or a

23   percentage of those cases, I don't know.

24   Q.   Does it happen often that a

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1   claimant puts a co-worker's Social Security

2   number in one of these exposure fields?

3   A.   I'm not aware of how often that

4   would happen.

5   Q.   Has it ever happened?

6   A.   Do not know.

7   Q.   Because as we know, the debtors

8   already have the claimants' Social Security

9   numbers; right?

10   A.   They provide us a Social

11 Security number that we're using for

12 matching.

13   Q.   And you noted also that the

14 narrative response fields can contain other

15 highly sensitive information.

16   What is an example of some

17 highly sensitive information, putting aside

18 what we've already talked about, that could

19 end up in one of these narrative fields

20 related to product exposure?

21   A.   We -- the fields that we were

22 redacting were the Social Security, like we

23 said, the names, the addresses, the date of

24 births. Information like that that

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1   identifies a specific individual.

2   Q.   And is that regardless of

3   whether that individual is the claimant who

4   filed the claim?

5   A.   Correct. We're removing all of

6   names, all socials and date of births.

7   Q.   And that's what -- I'm sorry. I

8   thought you were done.

9   That's what the DCPF redacted in

10 the DBMP production; correct?

11   A.   Yes, correct.

12   Q.   And moving down, you talk about

13 that excluding production of the data from

14 the narrative fields related to exposure will

15 eliminate the DCPF's need to manually review

16 each exposure record submitted in each claim.

17   When you say exposure record

18 submitted in each claim, what does that mean?

19   A.   So, when a claim is filed, the

20 individual can list their various exposures.

21   So, they will list the start

22 date of exposure, the end date, the site that

23 they were exposed and explain their exposure.

24 And then they can have multiple exposure

1   records within a claim. You know, a claim

2   may have one exposure record, a claim could

3   have several hundred exposure records.

4   So, each claim has, you know,

5   one or more exposure records and each of

6   those records then would have these narrative

7   fields that would need to be reviewed.

8   Q.   So, for -- if a claimant files a

9   claim against the -- a particular trust and

10 the claimant is alleging exposure to two

11 different products that are associated with

12 that trust, does that mean that there are two

13 exposure records?

14   A.   The exposure records, the claim

15 form asks for the claimant to provide their

16 exposure related to the trust that they are

17 submitting and there are certain

18 requirements.

19   So, what they'll typically do is

20 give, you know, an exposure record for each

21 of the various sites they were at where they

22 were exposed to asbestos; either to the

23 company's product or to general asbestos

24 exposure.

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1   Q.   In the DBMP production, do you

2   know how many exposure records in total were

3   reviewed?

4   A.   It was over 200,000 records.

5   Q.   So, more than would be at issue

6   in this case; correct?

7   A.   No. I mean for DBMP there were

8   9,000 or so claims. There was about 100,000

9   then I think claims and then those claims

10   then had multiple exposure records. So the

11   actual number of exposure records that had to

12   be reviewed were, you know, somewhere over

13   200,000.

14   Q.   And was it a multi-stage process

15   for this review or is it something that kind

16   of started at one, in -- was there more than

17   one batch of records that were reviewed?

18   A.   For DBMP?

19   Q.   Yes.

20   A.   There were two productions.

21   There was first an initial what they were

22   calling the stub production and then there

23   was the second larger production.

24   Q.   And in going through the

1   redaction process, was there a -- was there a

2   decision that needed to be made to determine

3   if something should be redacted based on the

4   content or was the exercise more if there's a

5   name or a number in one of these fields it

6   should be deleted?

7   A.   No. The process -- the part of

8   that process was that all of these -- the

9   information in all of these fields had to be

10   reviewed and you had to look at the

11   information that was provided and determine

12   whether or not the information should be

13   redacted.

14   There were information, for

15   example, company names that weren't really an

16   individual, but John Williams' company. So,

17   you know, there were also ships that are

18   named after individuals.

19   So, there were, when the

20   reviewer went through it, they were looking

21   to see if it was an actual person and

22   individual or it was more of a, you know,

23   like I said, those other two examples.

24   There's also numbers in there

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1   that may not have been a Social Security

2   number. There were, you know, the trust have

3   approved site list and some of those have

4   site code numbers. They would be on there.

5   There were documents that were

6   also uploaded with the claim that may have

7   had a number. And they would say see

8   document number and they would list the

9   document number.

10   So, the reviewers spent time

11   going through and looking at the information

12   within the content of the narrative to see

13   whether or not it was a name or whether or

14   not it was, you know, another piece of this

15   information that we're talking about related

16   to an individual.

17   For example, there might be an

18   address, but the address was not related to

19   the injured party's address or things like

20   that.

21   So, that information had to be

22   reviewed within the context of the claim to

23   determine what needed to be redacted.

24   Q.   So, there was some discretion

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1 taken so, for example, a ship that also

2 matched to a name of a proper name, that

3 wouldn't have been redacted because that was

4 determined to not be PII?

5   A.   That was the approach we took.

6 And, you know, we had a two stage, there was

7 an initial reviewer who went through and

8 applied those and then we had then a second

9 level QA to ensure, you know, within the time

10 we were provided to provide as accurate as

11 response as we were able to.

12   Q.   So out of those 200,000 records,

13 and I just want to make sure we're talking

14 about, that I'm -- that we're talking about

15 the same thing.

16   So, we're talking about 200,000,

17 I think you called them exposure records?

18   A.   Uh-huh.

19   Q.   That needed to be reviewed in

20 DBMP.

21   Out of the upwards of 200,000, I

22 think you said it was a little more than

23 200,000 --

24   A.   Uh-huh.

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1   Q.   -- records, how many of those

2   records needed redaction because they

3   contained PII?

4   A.   I'm not sure of the exact number

5   that needed redaction, but there are

6   thousands and thousands of these that --

7   fields that had to be redacted.

8   Q.   And what was redacted from those

9   fields?

10   A.   The information we've discussed,

11   that -- I'm not -- I'm not aware of every,

12   but in general it is, like we said, it was

13   the names of, you know, the injured party,

14   potential family members, co-workers, Social

15   Security numbers, date of births, addresses.

16   All of that information I believe was within

17   what was redacted in this case and with the

18   DBMP case.

19   Q.   So in DBMP, how many names were

20   redacted from the exposure records?

21   A.   I don't know the count on

22   exactly how many.

23   Q.   How many Social Security numbers

24   were redacted from the DBMP production?

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1   A.   I'm not sure of the number of

2   Social Security numbers that were redacted.

3   Q.   But it was -- was it more than

4   one?

5   A.   I believe there was probably

6   more than one and there were more names than

7   Social Security numbers.

8   Q.   Is it fair to say that the

9   majority of the information redacted from the

10   DBMP production were names of people who were

11   not the claimant who had filed the trust

12   claim?

13   A.   Most of the names that I think

14   were redacted were probably the co-worker

15   names.

16   Q.   And do you know how many

17   addresses were redacted?

18   A.   I do not know the number, but

19   that was -- that did happen occasionally, but

20   I don't know the numbers.

21   Q.   Do you know about how many of

22   those redacted records were thought to

23   contain PII of an individual? When I say

24   PII, I don't mean just their names. I mean

1   just some sort of confidential or sensitive

2   information.

3   A.   No, I cannot.

4   Q.   But we're talking -- strike

5   that.

6   So out of 200,000, I know you

7   said there were thousands of records that

8   needed to be redacted.

9   Could you put a finer point on

10 the number?

11   MR. GUERKE: Objection.

12   MS. MAISANO: If you can.

13   THE WITNESS: I can't at this

14 point. I know there was several thousand

15 that ended up being redacted, but I do not

16 know.

17 BY MS. MAISANO:

18   Q.   And that included for names,

19 addresses and other information in addition

20 to potentially Social Security numbers?

21   A.   That was, yes, that was for all

22 the different reasons that a redaction could

23 have occurred.

24   Q.   I'll show you what was marked as

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 1   Exhibit 3 and 4. I have them right here, the

 2   two invoices that we were just talking about.

 3   - - -

 4   (Whereupon, Deposition Exhibit

 5   Winner-3, Delaware Claims Processing Facility

 6   Invoice No. 12 dated November 2, 2022, was

 7   marked for identification.)

 8   - - -

 9   (Whereupon, Deposition Exhibit

10   Winner-4, Delaware Claims Processing Facility

11   Invoice No. 13 dated January 18, 2023, was

12   marked for identification.)

13   - - -

14   BY MS. MAISANO:

15   Q.   Are these the invoices that the

16   DCPF submitted to DBMP in connection with

17   compliance with the trust discovery

18   subpoenas?

19   A.   Yes, they appear to be.

20   Q.   And for Exhibit 3, I think you

21   said there was an initial, I think you called

22   it the stub production.

23   What does this invoice cover?

24   A.   Which one is Exhibit 3? Is it

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1   the first one?

2   Q.   Yeah. October, 22 and then the

3   next one is January of 2023. I think that's

4   3 and 4.

5   If we take a look at Exhibit

6   3 --

7   A.   Uh-huh.

8   Q.   -- what were the services

9   covered by this invoice?

10   A.   That would have covered all the

11 hours that were involved in this production

12 up until that point.

13   So, that was up through the

14 point of the first stub production.

15   Q.   And so sticking with Exhibit 3,

16 all of this work was performed by DCPF

17 employees; correct?

18   A.   Correct.

19   Q.   How many DCPF employees worked

20 on the project that's covered by this

21 invoice?

22   A.   I'm not sure of the number. I

23 know there was a little over 40 employees

24 that were involved across both. I'm not sure

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1   of the exact number just for this invoice.

2   Q.   Do you know what the positions

3   were of people who performed the work in

4   connection with the invoice that's Exhibit 3?

5   A.   There would have been myself,

6   there would have been the people in the data

7   analysis department. There would have been

8   people in our web support department. There

9   would have been other people in our support

10   department. There would have been viewers,

11   QA people and individuals from our claimant

12   relations department.

13   Q.   So, when this charge for work

14   came in or when this assignment came in, how

15   did you decide how you were going to staff

16   it?

17   A.   There were certain parts of

18   that, the nature of what was required,

19   matching the claimant data and things like

20   that would be, you know, the data analyst.

21   In this production we also

22   provided what was called a data dictionary

23   which was a description of the fields that

24   were being produced and our web service group

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1   is the one who put that together.

2   Our other support people were

3   involved in the actual mail-in notice to the

4   firms.

5   And then for the redaction and

6   the review, it was matter of looking at, you

7   know, all the work that was going on at the

8   facility and who we could assign to these

9   projects.

10   Q.   Did everyone who performed work

11   in connection with the invoice that's Exhibit

12   3 normally have access to claimant data as

13   part of their job duties?

14   A.   These individuals that I spoke

15   about would typically have access to claim

16   and claim data.

17   Q.   Specifically talking about their

18   redaction process, how many of the 40

19   employees who worked on this project overall

20   worked on the redaction piece of it?

21   A.   The majority -- I don't know the

22   exact.

23   I know over half where we would

24   review in QA.

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1   So, those were only involved in

2   this redaction process and there was probably

3   some additional individuals from some of

4   these other departments whose only

5   involvement was in the redaction part.

6   Q.   So, when we get to the redaction

7   process, we've got say 20 or so people who

8   are working on the redaction process and half

9   were doing something else?

10   A.   There was over -- it's probably

11   more than that. 20, 25. I don't know

12   exactly how many more than that.

13   But there was definitely more on

14   the redaction portion of it.

15   Q.   And for the folks who were doing

16   the redaction work, how was the data provided

17   to them that they needed to review and what

18   instructions were they given?

19   A.   When we had to redact these

20   fields, having never done this before and so

21   we worked with a data analyst and they

22   developed an in-house application that would

23   assist the people doing the redaction.

24   There was no way you could do

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1   this in Excel spread sheets or things like

2   that so we developed this application that

3   the reviewer would go in and be able to see

4   the information on a particular claim, read

5   that information, highlight the information

6   that was to be redacted and save that record

7   and it would be served up as the next record

8   in the process.

9   That's a tool we created in

10   order to handle redacting the volume of

11   records we had to redact in the period of

12   time that we had.

13   Q.   So the application essentially

14   teed up whatever the reviewer needed to look

15   at for him or her and assisted in the

16   efficiency of the process? I'm just trying

17   to figure out what the application did.

18   Because I understand your point

19   that you didn't give everybody an Excel

20   spread sheet and tell them to have at it.

21   A.   We create batches. We would

22   create a batch of a certain number of

23   records.

24   Each then person working the

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1   project was assigned a specific batch. That

2   way we could -- they were responsible, they

3   would process all the records within that

4   batch before they would be assigned another

5   batch.

6   Q.   The application that was

7   developed more handled the assigning of the

8   batches?

9   A.   The application is where all the

10 redaction occurred.

11   We would then create the batches

12 and we would create a list and we would say,

13 you know, employee one, you're to do batch

14 20. So, they would go into the application,

15 log in, they would pull up that batch and

16 within the application, they would process

17 it, you know, exposure record by exposure

18 record, redacting the information that needed

19 to be redacted and work their way through all

20 the exposure records within a batch.

21   Q.   So, the application also

22 assisted with the redaction process?

23   A.   The way the application worked,

24 the individual would highlight the section

1 and click a button to redact and the

2 application then would replace that

3 information with X's.

4   Q.   And did the application have any

5 capability to identify particular

6 information? So for example, numbers that

7 would be in a certain sequence perhaps with

8 three numbers?

9   A.   No. The application just served

10 up the records and then it was up to the

11 reviewer to look at the information that was

12 in there.

13   Q.   And who assisted in the

14 design -- strike that.

15   Who designed this application?

16   A.   This was done in-house by our

17 data analyst.

18   Q.   And who advised the data analyst

19 on what functionality this application should

20 have?

21   A.   I was involved, it was a group

22 effort for the people, a few of us who were

23 involved in this production to determine, you

24 know, what this application needed to do,

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1   what was the best way to set it up.

2   So, yeah, I was involved, the

3   data analyst was involved. There were

4   probably a couple of other people who we

5   brought in to talk about who would be working

6   this process or overseeing and managing this

7   process to assist with the development of the

8   application.

9   Q.   And have you explored with the

10   people who developed the application whether

11   it could potentially be enhanced to write

12   code that can identify numbers that fit a

13   Social Security number format, for example?

14   A.   No, we did not enhance it. I

15   mean there was some time between this first

16   production and the second production. So, we

17   did make some minor tweaks for people who

18   were using it. Move a button here, do this

19   or that.

20   Some minor sort of tweaks, but

21   given the nature of the information, given

22   how you have to review that information in

23   the context of the narrative, you know, we

24   did not try to automate any more of that

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1   process.

2   Q.   You said you made some tweaks to

3   the application. I know you mentioned moving

4   some numbers around, or moving some buttons

5   around. Were those more interface-type

6   changes or were there changes in

7   functionality that were different between the

8   first batch and the second batch?

9   A.   I believe they were mostly just

10 the people actually using it who provided

11 feedback on, you know, improvements they

12 could make to make it a little bit easier to

13 navigate the system.

14   I think those were mostly the

15 enhancements that were made in the

16 application.

17   Q.   In terms of the steps that were

18 taken to redact the potential PII that would

19 have been on the exposure field, I think we

20 talked about the first pass was a reviewer

21 was assigned through the application a batch

22 of records to review and should something

23 come up that was suspect, the reviewer had

24 the option to redact using the application,

1   that particular record.

2   Then what is the next step in

3   the process?

4   A.   Once the reviewer completed the

5   batch, then we would, then there was a second

6   level process.

7   The way we set that up was that

8   any claim that had exposure records that had

9   a redaction were grouped and then any claims

10   that there were no redactions within the

11   exposure records were into a separate group

12   and then we had different sets of teams, one

13   team would focus on those that had a

14   redaction, another team focused on those

15   where there were no redactions and we went

16   through the process again and reviewed the

17   work that the previous reviewer did.

18   And if they thought that, hey,

19   they redacted something that was a ship and

20   shouldn't have been, they could be, you know,

21   return the original data so they could update

22   it, they could both redact information that

23   potentially was missed or unredact

24   information that the first reviewer had

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1   redacted.

2   Q.   So, all of the records got a

3   second level review, whether they needed a

4   redaction or not?

5   A.   Correct.

6   Q.   How many sort of false positives

7   did you get in terms of things that on the

8   first pass they thought needed redaction, but

9   then once they got escalated it was known

10   that they did not require redaction?

11   A.   I'm not sure of the exact

12   number.

13   I think there may have been some

14   cases with some names that was really a

15   company name versus an individual, but I

16   don't know how often that happened.

17   Q.   And sticking with the work just

18   done on that first pass, Exhibit 3, when you

19   staffed this, were the folks tasked with

20   doing this work put on the project sort of

21   full time or were they told to get this done

22   in addition to getting their other work done?

23   A.   Given the time constraints on

24   this, there were some people who were --

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1   people were put on this as we could make the

2   resources available.

3   Some people were working on this

4   full time. Some people were only able maybe

5   to work part time.

6   We'd like to try to find people

7   who could focus on this and, you know, we

8   didn't want -- it would be much better for us

9   to have ten people working, for example, on a

10   full time than 40 people working part time.

11   Our goal was to try to get as

12   many of these people working on this project

13   for as many hours as they could to get this

14   done.

15   Q.   For some of the folks, it was

16   this was your life's work until it gets done

17   and for many others this was you need to do

18   your other work in addition to working on

19   this project?

20   A.   I mean if they worked on this

21   project, it was pulling them off their

22   existing.

23   But it was -- we had to identify

24   how many resources we needed to get done in a

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1   time period and from there, go through to all

2   of our various departments and work with all

3   of the managers and supervisors to say, you

4   know, who do you have available? Who can you

5   spare? Who has the skill set to sit there

6   and look through exposure records?

7   You know, you need a certain

8   attention to detail and focus to be able to

9   look at these records, you know, over and

10   over again.

11   So, we were looking for those

12   individuals.

13   Q.   And so after the first pass was

14   made and then there was sort of the second

15   level keyway check for both the records that

16   potentially needed redaction and those that

17   were not identified as ones potentially

18   needing redaction in this first stub

19   production, then what was the next step?

20   A.   Once we got through and redacted

21   all of them, then had the second QA, when

22   that part was done then the data for these

23   fields that we looked at were then

24   incorporated back into the production for

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1   each. So files were created for each of the

2   trusts.

3   So, based on the other

4   information that was required in the

5   subpoena, the information was compiled back

6   together and then so then you had a file for

7   AWI, for example, that would have all of

8   their requested information and the redacted

9   fields and then we had another group who then

10 went through the actual spread sheets to look

11 through to see again, they looked to make

12 sure all the fields were there, all the

13 information was there, that the information

14 contained matched, you know, for that

15 claimant.

16   They also went through some of

17 the other fields that were in there and to

18 identify, you know, the focus in the

19 application was for the four fields that we

20 talked about.

21   But they did find some

22 additional fields that also had SBI data

23 during that review.

24   One of the fields, for example,

1 was relationship to the

2 occupationally-exposed person. So that's on

3 the secondary.

4   And for the most part, you know,

5 people would put spouse or husband but some

6 people would put spouse dash and then the

7 person's name. And so there was the ability

8 in those fields to add that information.

9   So, they were, you know, on

10 those, they were able to in that sort of

11 other QA step identify some of those pieces

12 of information that also needed to be

13 redacted.

14   Q.   And so after that process was

15 completed for this first stub production,

16 then what was the next step?

17   A.   Well, once the files, where

18 we've gone through and redacted, compiled the

19 files by trust, done that QA, then that

20 redaction, then that data along with what we

21 talked about the data dictionary, then there

22 was the process, I believe in this case --

23 let's see there was another step in this -- I

24 think there was some other information then

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1   that was requested.

2   I mean I think in the original

3   data there may have been a state, VA,

4   abbreviation and they did request that we

5   provide what all those abbreviations meant,

6   not only the 50 states, but some other

7   countries and things like that.

8   I think there was some

9   additional information provided for that.

10   But I think that's the pieces of data.

11   And then each one of those were

12   created then for each of the 15 trusts.

13   Q.   So the, I guess files, for lack

14   of a better term, but you'll correct me if

15   there's a better term, that were made for

16   each of the trusts or the compilations,

17   however you want to say it, that's all done

18   electronically; right?

19   A.   The data analyst would combine

20   those and then those were then combined into

21   Excel spread sheets with the final version of

22   the data and those Excel spread sheets were

23   what then were QAs again in that last step.

24   Q.   And was that the last thing that

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1 happened prior to production?

2   A.   I believe that was the last step

3 in producing this data.

4   Q.   And before we leave that first

5 stub production Exhibit 3, do you know how

6 many records needed to be reviewed for

7 potential need for redaction in connection

8 with this first stub production of the 1,500

9 claimants?

10   A.   I don't know the breakdown

11 between the first and second.

12   Q.   And so you couldn't tell me how

13 many of that initial stub production of those

14 records may have contained information that

15 needed to be redacted?

16   A.   I don't know the number. I

17 don't. I mean overall I know there were

18 thousands and thousands, between the two, but

19 I don't know the distinction between the

20 first and the second.

21   Q.   And moving to Exhibit 4, which

22 is, as I understand it, the second larger

23 production of the data after that initial

24 stub production?

1   A.   Correct.

2   Q.   How many people were tasked with

3   doing the redaction work associated with this

4   invoice?

5   A.   Again, I know there was a little

6   over 40 between the two. I don't know the

7   exact breakdown, but the majority of them

8   would have been working on this part, given

9   the volume of records that were in this

10 second production.

11   Q.   So, was it the same team I guess

12 as between the first and the second

13 productions?

14   A.   There was some people the same.

15   But again, every time, you know,

16 when we have this, at that second period,

17 then we had to go back out and look at the

18 availability of the individuals and some of

19 the individuals, you know, were the same and

20 some who worked on the project before were

21 not able to and then there were many

22 additional people who had to be assigned to

23 the project.

24   Q.   So, when you staffed the second

1 project, did you try to get folks from the

2 first project if possible so that there would

3 be some efficiency gains there?

4   A.   We tried to -- we looked at all

5 of that and tried to, you know, if people

6 were experienced at the project and they did

7 a good job on the project, we would like to

8 use them, but it depended on what other work

9 they had going on at the time.

10   Q.   How many hours of your time was

11 put into the work that is captured by the

12 second invoice that's Exhibit 4?

13   A.   I'm not sure of my exact hours.

14   I mean I think -- I think

15 between the two, I mean it was over -- over

16 40 hours of direct billed time. I mean that

17 doesn't count, all the other time working on

18 the project, trying to get it set up or

19 things like that, but I think, you know,

20 direct bill time was somewhere in that range.

21   Q.   And I know you mentioned there

22 were some tweaks between not just to the

23 application, but I thought also to the

24 process between the stub production and the

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1   second larger production.

2   Was that -- did I understand

3   that correctly or were the tweaks made just

4   at the app?

5   A.   I was referring to the

6   application.

7   Q.   Okay.

8   A.   Whether or not -- mostly it was

9   to the application and how the application

10 worked and served up the information and how

11 that whole process -- I'm trying to think if

12 there were any other procedural type.

13   I think most of it was the

14 design and then tweaking of the application.

15   Q.   So but interface -- more of the

16 interface of the application as opposed to

17 the functionality of the application?

18   A.   I mean there's sort of -- I'm

19 not sure of all the -- I know, I mean some of

20 it was the locations of where things were and

21 the ease of going through.

22   Some were, I think, the ease of

23 you're on one record and you go to the next

24 but then you want to go back to the previous

1   record.

2   So it was sort of given that

3   functionality and the application to be able

4   to, you know, when the actual people were

5   using this for the first time, there were

6   suggestions made to say, you know, hey, can

7   we make this change? I'd like to be able to

8   go back.

9   And then I think that they made

10   the ability to go back and see the last five.

11   So, if I'm working it, there was

12   a section at the top so I can see the last

13   five that I worked. So if I wanted to go

14   back or if I may have missed something, you

15   know, I could go back.

16   I think it's sort of those type

17   of tweaks that were done.

18   Q.   So, things perhaps geared to

19   make the second go-round a little more

20   efficient based on what you learned from the

21   first stub production?

22   A.   Some things were done as we were

23   going in that first direction.

24   You know, it was -- this was

1   sort of a build it as you go, you know, given

2   the time constraints.

3   But yeah, then, you know, with

4   the second, when we did the second, that

5   application then, you know, was at a good,

6   you know, it was set up, it was ready to go

7   and that then we used for processing it and

8   that would be, if we were to do this type of

9   work again, that would be the application

10   that would be used to do the redaction.

11   Q.   And so as you worked through the

12   DBMP production, you made enhancements to the

13   application to improve it and improve the

14   process?

15   A.   There were some, I mean there

16   was some enhancements to it. I mean the

17   amount -- most of what was involved was the

18   manual review of each of these exposure

19   fields.

20   We did make some minor

21   enhancements of the application to assist

22   those people doing the job to make at least

23   that part of it, if there were some

24   enhancements that would help them get through

1   the process. And suggestions, yes, we did

2   implement those enhancements into the

3   application.

4   Q.   Are there any potential

5   enhancements that you all have considered

6   adding to the application in the event of

7   productions in future cases?

8   A.   No. I think the application

9   that we designed I think worked well and

10   helped us, you know, within that 45 days over

11   the Christmas holiday redact and spend, in

12   this case, 809 hours to redact all those

13   records.

14   So I imagine we would use that

15   same application as it is.

16   Q.   Did the second production go

17   more smoothly than the first when it came to

18   the review of the records because of the

19   improvements made to the app?

20   A.   I mean the application, yeah,

21   there was parts of it with the application

22   that we had worked out some of the issues and

23   the application was working. The bigger

24   challenge on the second part was not so much

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1   the application, but was just getting the

2   number of individuals available.

3   Like I said, it would be also

4   just brought on to a new trust and so we were

5   being, you know, stretched thin with

6   everything and having, you know, over 800

7   hours of additional work that needed to be

8   done.

9   So, that was the challenge was

10 identifying these people and resources and

11 working with them to get this all done within

12 the time frame we were given.

13   Q.   How many records or excuse me,

14 how many claimants were involved in that

15 second production?

16   A.   Again, I don't know the

17 difference between the first and second.

18   I think in total, there's over

19 100,000, 105,000 claims and then the exposure

20 records would have been over 200,000. I

21 don't know.

22   Q.   I didn't mean to talk over you.

23 I thought you were done.

24   . As 105,000 claims, that's

1   claims among all of the member trusts?

2   That's not individual claimants?

3   A.   That's -- that's claims. We

4   have claimants and that transfers to the 105

5   claims and then within the 105 or so claims

6   there's the 200 some thousand exposure

7   records.

8   Q.   So, was there any material

9   difference between the process that was

10 taken, that was undertaken for the first

11 production and the second?

12   A.   I don't believe so. We did the

13 same things with the application. I think it

14 was the same process.

15   Q.   And are -- is DCPF bringing on

16 any additional asbestos trusts for claims

17 processing in the next six months that you

18 can disclose?

19   A.   I'm not aware at this point.

20   Q.   And so moving off of the

21 invoices, I mean I think we've discussed your

22 concerns that a data breach could reveal some

23 sensitive claimant information that may

24 inadvertently be included in some of the

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1 fields that are produced to the debtors. Is

2 that a fair statement?

3   A.   I'm concerned with both the

4 sensitive information and just all of the

5 confidential information. All the

6 information the claimants provides is

7 considered is confidential. It's not just

8 the SBI data related to the fields, but it's

9 all of the data.

10   Q.   But sticking with just for the

11 purposes of these few questions, the whole

12 redaction process, so, in order for some SBI

13 or sensitive or personal PII to be

14 inadvertently disclosed, we would have to

15 have in the first instance the data sort of

16 getting by that, somehow not getting redacted

17 on the first pass taken by DCPF,

18 understanding that DCPF undertook a very

19 robust and time-consuming process to redact

20 that data.

21   And then that data would then

22 not have to be properly redacted by the

23 debtor's experts who are required to

24 undertake such an exercise. And then there

1   would have to be a breach.

2   Are those -- isn't that the only

3   way that this data could be inadvertently

4   disclosed?

5   MR. GUERKE: Objection.

6   THE WITNESS: I mean this data,

7   we've got, through the process, going through

8   and redacting the information, but then the

9   information that was produced, there still is

10   then, you know, a matching key that

11   potentially could be used to, you know,

12   recompile this data with other pieces of

13   information.

14   What happens to the data after

15   it leaves us, you know, I can't speak to.

16   There is a risk, there is a data

17   out there but, you know, we do everything we

18   can to redact this information out of these

19   exposure fields within the time frame that

20   we're given.

21   Like we've said, there's quite a

22   number of exposure records and the data can

23   be in even some locations you necessarily

24   wouldn't think someone would put some of this

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1   data.

2   So, it is quite an effort and we

3   do our best to get out as much information,

4   hopefully all of this information that we

5   can.

6   Q.   So as we talked about, the DCPF

7   has provided similar trust data as requested

8   by the debtors in this case to DBMP and that

9   data was redacted before it was sent; right?

10   A.   Correct.

11   Q.   And DCPF did its best to ensure

12   that anything that was not supposed to be

13   included in that transmission was redacted;

14   right?

15   A.   We did, yes, to remove those

16   pieces of information, correct.

17   Q.   And so what is the process after

18   the transmission, such that do you know how

19   many records DCPF may have failed to properly

20   redact before the info went to Bates White?

21   MR. GUERKE: Objection.

22   You can answer.

23   THE WITNESS: No, I do not.

24   BY MS. MAISANO:

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1   Q.   So, was there a process by which

2   after the data was transmitted somebody came

3   back to DCPF and said hey, I think we might

4   have, some of these might have been missed,

5   we should talk about it or how does that

6   work?

7   A.   Well, when we produce the data

8   for DBNP, they did come -- DBNP did come back

9   with a couple of questions.

10   There was -- when we created the

11   spread sheet, there was a spread sheet on one

12   of the trust's DII, which was to Hal Harbison

13   Walker and I think it was the secondary

14   exposure that the, one of the other Harbison

15   Walker data was on both of those spread

16   sheets and when the data had been pulled in

17   by the data analyst, they pulled in the

18   Harbison -- one trust instead of the other.

19   And so then we were able then to

20   pull and produce the, that tab, there was

21   three tabs in it, that one tab for that one

22   trust.

23   Then they also had some

24   questions about information I believe that

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1 was in certain fields and the way it was

2 described and then we explained to them that

3 that's the information as it was provided by

4 the trust, by the claimant.

5   So, we only give you back the

6 information, I think some of it was the

7 information provided didn't look like it was

8 for a different question. And we confirmed

9 that that, you know, that is the information

10 that was provided by the claimant.

11   Q.   So, does DCPF have any knowledge

12 of how many records associated with the DBNP

13 production may have gone out that could have

14 included sensitive information or personal

15 information in those exposure-related

16 narrative fields?

17   A.   No, I do not know.

18   Q.   And has DCPF produced this type

19 of redacted claimant data to anyone other

20 than DBNP?

21   A.   In this format, I do not believe

22 so. There were others in more of the

23 individual subpoenas where information would

24 be redacted, but I think this exercise that

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1   we did with DBNP was the first time we've

2   done that.

3   Q.   And so for the -- any Aldrich

4   Murray claimant who was also included in the

5   DBNP discovery data, you'd be able to skip

6   the redaction process, right, because you

7   already redacted for that claimant?

8   MR. GUERKE: Objection.

9   THE WITNESS: Not necessarily.

10   I mean this subpoena here, I

11 don't know, you know, if that occurred or how

12 many it occurred.

13   The subpoena here is, you know,

14 doesn't talk about using information from a

15 previous production and we typically just, we

16 deal with, you know, each of these subpoenas

17 separately as they are received and not rely

18 on information that was previously produced

19 in another matter.

20 BY MS. MAISANO:

21   Q.   Do you know what the overlap is

22 between the claimants requested by DBMP for

23 which you produced the redacted data and the

24 claimants requested by Aldrich and Murray?

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1   A.   No, I do not.

2   Q.   But assuming that there is some

3   overlap, is it your expectation that DCPF

4   would undertake that redaction process all

5   over again and not use the work on the

6   redaction that was done previously for the

7   same claimants' claims?

8   A.   I mean we haven't -- I haven't

9   thought through exactly what we would do in

10   that case.

11   I mean I'm certainly hoping we

12   still produce the sample in this case. But

13   the data changes, too.

14   I mean there's information,

15   there's new information, exposure records get

16   updated. So, I don't know how or the

17   usefulness of reusing some of the data from

18   the DBMP production into this.

19   I know -- yeah, so I'm not sure.

20   We'd have to -- it would be something we'd

21   have to look at if we were instructed to do

22   so.

23   Q.   But assuming that there was

24   potentially overlap, and you were able to use

1   the records that have already been reviewed

2   and redacted for the DBMP production, would

3   then the burden of producing the data

4   requested by the Aldrich Murray debtors in

5   this case just be limited to review of a

6   limited number of -- those limited number of

7   fields for those limited claimants who did

8   not overlap?

9   MR. GUERKE: Objection.

10   THE WITNESS: I mean in this --

11   there's more claimants in this request. And

12   I think in here, there's 12,000. So, I think

13   there's 30 percent more claimants and I think

14   on claims, I think we're up to close to

15   150,000 versus I think it was 105.

16   So, I think there's quite a

17   number of more claims and then each of those

18   claims that have a correlating increase in

19   the number of exposure records that would

20   need to be reviewed.

21   So, you have all of those that

22   would have to be reviewed. You have all of

23   the ones that would not overlap. You would

24   have all those ones that maybe do overlap,

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1   but the information would then -- within the

2   claim has changed since the DBMP was

3   produced.

4   All of that -- and, you know, I

5   wouldn't want to get into trying then to

6   identify what piece of data changed and then

7   trying to take what was produced here and

8   sort of merge certain fields to the other.

9   I think if the data is changed,

10 we definitely would want to relook at those

11 claims.

12   So, I'm not sure what the

13 overlap is, but there is substantial number

14 of claims just given the 40 percent or so

15 increase in additional records that we would

16 need to review -- not records -- claims,

17 review and redact.

18   Q.   Why would a record -- why would

19 a trust claimant's record change after that

20 claimant has been paid?

21   A.   We're not just looking at

22 records that have been paid. We're matching

23 against all claims for that individual.

24   Q.   So, if a claimant -- so I guess

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1   there is the potential perhaps for a field or

2   for a claimant's record to change, and

3   understanding that we're doing this on a

4   claim basis, right, not a claimant basis?

5   A.   Uh-huh.

6   Q.   So, is that -- so is the

7   situation you're envisioning one in which a

8   claimant was paid by one trust, but perhaps

9   has submitted a claim to another trust?

10   A.   We reproduce all this data.

11 It's trust by trust.

12   So, regardless of what happened

13 in one trust, for each of these trusts, the

14 data, we're to produce all the matching

15 claims. And so within each of these trusts,

16 claims can change.

17   We're required to, you know, if

18 it was paid, if it wasn't paid, give it's

19 current status. Statuses can change,

20 exposure records can change. That type of

21 information can change.

22   Q.   In reviewing the information for

23 the DBMP production, did you -- did the DCPF

24 sort of cut it off to account for this

1   potential change? So what I'm trying to get

2   at is was there a date certain whereby even

3   if, for example, an exposure field may have

4   changed for some kind of a claimant or a

5   claim record may have changed, that may not

6   have been included because it was -- you had

7   already started work on the production?

8   Because I guess what I'm trying

9   to get to is from what you're saying, it

10   seems that this information is kind of

11   dynamic and subject to change all the time.

12   And so how did you handle it in

13   DBMP, understanding that as you said this

14   information can be subject to change

15   regarding the claims records?

16   MR. GUERKE: Objection.

17   THE WITNESS: When in this

18   process it's finally decided that, you know,

19   yes, we need to produce the data, then we

20   would go and develop the queries to pull all

21   of this data that's requested.

22   So, the first step would then,

23   at that point in time, we would pull all of

24   the information that's requested for all of

1   these fields.

2   Then that data set becomes the

3   basis then for what then gets redacted.

4   Q.   And so assuming that there

5   are -- that there is claimant overlap between

6   the claimants requested in Aldrich Murray and

7   the claimants for which DCPF undertook this

8   redaction process for DBMP, if there were no

9   changes in the claim record data, could that

10   data be used in connection with responding to

11   the Aldrich Murray subpoenas?

12   MR. GUERKE: Objection.

13   THE WITNESS: Again, we would --

14   if we -- we could identify potentially that a

15   record has not changed. But, you know, we've

16   not been instructed to reuse that data. It

17   doesn't seem to be a part of this subpoena.

18   But given that, we would still

19   want to, you know, QA that information and

20   take another look at it before that data then

21   gets produced in another production.

22   BY MS. MAISANO:

23   Q.   So you would QA it again from --

24   after -- I just want to make sure we're

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1   talking about the same thing. The DBMP data

2   that was already redacted and produced, you

3   all would QA it and look at it again prior to

4   any potential production in another case?

5   A.   There would be some QA that

6   would be done, yes, absolutely.

7   I mean we're pulling certain

8   fields out of what was produced previously

9   and adding it to additional new records.

10   I mean all of that, we would

11 have -- we'd want to QA and make sure that

12 everything is as accurate as possible. So,

13 yeah, there would be some QA that we would

14 want to do.

15   I haven't thought about it or

16 worked out all the details in sort of what

17 that would envision.

18   Q.   But assuming that you were --

19 that the DCPF was able to use the data that

20 had been unchanged since the DBMP production

21 had already been redacted, that would reduce

22 the time needed on the DCPF then to make that

23 production; right?

24   MR. GUERKE: Objection.

1   THE WITNESS: Reduce the time, I

2   mean over all the production? I'm not sure.

3   On an individual record basis?

4   For those potential records that had the

5   overlap? You know, there may be scenarios

6   where that would save time.

7   But given the additional number

8   of records and, you know, the records that

9   would have changed or not overlapping, you

10   know, they certainly could be, you know, more

11   time consuming than what it was in the DBMP.

12   I mean I just have no way of

13   knowing at this time.

14   BY MS. MAISANO:

15   Q.   Because we don't know because we

16   don't know what the overlap would be; right?

17   A.   I don't know the overlap, but I

18   do know there are substantially more records.

19   Q.   Did you tell me there were

20   89,000 claimants who were requested in DBMP?

21   A.   Somewhere around 9,000.

22   Q.   And we've got about 12,000 in

23   the case; right?

24   A.   I think it was 12,002 for this

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 1   one.
 2        Q.     And so assuming that there is
 3   overlap among the claimants and assuming that
 4   you might be able to use some of the work
 5   that you had done in DBMP, potentially there
 6   could be some claims wherein you might not
 7   have to undertake that redaction, possibly?
 8                MR. GUERKE:  Objection.  Calls
 9   for speculation and asked and answered.
10                THE WITNESS:  This is assumption
11   on assumption.  I mean we'd actually have to
12   see what it was to make those determinations.
13                I mean this is nothing we've
14   ever done before.  It certainly wasn't
15   envisioned in this production.
16                So, it's something that we would
17   and I would need to look into.
18   BY MS. MAISANO:
19        Q.     Moving on to Paragraph 29, you
20   talk about the burden of responding to this
21   request that was made by the debtors.
22                We talked about what happened in
23   DBMP.  You say here first this production has
24   already taken up a significant amount of DCPF
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1   employees' time.

2   How much time has DCPF taken so

3   far to respond to the Aldrich Murray

4   subpoena?

5   A.   I'm not sure of the hours so

6   far, but there's many parts in the process

7   that the DCPF has already worked on, you

8   know, including here it talks about the

9   initial, the matching.

10   So, we worked on the initial

11 matching. It provided, we say 12,000 claims.

12 It actually provided somewhere over 13,000

13 records.

14   For some of the claims, they

15 gave multiple versions of the last name.

16   So then we matched up, so, we

17 would match up the social and then whether or

18 not it was an exact match.

19   So, we completed that, we

20 created then the initial meet and confer list

21 that had probably over 10,000 records that

22 matched on social but didn't match exactly on

23 last name. And we went through the process

24 of trying to identify the reason for it not

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1   matching.

2   Some of these were because they

3   were the additional name variations, but they

4   provided that the claim that was being

5   matched was already on the list of an exact

6   match. It was a portion of those.

7   There was ones where we would

8   look through to see that it appeared to be a

9   typo in the last name field or they had the

10 first and last name reversed.

11   So, we went through all of those

12 records to develop the meet and confer and I

13 believe we've also been sent the initial

14 notice to the law firms who represent these

15 150,000 claims.

16   So, I think all of that work, I

17 don't believe the meet and confer process was

18 ever finalized. We started them and that was

19 all put on hold.

20   Q.   So, just to make sure that I've

21 got it correctly, if I, Clare Maisano am one

22 of the 12,000 claimants who is among those

23 requested and I submit claims against all 15

24 of the trusts and the sub funds, would that

1 be, that would be 15 unique claims because

2 the sub funds are all separate or is that the

3 ten?

4   A.   It would be 15.

5   So, individuals can have, in

6 each of the 15 and they can have multiple

7 claims within a given trust.

8   Q.   And is there a way to do a

9 single query against all of the trust

10 databases for a name and Social Security

11 number?

12   A.   I'm not sure --

13   Q.   For example, for all of the

14 trusts that DCPF manages, is there a way to

15 be a Trust Online or some other mechanism

16 where you can do a query and put in a Social

17 Security number and last name and it will

18 deliver all of the hits for all of the member

19 trusts for those two data claims?

20   If you put in my name and Social

21 Security number, would you get a list of all

22 of the trust claims that I've made for -- to

23 the DCPF member trusts?

24   A.   All of the data is in the

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1   database. We keep all of the information.

2   We don't commingle the data between the

3   trusts.

4   So, the information, and again,

5   it's not just to make the point, it's not the

6   Social Security number but the --

7   Q.   SSID?

8   A.   -- the SSID that's in the

9   database. There's the ability, but it's a

10   matter of the procedures and the policies and

11   reductions, you know, we don't compare data

12   across trust.

13   Q.   So, of the 12,000 claimants that

14   were requested by the debtors in this case,

15   how many of those matched to at least one of

16   the DCPF database or one of the DCPF member

17   trusts?

18   A.   I do not know that number. I

19   don't know the number. It did not match to

20   anything.

21   Q.   And I think you said in your

22   declaration that after completing a

23   preliminary database search over a series of

24   days for more than 12,000 claimants, almost

1   150,000 potential relevant claims came up.

2   How does a preliminary database

3   search take days?

4   A.   Well, part of the process is the

5   information that's provided to us, again, was

6   the name, the Social Security number.

7   That Social Security number then

8   is a process, a tool that we have that we

9   then feed the Social Security numbers in

10   through software that then will let us know

11   what the surrogate key is or the SSNID is

12   that we could then use for matching. That is

13   a more time-consuming process.

14   So, we feed those through, the

15   data analysts will set up a query and submit

16   them one by one through the system. So, that

17   takes time to run through.

18   So, once then it goes through

19   and then pulls all of the SSN IDs, then it

20   would run and do the matching of each of --

21   for each of the trusts.

22   And then would create, when it

23   does the initial matching so then you would

24   create I think it was at least three tabs.

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1   It's one tab would have, you know, here are

2   the claims that are the exact match. And

3   then there would be another tab that

4   identified claims that were just a Social

5   Security but did not match on last name.

6   There was also I believe another

7   tab then that would list those pro se

8   claimants and then there was another tab that

9   would I believe list those records that

10 didn't match to anything. So, I think those

11 were those four fields.

12   So, the data analyst has to pull

13 out all the socials, run the data for each

14 trust and then create each of these

15 individual spread sheets for each of the

16 different 15 entities.

17   Q.   But he has -- he or she has

18 scripts to help with that, with doing the

19 queries?

20   A.   I mean he does run programs, but

21 I'm not sure the level of -- I'm not sure how

22 much the creation of the actual Excel spread

23 sheets are automated. I know he goes through

24 and does the comparison and whether he

1   manually creates the spread sheets or whether

2   he has a more auto -- has them more

3   automated, I'm not sure.

4   Q.   Do you remember -- strike that.

5   So, you undertook this same work

6   I presume in DBMP, this initial pass through

7   the database to see how many relevant claims

8   there were matching to the claimants?

9   A.   Yes.

10   Q.   Do you know how long that took

11   in the DBMP case?

12   A.   I do not know.

13   Q.   Do you know how many DCPF

14   employees did this work in the DBMP case?

15   A.   The initial matching?

16   Q.   Yes.

17   A.   Well, the different -- the

18   actual running the queries and developing

19   those 15 spread sheets would have been done

20   by one individual.

21   I then got involved in at the

22   next step with the meet and confer and going

23   through those that were the partial matches

24   and trying then to categorize those, the

1   level of matching and provide that

2   information.

3   So, I was involved in more of

4   that manual review of the meet and confer

5   claims.

6   Q.   How many DCPF employees

7   undertook this initial search and process

8   that we just talked about in the Aldrich and

9   Murray case?

10   A.   It would have been I believe the

11 same people.

12   Q.   And have you done the work yet

13 in Aldrich Murray to determine whether a

14 claim should be considered the -- a match

15 under the subpoena?

16   A.   I do not believe that the meet

17 and confer process has been completed.

18   Q.   Other than what we talked about,

19 has the DCPF performed any other work related

20 to complying with the subpoena served by

21 Aldrich and Murray in this case?

22   MR. GUERKE: Objection.

23   THE WITNESS: As far as what I'm

24 involved with, I mean like I mentioned the

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1   matching, the notice to the law firms, there

2   may have been some work in creating the data

3   dictionaries of listing the, you know, by

4   trust, the fields that would be produced.

5   But I'm not aware of anything else at the

6   moment.

7   Q.   And in terms of the motion to

8   quash, I mean you obviously executed a

9   declaration in support of the motion to quash

10 the subpoena; right?

11   A.   I'm not quite following that

12 one.

13   Q.   I'm just trying to figure out,

14 everything that DCPF has done in response to

15 the subpoena served by Aldrich and Murray in

16 this case, so we talked about the work that

17 DCPF undertook in terms of the matching and

18 the preliminary queries and we've got your

19 declaration here which also was drafted I

20 believe in connection with the subpoenas that

21 were served in this case.

22   So, I just wanted to make sure

23 we had talked about everything that DCPF has

24 done in connection with responding to the

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1   subpoena served by the debtors in this case?

2   MR. GUERKE: Objection. Are you

3   asking him about everything including the

4   litigation over the last ten months or just

5   the nuts and bolts of responding to that?

6   MS. MAISANO: Anything that DCPF

7   has done in response to the subpoena. I feel

8   like the motion came in response to the

9   subpoena. That's what I'm trying to get at.

10   MR. GUERKE: I object to that.

11   THE WITNESS: There was other

12   work related to the actual notice to the law

13   firms and I think we've talked about it on

14   noticeable claimant.

15   So, there's certain law firms

16   that have lost contact with the facility and

17   despite our best efforts to notify the

18   counsel, weren't able to. So, there's some

19   work around that researching these firms,

20   making sure we have the correct contact

21   information in order to send the notice.

22   There's, you know, then research

23   if any of these were to bounce back or come

24   back, then I believe related to that, also,

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1   was some of the law firms that would file a

2   motion to quash and I believe we also, there

3   were people who also would track those firms

4   that filed those motions.

5   Sitting here today, I can't

6   think of anything beyond what I just

7   discussed.

8   BY MS. MAISANO:

9   Q.   We talked a little bit about the

10   meet and confer process.

11   You note in your declaration

12   that DCPF would have to meet and confer with

13   the debtors to receive additional information

14   on any hits that came up as inconclusive?

15   A.   Uh-huh.

16   Q.   What makes a hit inconclusive?

17   Is that if it doesn't match exactly on social

18   ID and name? How do you all define a hit as

19   inconclusive or potential hit, I should say?

20   A.   Well, we look at, yes, we look

21   at the information that, if it doesn't

22   match on name -- we know it matches on -- if

23   it's in the SSNID. If it doesn't match on

24   Social, it's not considered a match at all.

1   Then it's a matter of going

2   through where the name, and if you look at

3   it, there's somewhere it may be a hyphenated

4   name. It may be due to formatting. There

5   may be cases where it really does appear that

6   it is for the same individual and there's

7   other cases where it does not appear to be

8   clearly for the individual. The name is not

9   a match.

10   So, those would go back during

11   in the meet and confer process and sometimes

12   they would then provide additional

13   information that potentially could help to

14   clear up the issue.

15   Q.   And so you had a, I would

16   presume DCP had a meet and confer process

17   with DBMP in connection with the trust

18   discovery and they saw the same inconclusive

19   hits; right?

20   A.   I was not involved in the actual

21   meet and confer meeting with DBMP, but yes,

22   that process did occur.

23   Q.   Do you know how many claims you

24   out of the population requested, how many

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1   came up as inconclusive hits?

2   A.   I don't recall how many.

3   Q.   And so do you know how many you

4   had to meet and confer on in connection with

5   that production?

6   A.   No, I do not.

7   Q.   Do you envision that the same

8   folks on the DCPF side who did the legwork on

9   the potential matches and the meet and confer

10 process in DBMP would be doing it in the

11 Aldrich Murray case?

12   A.   Yeah, I would think it would be

13 the same individuals.

14   Q.   You note, too, when we talked

15 about that DCPF is going to send notice to or

16 has sent notice to the legal counsel of any

17 claimants who are identified in the search

18 and come up as hits.

19   What does this notice involve

20 other than sending a letter to the claimant's

21 counsel?

22   A.   I mean we send -- send notice to

23 the firm.

24   I'm not involved directly in

1   that part, but I think it includes a copy of

2   the subpoena, it includes, you know, the body

3   of the email that explains the subpoena and

4   any sort of requirements.

5   Then I think it's a list of

6   their claimants that match, that were

7   identified as matches.

8   Q.   And so -- and then is -- is that

9   the extent of that work?

10   A.   We send it out. There may be --

11   there's some questions that the law firm may

12   call in to ask about.

13   There may be some requests by

14   the law firms to get that. We send them out,

15   you know, as a PDF. There may be some that

16   they request to receive it in an Excel or

17   some other format.

18   It's just the responding to

19   those types of requests to the law firm and

20   then I believe as I said before, then the law

21   firm, whether or not they file a motion to

22   quash, I think then that also then, someone

23   at the DCPF will track, you know, those firms

24   that have filed the motion and those that

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1   have not and answer, you know, any questions

2   related to that.

3   Q.   We also talked previously about

4   those counsel who might not be able to be

5   identified, some of these claimants' counsel?

6   A.   The non noticeable?

7   Q.   Yeah.

8   A.   Yeah.

9   Q.   Do you know how many potentially

10 unnoticeable counsel there are in the Aldrich

11 Murray claimants that have been requested?

12   A.   I do not know.

13   Q.   Did you encounter this issue in

14 DBMP such that there were unnoticeable

15 counsel?

16   A.   There were unnoticeable claims

17 in DBMP.

18   There was another individual who

19 was handling the tracking and the monitoring

20 of the unnoticeable claimants in breaching

21 out and trying -- in doing the research in

22 trying to identify a better way to contact

23 these -- this counsel.

24   So, there was firms that were

1   unnoticeable on DBMP.

2   Q.   Do you know how many there were?

3   A.   I do not know.

4   MS. MAISANO: Off the record.

5   - - -

6   (Whereupon, there was a recess

7   commencing at 12:29 p.m. and concluding at

8   12:32 p.m.)

9   - - -

10   BY MS. MAISANO:

11   Q.   We're getting to the home

12   stretch here, Mr. Winner. Thank you for your

13   patience and time today.

14   Going back to the DBMP

15   production briefly, I think we talked about

16   that there were about 200,000 records that

17   needed to be reviewed for potential redaction

18   in that case. Is that right?

19   MR. GUERKE: Objection.

20   Misstates his testimony.

21   BY MS. MAISANO:

22   Q.   What was the -- what was number?

23   A.   DBMP, yeah, I think it was

24   somewhere over 200,000 exposure records.

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1   Q.   And sorry if I wasn't precise in

2   my terminology there.

3   So, it was 200,000 exposure

4   records that needed to be reviewed for

5   potential -- potential redaction I think you

6   said, that there were more than 1,000 records

7   that needed to be redacted in connection with

8   that initial 200,000 that were initially

9   reviewed?

10   MR. GUERKE: Objection.

11 Misstates his testimony.

12   THE WITNESS: I don't know the

13 exact number, but there were several thousand

14 records that had to be redacted.

15 BY MS. MAISANO:

16   Q.   And several thousand that needed

17 to be redacted, I think you said that that

18 was the best estimate you could give us was

19 several thousand? Could you give me a more

20 precise number than that?

21   A.   Again, several thousand.

22   Q.   That's fine. I think we talked

23 about how that contained not only just

24 potentially Social Security numbers, but also

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1   names, addresses, dates of birth with other

2   sensitive information that did not belong in

3   those exposure fields. Is that right?

4   A.   Correct.

5   Q.   Out of that small percentage of

6   the -- or that percentage of the 200,000

7   records that needed to be redacted and

8   contained information that shouldn't have

9   been there, can you tell me how many of those

10   records contained non-claimant PII, meaning

11   PII that was different than the person who

12   filed the claim?

13   A.   I'm not sure. I know that

14   co-worker and co-workers names made up a

15   large percentage of those that were redacted.

16   I don't know the exact percentage.

17   Q.   But it was mostly names of

18   co-workers?

19   A.   I believe there were more names

20   than anything else for the co-worker.

21   MS. MAISANO: I think those are

22   all the questions that I have. Thank you

23   very much for your time today.

24   THE WITNESS: You're welcome.

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1   MR. GUERKE: Thank you.

2   THE COURT REPORTER: Transcript

3   orders?

4   MS. KREPTO: Expedited.

5   MR. HOGAN: Regular ordinary

6   course.

7   MR. GUERKE: I'll take a regular

8   order that gets me a condensed version.

9   I would say if I could get it

10   within a week, that would be great.

11   MS. MOSKOW-SCHNOLL: Same with

12   me.

13   MS. MAISANO: That's the same.

14   THE COURT REPORTER: Jones Day

15   ordered it as a two day. I'm just confirming

16   that.

17   MS. MAISANO: Whatever they said

18   is fine. Just send it to them or send it to

19   me.

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1                    C E R T I F I C A T E

2

3          I hereby certify that the proceedings

4    and evidence noted are contained fully and

5    accurately in the notes taken by me on the

6    deposition of the above matter, and that this

7    is a correct transcript of the same.

8

9

10

11

12

13    --------------------------------

14          Teresa M. Beaver

15

16

17          (The foregoing certification of this

18    transcript does not apply to any reproduction

19    of the same by any means, unless under the

20    direct control and/or supervision of the

21    certifying shorthand reporter.)

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EXHIBIT H

<pre>
 1   UNITED STATES BANKRUPTCY COURT
                            DISTRICT OF DELAWARE
 2

 3   IN RE: .   Chapter 11
                                     .   Case No. 20-10028 (LSS)
 4   PADDOCK ENTERPRISES, LLC,   .
                                     .
 5   .   Courtroom 2
                                     .   824 Market Street
 6   Debtor.   .   Wilmington, Delaware 19801
                                     .
 7   .   Friday, January 6, 2023
     . . . .   9:58 a.m.
 8
                              TRANSCRIPT OF HEARING
 9   BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
               CHIEF UNITED STATES BANKRUPTCY JUDGE
10

11   APPEARANCES:

12   For the Debtor: Amy C. Quartarolo, Esquire
                                  LATHAM & WATKINS, LLP
13   355 South Grand Avenue
                                  Suite 100
14   Los Angeles, California 90071

15   For the Owens-Illinois
     Trust Advisory
16   Committee: Todd E. Phillips, Esquire
                                  CAPLIN & DRYSDALE, CHARTERED
17   One Thomas Circle, N.W.
                                  Suite 1100
18   Washington, DC 20005

19   (APPEARANCES CONTINUED)

20   Electronically
     Recorded By: LaCrisha Harden, ECRO
21
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                                  E-Mail: gmatthews@reliable-co.com
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 1  APPEARANCES (CONTINUED):

 2  For Bestwall, LLC:          Gregory M. Gordon, Esquire
                                JONES DAY
 3                              2727 North Harwood Street
                                Suite 500
 4                              Dallas, Texas 75201

 5                              Morgan R. Hirst, Esquire
                                110 North Wacker Drive
 6                              Suite 4800
                                Chicago, Illinois 60606

 7

 8  For Official Committee
    of Asbestos Claimants
 9  of Bestwall, LLC:          Davis L. Wright, Esquire
                                ROBINSON & COLE, LLP
10                              1201 North Market Street
                                Suite 1406
11                              Wilmington, Delaware 19801

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 1 years? I mean, some of the asbestos bankruptcies, as you are

 2 well aware, lasted 15 years. I don't think it's appropriate

 3 for this claimant data to be sitting in North Carolina

 4 debtors' files for 15 years, that to me is inconsistent with

 5 protecting and appreciation the security interests of that

 6 data.

 7   THE COURT: How is that different than it sitting

 8 in Paddock's files for the next 20 years?

 9   MR. PHILLIPS: I don't -- Paddock is in the

10 process of transferring it all to the trust.

11   THE COURT: Okay, or this trust's for the next 20

12 years?

13   MR. PHILLIPS: Well, the Trust has a different --

14 I mean, I don't want to malign the North Carolina debtors,

15 but the trusts have a very different incentive to protect

16 that data.

17   THE COURT: But I don't know that it does or it

18 doesn't. I mean, that's -- it seems to me that -- and maybe

19 a finite time is appropriate, but it seems to me that we deal

20 with this Court, the court across the street, many courts

21 deal with sensitive information -- it's not privileged, but

22 it's sensitive -- in discovery situations all the time.

23   MR. PHILLIPS: I appreciate that.

24   THE COURT: And I do think this information is

25 sensitive and that is -- it has to be protected, but we deal

 1 with it all the time and we deal with it through protective

 2 orders. We assume the good faith, quite frankly, of the

 3 people who are -- who have access to that information and, if

 4 we can't depend on the good faith of the people who have

 5 access to the information, then that just throws the whole

 6 scheme out.

 7   MR. PHILLIPS: I appreciate that, Your Honor.

 8 Having worked with the trusts for a number of years, I know

 9 that they have very -- they have specific protocols and

10 security in place for their doc -- like, they actually -- I

11 know that they have protections in place, I'm just not

12 comfortable. I don't know what Bates White -- I just don't

13 know what they do to protect their data.

14   So it's hard for me to say that it's going to be

15 safe sitting in their files for a number of years, but I

16 appreciate what you're saying that relying on the good faith,

17 but I will say that the longer it sits, the more of a chance

18 there is for hacks and for data breaches and that kind of

19 thing.

20   THE COURT: It clearly is. The more it sits

21 anywhere, there is a chance that anybody can be hacked, but

22 just as your firm may get confidential information and

23 discovery in cases that you're working on and your employees

24 get to look at it and whoever gets to look at it, you know,

25 we trust that your firm is going to handle it appropriately

1   <u>CERTIFICATION</u>

2   We certify that the foregoing is a correct

3   transcript from the electronic sound recording of the

4   proceedings in the above-entitled matter to the best of our

5   knowledge and ability.

6

7   <u>/s/ William J. Garling</u>   <u>January 9, 2023</u>

8   William J. Garling, CET-543

9   Certified Court Transcriptionist

10   For Reliable

11

12   <u>/s/ Tracey J. Williams</u>   <u>January 9, 2023</u>

13   Tracey J. Williams, CET-914

14   Certified Court Transcriptionist

15   For Reliable

16

17   <u>/s/ Coleen Rand</u>   <u>January 9, 2023</u>

18   Coleen Rand, CET-341

19   Certified Court Transcriptionist

20   For Reliable

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