UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, October 24, 2024
	:	10:02 a.m.
	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,	:	AP 21-03029
Plaintiff,	:	
v.	:	
ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC.,	:	
Defendants,	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	:	AP 22-03028
Plaintiff,	:	
v.	:	
INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, *et al.*,	:	
Defendants,	:	

OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, : AP 22-03029

Plaintiff,

v.

TRANE TECHNOLOGIES PLC, *et al.*,

Defendants.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LENA MANSORI JAMES,
UNITED STATES BANKRUPTCY JUDGE

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURTROOM DEPUTY: No. 1, Aldrich Pump, continued status hearing; No. 2, Official Committee of Asbestos Personal Injury Claimants versus Aldrich Pump LLC on a continued status hearing; No. 3, Official Committee of Asbestos Personal Injury Claimants versus Ingersoll-Rand Global Holding Company Limited, also a continued status hearing; No. 4, Official Committee of Asbestos Personal Injury Claimants versus Trane Technologies plc, continued status hearing.

THE COURT: Good morning, everyone.

(Counsel greet the Court)

THE COURT: All right. I'll start with appearances.

MR. ERENS: Yes, your Honor.

Brad Erens, E-R-E-N-S, of the Jones Day firm on behalf of the debtors.

Your Honor, traditionally I introduce a whole variety of lawyers --

THE COURT: All right.

MR. ERENS: -- on our side. But I think today we'll have everybody introduce themselves to allow your Honor to start putting names to faces.

THE COURT: All right. I appreciate that.

MR. ERENS: Okay.

THE COURT: All right.

MR. ERENS: Thank you.

MS. CAHOW: Good morning, your Honor. Caitlin Cahow, also of Jones Day, on behalf of the debtors.

MS. JOHNSON: Good morning, your Honor. Amanda Johnson on behalf of Jones Day for the debtors.

MR. EVERT: Your Honor, I'm Michael Evert from the firm Evert Weathersby Houff, along with my law partner, Clare Maisano. We were, we were the, the debtors' National Coordinating Counsel for their asbestos litigation prepetition.

THE COURT: Okay.

MR. EVERT: And we serve as special counsel to the debtors for asbestos matters.

MR. MILLER: Good morning, your Honor. Jack Miller, Rayburn Cooper & Durham here in Charlotte, for the debtors.

THE COURT: All right.

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter & English, on behalf of the Non-Debtor Affiliates, Trane U.S. Inc. and Trane Technologies Company LLC. We also represent certain other affiliated entities in connection with the adversary proceeding.

MS. SIEG: Good morning, your Honor. Beth Sieg of McGuireWoods, also for the Non-Debtor Affiliates, and I'm based in Richmond.

THE COURT: Okay.

MR. FLORCZAK: Good morning, your Honor. Joseph

Florczak from McGuireWoods, LLP, also here on behalf of the Non-Debtor Affiliates, based in Chicago.

THE COURT: All right.

MR. KUTROW: Your Honor, I'm Brad Kutrow, also with McGuireWoods, and I'm here in Charlotte, for the Non-Debtor Affiliates.

Thank you.

MR. PHILLIPS: Your Honor, Jim Phillips from the Brooks Pierce firm in Greensboro, on behalf of the Fiduciary Duty Defendants.

MR. MARTINEZ: Agustin Martinez. I'm also from the law firm of Brooks Pierce, also here for the Fiduciary Duty Defendants.

THE COURT: Okay.

MS. CORDES: Stacy Cordes with Cordes Law, Charlotte attorney, on behalf of the Non-Debtor Affiliates.

THE COURT: Anyone else over there?

(No response)

THE COURT: All right.

MS. RAMSEY: Good morning, your Honor. It's a pleasure to appear before you this morning.

Natalie Ramsey from Robinson & Cole and I am representing, along with a number of other people I also will allow to introduce themselves this morning, the Official Committee of Asbestos Claimants.

MR. WEHNER: Morning, your Honor. James Wehner from Caplin & Drysdale in Washington, DC. I am one of the co-counsel for the Official Committee of Asbestos Claimants.

Nice to meet you.

THE COURT: Nice to meet you.

MS. HARDMAN: Good morning, your Honor. Carrie Hardman from Winston & Strawn on behalf of the Asbestos Claimants' Committee. Your Honor, Winston & Strawn represents the Committee in a special litigation counsel role.

And with me is Mr. Neier as well from Winston & Strawn.

MR. NEIER: Good morning, your Honor.

THE COURT: Morning.

MS. HARDMAN: And we are from New York, but please don't hold that against us.

THE COURT: I'm from New Jersey, so.

MS. HARDMAN: Oh, perfect. Thank you, your Honor.

MR. THOMPSON: Morning, your Honor. Clayton Thompson with Maune Raichle Hartley French & Mudd on behalf of Robert Semian and 46 other claimants. My firm represents mesothelioma victims' claims against the debtor. I'm also from New York.

Thank you.

MR. MILLER: Good morning, your Honor. Nathaniel Miller from Caplin & Drysdale, also on behalf of the Committee.

MS. MAUCERI: Good morning, your Honor. Rachel

Mauceri from Robinson & Cole, also on behalf of the Committee.

MR. WRIGHT: Morning, your Honor. Davis Lee Wright from Robinson & Cole on behalf of the Committee. I'm in our Wilmington, Delaware office.

MS. SMITH: Morning, your Honor. Annecca Smith, also rounding out the Robinson & Cole contingent, on behalf of the Committee.

THE COURT: Thank you.

MR. THOMPSON: Your Honor, Glenn Thompson of Hamilton Stephens. I'm local counsel for the Committee.

MR. WALDREP: Your Honor, Tom Waldrep. Waldrep Wall Babcock & Bailey. We're the claimant local counsel.

MS. ABEL: Good morning, your Honor. Shelley Abel, Bankruptcy Administrator for the Western District of North Carolina.

MS. WRIGHT: Good morning, your Honor. I'm Cotten Wright with Grier, Wright & Martinez here in Charlotte. We rep -- I'm local counsel for the Future Claimants' Representative, Joe Grier. Mr. Grier is out of the country today. So he's not with us.

But I do have Jonathan Guy and I'll allow him to introduce himself. He'll be speaking for us today.

MR. GUY: Good morning, your Honor. Thank you for taking this case on.

THE COURT: You're welcome.

MR. GUY: Yes. I rep -- I'm from Orrick Herrington & Sutcliffe and I represent Mr. Grier, the FCR.

Thank you.

THE COURT: All right. Thank you.

All right. Well, so you have introductions. My career law clerk, Eric Connon, is down there. He's a great point of contact. I believe some of you have already e-mailed with him. And my courtroom deputy, we have a little different sort of situation in our District. So she's always with me, Traci Phillips, who's also, you can contact her. I think there's been a problem with the link on the website with her e-mail, but she is very responsive, so.

And anyway, those are two great contacts directly to sort of my Chambers and me, so.

And a little bit about myself. I am a Yankee, but came down here for law school. You probably googled me, but you know, I think the biggest warning or, or apology, perhaps, I have is I'm not going to be nearly as funny as, as Judge Whitley. I listened to a few of the hearings and, you know. So I don't think anyone can compete with that. So I don't have a vast repository of song lyrics in my head, you know.

Also, I am not really following sports. So that, that's me. But you know, when appropriate, absolutely appreciate some light moments in the courtroom and just ask that everyone, of course, always, even as contested things get,

remain professional, so.

So I will hand it over.

MR. ERENS: Okay. Thank you, your Honor. Again, Brad Erens on behalf of the debtors.

Couple of housekeeping items before we start on the substance. As we indicated when we sent e-mails to Chambers, we have talked to the parties in advance of this hearing to reach agreement on a couple of things. One is the order of presentation and two is some rough estimates on, on time frames, again subject to your Honor's preference and the like. It does require most of the day for the presentations. We hope it will go in a, you know, relatively prompt fashion, but there's a lot to go over.

In terms of the order, what was agreed to is the debtors would go first. There -- there -- well, there's sort of two sides, right, to this case. The debtors and the FCR have been aligned. The ACC has been on the other side as well as some of the plaintiffs' bar.

So the debtor and the FCR would go first and do their presentations. The Maune Raichle firm has another hearing in front of Judge Bell, I believe it is, in the District Court early this afternoon. So the request was that they go before lunch so they can then attend to their District Court proceeding.

THE COURT: All right.

MR. ERENS: So the idea would be we would do the debtor and the FCR and the Maune Raichle firm, break for lunch at that point, and then we would have the ACC in the afternoon. And then the parties also agreed to what I would describe as relatively short rebuttals. Again, it's going to be a relatively long day. So we want, we don't want to belabor the points, but even though everybody's seen each other's case status reports -- so to some extent, probably, this presentation is going to be in response -- there would be some time for rebuttal at the end of the day to respond to what had been said by the other side. Fifteen minutes, I think, is kind of what the target was for each side.

In terms of the presentations, the rough estimate -- you never really know until you get into it -- but the rough estimate would be each side would have, roughly, 2, maybe 2-1/2 hours tops for presentation. So that's the debtor and the FCR on one side and then the Maune Raichle firm and the ACC on the other side. There was no idea that, you know, there'd be a stopwatch or, you know. We're, we're not keeping time, but the idea was, roughly, each side would have, roughly, the same amount of time.

And if that still works for your Honor, that would be how we would proceed.

THE COURT: That, that's fine with me.

MR. ERENS: Okay.

THE COURT: Any other comments?

MR. ERENS: Any other questions or comments before we start?

(No response)

MR. ERENS: Okay.

In terms of the debtors' presentation, your Honor, I'm going to start off with just some high-level points. We've got a couple different people doing the debtors' presentation, different parts. It will, more or less, track the case status report, but we do have some things to emphasize.

I will come back at the end to do sort of the, the, the wrap-up of the presentation.

And if it please your Honor, I'd like to actually do it from the podium, if that's okay.

THE COURT: Yeah. No, that's fine.

MR. ERENS: Okay. Thank you.

MR. MILLER: Your Honor, if I may approach, I'll hand up hard copies of the presentation and then give them to the other side.

THE COURT: Yes.

MR. ERENS: Yeah, that's --

THE COURT: I'm just, I'm getting myself, I'm getting a little adjusted here. I cannot reach the floor. So give me a minute.

(Pause)

(Debtors' presentation distributed)

MR. ERENS: I suppose that's another housekeeping point, your Honor. The, the history of these cases that seems to have worked well is often the parties do do PowerPoint presentations as part of their argument or presentation and that the parties have historically e-mailed those presentations to the other side at the time they're being presented. So they don't get --

THE COURT: Okay.

MR. ERENS: -- sent the night before or anything.

THE COURT: So you're all set.

MR. ERENS: And that, that seems to have worked for everybody. So we're going to continue that practice.

All right. Thank you, your Honor.

I'm going to start off with what, hopefully, is about ten minutes or so of just main points from our case status presentation and you know, most of this, again, is in the, the case status and we hope that was helpful, but we, I did want to emphasize some points starting off and then, again, I'll turn it over to some others for the, the details.

Your Honor, as we set forth in the case status, we do think, unfortunately, a significant opportunity in this case was missed at the beginning for a resolution. And the reason for that is these North Carolina debtors filed as a very important case had, was either wrapping up or had just wrapped

up and that's the Garlock case. There is substantial similarity between the two cases. Obviously, both sets of debtors were North Carolina companies and filed here in the Western District. But more importantly, both were asbestos cases and the products in this case, more or less, track the products at issue in the Garlock case. Garlock was a manufacturer of asbestos-containing gaskets. The, one of the largest products involved in this case is gaskets and many of the gaskets actually were purchased from Garlock itself.

Also, the liabilities were similar in terms of scope. If you measure liability by how much the company was paying in the tort system, Garlock was paying more than these debtors, but, you know, the, the range was relatively close. Garlock was paying somewhat more. So the size of the liability was similar.

And there was also substantial overlap as this case unfolded in professionals. Many of the professionals, including the FCR as an example, were professionals in the Garlock case.

And Garlock was a difficult case. It lasted several years. think seven years, roughly. It was highly contested. There was a lot of litigation, a lot of fees. It had a contested estimation proceeding and in fact, there was even litigation where the company was bringing RICO lawsuits against some of the plaintiffs' bar for what was, what had been alleged

to have occurred in the tort system before the bankruptcy.

So if you looked at that case, you'd say, "Boy, this is a difficult case to resolve," but after a contested estimation it did resolve and it resolved at a $480 million consensual plan and an asbestos trust.

So your Honor, as this case filed, we felt like we had really something to work with. We had an advantage. Garlock had just finished, a lot of the same professionals, a lot of the same issues. Gee, this would be great. Do we really have to litigate everything over again? We have a precedent in this jurisdiction.

So from Day 1 the debtors worked to, to try to resolve the case quickly with the estate fiduciaries, the ACC, the Asbestos Claimants' Committee, and the FCR. When we approached the ACC they indicated they were not interested at that time in a resolution. They wanted to litigate the preliminary injunction, you know, the debtors' request, which is typical in these asbestos cases and has almost been uniformly approved in these cases, that you can't sue non-debtor entities where the debtor is ultimately liable. Otherwise, there's really no automatic stay and you really don't have a bankruptcy. And that's what Judge Whitley ultimately found in approving both the determination the stay applied and granting a preliminary injunction.

But that's what the ACC wanted to do. They wanted to

litigate.

The FCR had a much different approach. They wanted to resolve the cases. And again, the FCR was the FCR, Mr. Grier, in the, in the Garlock case. And we were happy not only to have a party to talk to, but frankly, it was estimated that the future liability in this case was, roughly, 80 percent of the liability. So the FCR was, by far, the largest constituency in the case and as a result, as is often the case in bankruptcy, you start with the biggest parties.

So we spent time over the course of the next year or so negotiating with the FCR and by the summer of 2021 we did reach resolution on a $545 million asbestos trust under section 524(g).

And going back to Garlock, we think for the benefit of claimants that compares very favorably to Garlock. Garlock was 480. This trust is 545. Again, as I indicated, Garlock actually paid more in the tort system. But also very importantly, Garlock filed ten years earlier than these cases. Garlock filed in 2010. These cases filed in 2020. So the trust in this case is paying ten less years of claims than the Garlock trust will pay and those are the claims upfront. So from a present-value basis, not to get into all the details, that's a very significant change.

So from our perspective, this is a much bigger trust than the Garlock trust for, effectively, the same liability, or

close to the same liability.

After Judge Whitley granted the preliminary injunction and the, the determination that the stay applied, we did return to the ACC and said, "Okay. Now that that's over, we would like to enter into negotiations and get this case wrapped up." But again, the ACC was not interested and they have not been interested throughout this case.

Your Honor, the trust that's being proposed by the debtors and that has been agreed to by the FCR builds on now decades of experience in these asbestos mass tort cases. There have been scores of 524(g) trusts created and I think most importantly maybe for this case -- we had a chart at the end of our case status report -- there are numerous examples of these trusts being put in place in solvent asbestos reorganizations and that can mean either the debtor was solvent or the debtor was part of a corporate family, often a very highly solvent corporate family, where the funding for the trust came, if not exclusively, primarily from those non-debtor entities.

So from our standpoint, your Honor, the setup we have in this case is not new. There have been numerous solvent asbestos reorganizations for asbestos cases under 524(g), however you want to define those. And again, we have a chart at the end of the case status that we filed that shows that.

In, in addition, the -- the -- it's not just the debtors who think that asbestos trusts are beneficial, not only

for the debtor, but for everyone. The courts have said so repeatedly. And on Page 3 of our case status report we quote the Third Circuit in the Federal-Mogul case and maybe more importantly for this case, the Fourth Circuit in the Bestwall case. And we have a short quote from the Fourth Circuit. This was the case on the preliminary injunction that got appealed up to the Fourth Circuit in the Bestwall case, the same preliminary injunction I just mentioned for this case. And what the Fourth Circuit said about these asbestos trusts is:

> "Bankruptcy procedures promote the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payments for legitimate claimants."

So there is broad recognition that asbestos trusts are good resolutions for these mass tort cases.

So why were we having a problem with the ACC? Why -- if, if you think about it, from the AC stand, ACC standpoint, the plaintiffs' bar standpoint 'cause that's who runs the ACC, why wouldn't they want a trust? We're handing them over a half-a-billion dollars. The asbestos bar controls these trusts postconfirmation. They run them. They don't have to file lawsuits in the tort system anymore. Effectively, the, the clients just have to file what effectively is a proof of claim with evidence of disease. So why isn't this a good idea for

everybody? Now we could understand the ACC saying, "Well, that's all good, but," you know, "the amount you're, you're proposing for the trust, we think, is insufficient." But that's not what happened. They never engaged. They never gave us a number. They said, "Okay, we think this is the right amount and we need to negotiate." They were uninterested in a 524(g) resolution. So why is that?

First slide, please.

We can speculate and we have our own views, but frankly, the Fourth Circuit in the same PI litigation hit the point directly. It said:

"It is not clear why the Claimants' Representatives' counsel have relentlessly attempted to circumvent the bankruptcy proceeding, but we note that aspirational greater fees that could be awarded to the claimants' counsel in state court proceedings is not a valid reason to object to the processing of claims in the bankruptcy proceeding."

What they're saying is trying to avoid the bankruptcy, there may be legitimate reasons, but getting more fees for plaintiffs' counsel in the tort system is not one of them. And we think, unfortunately, that is one of the major problems in this case. The plaintiffs' bar, that is, the ACC, has continually sought to get this case out of bankruptcy and back to the tort system. And we don't think, frankly, the tort

system benefits anybody else other than plaintiffs' counsel. We cited the RAND study in our papers that shows that, roughly, 58 percent of the costs in the tort system go to lawyers, not claimants. Now that's not only the plaintiffs' lawyers. That includes defense lawyers. But a system where 58 percent of the money is just going to lawyers really, we don't think, is beneficial to the claimants.

But this is the dynamic, your Honor, that has plagued this case from Day 1. The plaintiffs' bar wants to get this case back in the tort system. We think for the benefit of not only the debtor, but all parties a 524(g) trust is much more beneficial.

With that, I'll say the following and then I'm going to turn it over to others on my team. The ACC kind of nicely posed three questions in their case status report. I think they did a good job to lay out, you know, what do we need to talk about? They said what is this case about, why is it taking as long as it is, and what should happen next? Now their answers to those questions, of course, we disagree with.

In terms of what this case is about, I think the main point the ACC has said is this case is about claimants dying without compensation while we're in bankruptcy. This is a very important point, your Honor. Obviously, we sympathize with the claimants. They have a horrible disease. That is the one fact we all know. Now there could be disputes as to whether we or

someone caused it, but they clearly have these diseases, okay? But the important point, your Honor, is historically, these debtors have been, roughly, 3 percent of the money paid to any particular claimant in any particular case, on average. So while we're in bankruptcy, 97 percent of the money is still being paid to these claimants through other tort defendants in the tort system or bankruptcy trusts.

So it is a complete fallacy to say or to imply that the claimants are sitting without compensation and dying. They should, on average, be getting 90 percent of the same money they would otherwise get. And we suspect, your Honor, though we can't prove it obviously, that they're actually getting, probably, a hundred percent. 'Cause the experience in the tort system is when one person leaves, the plaintiffs' bar is able to find the money from the other remaining defendants. So maybe they're getting the exact same amount of money, notwithstanding the automatic stay in our case and that we're in bankruptcy.

So the real question of what this case is about or the, the question as to what it really should be about is what is a fair and reasonable amount for these debtors to pay for resolution of their asbestos liability that can be placed in a 524(g) trust for the benefit of all parties. That is what this case really should be about, but unfortunately, to date it's been about the plaintiffs' bar's resistance to that type of

resolution.

No. 2, why is the case taking as long as it is. The ACC has said it's because the debtors are happy to be sort of sitting in bankruptcy with the automatic stay and not paying. Well, of course, we're paying a lot of professional fees and we'll have to pay the liability at the end of the case. But to try to pin the delay on the debtor, your Honor, is simply belied by the record. And Ms. Cahow will go through this issue in more detail. We are not the cause of delay. Judge Whitley even found in his opinion denying dismissal that the debtors have prosecuted these cases with haste as best we could. The delay is because of the resistance of the plaintiffs' bar.

The third issue -- and this is where I'll wrap up -- is what should happen next. I'm going to defer most of the discussion on that until the end so you have the benefit of our full presentation. But the bottom line from the debtors' perspective is straightforward. We need to get to estimation. Garlock resolved after an estimation. People thought Garlock would never resolve, but it did after the contested estimation. That's where these cases need to go. That's what Judge Whitley ordered and said these cases need to get to estimation. And frankly, we have been having trouble getting the ACC to move along in estimation. We think we need some discipline in this case. We think we need to get that process finalized so we can get to the final stage of this case.

Unless your Honor has any questions, I thank you for listening to the intro and I would turn it over to Ms. Maisano from the Evert Weathersby firm for the next part of the presentation.

THE COURT: Thank you.

MR. ERENS: All right. Thank you.

MS. MAISANO: Good morning, your Honor.

THE COURT: Good morning.

MS. MAISANO: Clare Maisano on behalf the debtors. And I'm just going to take you through a little bit of the history of the debtors and their products and their experience in the asbestos litigation.

And before we get into the specific bankruptcy points, hopefully it'll be helpful for the Court to get just a little bit of context in regard to the underlying asbestos litigation. Perhaps, a little crash course in Asbestos Litigation 101.

Go to the next slide, please.

The debtors, Aldrich and Murray, hold the legacy asbestos liability for the former Ingersoll-Rand and Trane companies. And to be clear at the outset -- and we'll talk about this a little more later on -- Aldrich and Murray never mined asbestos. They never designed or manufactured any asbestos-containing products. The liability in the asbestos litigation for Aldrich and Murray arises primarily from their incorporation of encapsulated chrysotile sealing products into

their equipment. And we'll talk about what all that is later on in the presentation.

Go to the next slide, please.

We were manufacturers of equipment and this equipment was primarily used for air and fluid movement and climate control. So for example, we made compressors. This is a smaller portable compressor, but Ingersoll-Rand also made huge compressors that could take up the size of this room. We also made industrial pumps.

Next slide, please.

And there's a picture of an Ingersoll-Rand pump. Climate control equipment, such as chillers and other HVAC equipment. And there are some pictures over here, too, of that.

And so the liability allegations came, largely, from the incorporation of gaskets and packing that we purchased in the marketplace from the manufacturers of those products, like Garlock like you heard about before, in the pursuit of safety.

And we can go to the next slide, please.

A small portion of boilers also on the Trane side came with some asbestos-containing insulation material, but this was over with in the early 1950s. So this is a really small part of, of the liability here.

Go to the next slide.

So what are we talking about here, the gaskets that

everyone's talking about? These are some photographs of gaskets. And so what a gasket is is it's essentially a seal that prevents the leak and it would go between a piece of equipment and then the line that it was hooked up to, whether it was a steam line or a waterline or a chemical line. And so this gasket was in between two pieces of metal for its useful life. It didn't emit asbestos fibers when it was in place and it was inside the equipment or in between the lines.

The next slide, please.

And so packing is another product that was incorporated in some of the debtors' products. And it essentially serves the same function in a valve. It makes sure that it can be opened and closed without leaking.

And so the gaskets and packing were only accessed and manipulated on limited occasions. And this is important because that impacts the dose of asbestos exposure, which is the critical element in disease causation.

I think it's also important to note that, as you saw, this is some big, heavy equipment. This is not something that everyone found in his or her home. It wasn't a TV that was in everybody's house, for example. This was equipment that was in an industrial environment, for the most part, or, perhaps, on a Navy ship. And so only a small fraction of the population would ever even encounter this equipment and of that small population it was even a smaller subset of people in the

workforce who actually would ever work on this equipment and encounter these gaskets.

And so why were these gaskets part of the, of the equipment? It was a safety issue. If we had a line leak, if a pump leaked and people could be seriously injured whether it was steam or whatever fluid was being moved through the pipes and through the pumps and the other equipment. And so we wanted to make sure that the workers were protected. We were consumers of these products. They were manufactured by companies like Garlock, which you heard about, Johns Manville, and other manufacturers. And the debtors utilized whatever products were industry standard at the time. And for some applications the asbestos-containing gaskets were the industry standard. And we would have used different gaskets depending on things like the flow rates, the environment where the equipment was, or what fluids or other material was being moved through the lines.

It also, I think, important to note that the incorporation of these third-party asbestos-containing gaskets and packing into the debtors' equipment ended over 40 years ago.

And so very briefly, asbestos. This is what we've all been talking about.

What is asbestos? It's a rock. It comes out of the ground. It's a naturally occurring mineral that's been used

since ancient Roman times and it's been known for its heat-resistant properties and as a result, because it's a rock that exists in nature we all have some asbestos in our lungs.

You can go to the next slide. Oh, got it.

There are two types of asbestos fibers. Chrysotile on the right is widely recognized as incapable of causing or being far less likely to cause disease than other types of asbestos. And the other types are the amphiboles, which are on the side, and those are accepted in the literature as much more potent. And you'll see that the chrysotile asbestos, they're sort of thin, they're short, they're curly, contrasted with these needle-looking, thicker amphibole fibers.

It's important to note that the gaskets and packing incorporated into the debtors' equipment was, largely, chrysotile and encapsulated. So "encapsulated" is another word that we've been using this morning.

You can go to the next slide, please.

What does "encapsulated" mean? The fibers are mixed into a resin or some other material. So they're not readily respirable or released into the air under normal conditions. You'll see here these are some other examples of gaskets and the fibers are mixed into the resin. We also have metal gaskets. They're all different kinds, but the asbestos in all of these gaskets was encapsulated.

We can go to the next slide, please.

Contrast that with asbestos-containing pipe covering and other thermal insulation products. And those are friable products. Friability is something that you can crush it with your hand and sort of make it into a powder under low pressure. Friable asbestos products like thermal insulation contained amphibole asbestos and released fibers and could be crushed with low pressure. And as your Honor will see at the, the second slide, this is some examples of asbestos-containing thermal insulation that is definitely looking friable and contrasted with the gaskets and packing that we saw earlier.

Go to the next slide, please.

Just for some general background on asbestos elimination and asbestos-related disease, the use of asbestos-containing products in the United States was mostly phased out in the 1970s. So it has not been widely used in the workplace for a very long time. We now have data that shows that there are mesotheliomas that are not caused by asbestos. We have mesotheliomas, not only in people with no occupational exposure, we also see mesotheliomas in women and given that we have this background level of asbestos in the air and we all have asbestos in our lungs, it makes it very difficult to try to isolate who may be a "unexposed" population. Because there is this background that causes all of us to have some level of asbestos in our lungs and that'll vary based on where we live. Urban environments where there's a lot of construction, people

would, perhaps, have higher levels of background asbestos in the air.

Mesothelioma is the disease that is really driving the debtors' liability in the asbestos litigation. The most common form of mesothelioma is a cancer of the lining of the lung. It's known as a pleural mesothelioma. It's a rare cancer. There are, roughly, 3,000 diagnoses per year in the United States and as Mr. Erens noted, it's a terrible disease. It, unfortunately, has a short survival period after diagnosis. And amphibole fibers, such as those contained in the thermal insulation products, are considered to be more causative of mesothelioma than the short-fiber chrysotile that was predominantly in the gaskets and packing that the debtors incorporated into their equipment. And as is typical for the asbestos litigation, the vast bulk of the dollars that were spent by the debtors and their predecessors in the tort system in the asbestos litigation was on these mesothelioma claims.

There are some other diseases, malignancies and nonmalignancies, that are associated with asbestos exposure, but these claims are a much smaller part of the spending for the debtors in the asbestos litigation.

And so the asbestos litigation has been sort of a, an evolving process for the debtors and their involvement was minimal until some certain events took place in the early 2000s. The original asbestos litigation began in the 1970s and

it was targeting the companies that manufactured those friable thermal insulation products that incorporated those potent amphibole fibers. They were known as the "big dusties," among other things, and companies like Johns Manville, Raybestos-Manhattan, and others. And it's, I think, critical to note that for the first 20 years of the asbestos litigation the debtors were not pursued. They were not sued at all.

Go to the next slide, please.

So you'll see that from the mid-1980s into the 2000s the debtors' predecessors paid less than four million in total dollars to resolve their mesothelioma claims. Your Honor might note that at the end the 2020 is a short graph. It's because we were not in the tort system for the entire year because of the petition filing. But you'll see that we went from sort of nothing to a lot. And Mr. Evert will talk more about the, the events that got us there, but it's a pretty, I think, compelling graphic to see sort of where we started and where we are. There's a stark contrast as to the debtors' experience in the tort system in this century versus the last century.

Go to the next slide, please.

The number of mesothelioma claims asserted against the debtors increased twofold in one year alone between 2001 and 2002 and we ultimately landed on about 2,500 claims a year by the end of the decade. And so you'll see here that it started out not too much and then all of a sudden we ended up with a

pretty big jump.

Go to the next slide, please.

By the time of the petition filing in 2020 a new claim was being filed against the debtors essentially every working hour of every weekday every week of the year. And Aldrich, after not being involved in this litigation for the first 20 years of it, was now being named as a defendant in, roughly, 80 percent of the mesothelioma claims that were being filed in the United States and Murray was being named as a defendant in about 60 of them, 60 percent of them.

And so at the time of the petition the claims were pending against the debtors in almost every state in the country, which was a staggering result given not only the natures of the debtors' businesses, their incorporation of these gaskets into their equipment, their status as an equipment manufacturer and not a maker of asbestos-containing products.

And unless your Honor has any questions for me with that background, I would turn the presentation over to my partner, Mr. Evert, to discuss in more detail those events that led to sort of where we started as to where we are now.

THE COURT: Thank you.

MS. MAISANO: Thank you, your Honor.

MR. EVERT: Your Honor, I'm Michael Evert, Evert Weathersby Houff. Is it okay if I stand here? That way, I

can --

THE COURT: Sure.

MR. EVERT: Okay. -- that way, I can, can play with the slides.

THE COURT: As long as you speak up so that the, so we catch the recording.

MR. EVERT: You know, I've never had a person ever say they couldn't hear me. So I am so -- this is an exciting day for me, okay? I can't wait to tell my wife, so.

But yes, I'll speak up.

THE COURT: Okay. Thank you.

(Pause)

MR. EVERT: So your Honor, it's, it's a little ironic that the, the old guy's getting up here and talking about the 21st century. As, as Ms. Maisano was speaking, I thought, well, this was stupid. I should have gotten up and talked about the old days instead of the new days, but we, we are where we are.

So I wanted to go back to this slide for just a minute because one of the things that's not immediately apparent to your Honor is that these are the, the mesothelioma claims filed against the debtor. During this period of time, actually the first mesothelioma claims were filed in the, in the early 1970s. And then, in fact, the largest manufacturer and the leader of the asbestos industry, Johns Manville, went bankrupt

in 1982 with the then inconceivable amount of 26,000 asbestos claims pending against it. But during this whole period of time you see on this graph there were literally thousands of asbestos claims being filed every year. And so it, it occurred to me that we might should have showed the Court sort of the total filings up against the debtors' filings. But if, if they were there, then the, the total filings would all be around the 2500-to-3,000 range because that's how many mesotheliomas were being diagnosed, roughly, on an annual basis in the United States. But --

THE COURT: So the total filings have been constant?

MR. EVERT: Relatively constant --

THE COURT: Okay.

MR. EVERT: -- since the 1980s.

So this is the debtors' experience. And so the, the thing we want to bring to the Court's attention is and sort of as the history -- and again, we apologize for boring the Court with the history of asbestos. Unfortunately, somebody like me who's been involved in the litigation for all these years can talk about it *ad nauseam* and, and it's not -- I don't get invited to a lot of cocktail parties -- but, but we think it is important 'cause the, it's the issue in the case, right? The asbestos liabilities are the issue in the case.

So, so what changed in 2000, 2001, 2002? The debtors' liability didn't change. The case against the debtors didn't

change. There was nothing that happened that made the claim, the nature of the claims against the debtors change. The debtors' conduct hadn't changed. We talked about all of the, of the stuff. We're talking about things that happened many, many years ago, now 40, 50, 60, 70 years ago. And so with the peak of asbestos usage in the United States in 1974 and nothing but a decline since then and a virtual elimination, as Ms. Maisano said, by the mid-1980s, for the most part, then what changed to cause this sudden explosion in the claims against the debtors?

All right. I'm confused now. There you go. Keep going. Go ahead.

So I'm going to, I'm going to borrow on what was one of the prominent lawyers in mass tort litigation at the time and certainly in the asbestos litigation, which was a guy named Richard Scruggs, Dick Scruggs. We all know him. He's a lawyer from Mississippi and he commented in 2002 that what the asbestos litigation had become was "the endless search for a solvent bystander." And there's, there's a lot to unpack there, but it is a tremendous summary of what happened during this period of time. As Mr. Scruggs said:

> "Now the companies that are peripherally related to the bankrupt defendants are being seized and held up in what I call the 'magic jurisdictions,' areas where what happens in court is irrelevant because the jury

will return a verdict in the favor of the plaintiff."

And this goes to the fact that the asbestos litigation, for the most part, has been an eight-or-ten state problem. The vast, vast bulk of the cases have been filed in eight-or-ten states, whereas even though some will be filed in virtually every state, which, which causes some interesting problems we'll talk about in a minute, the vast bulk of them have been filed in a few states. And Scruggs says, "Most of the companies that were culpable in promoting the sale of asbestos-containing products have been held accountable and most of them have gone bankrupt."

And that was what we call the "Bankruptcy Wave." And as you'll see from this slide here, in the 2000-to-2006 period there were a huge number of asbestos-related bankruptcies and the centerpieces of the litigation up to that time, that is, the companies that were really the asbestos industry, started to take advantage of 524(g) and file for bankruptcy and establish bankruptcy trusts.

Back in the old days before all this happened, there, there, there used to be all these fights in the underlying tort cases, could you call these companies members of the asbestos industry, right? They all said, "No, no. We're not the asbestos industry. We're separate." But they were the asbestos industry and since then we, we don't even hear that term anymore, now the "big dusties," or whatever. These were

the companies who bought raw asbestos, for the most part, manufactured raw asbestos, products that, with that raw asbestos and for the most part, the thermal insulation materials that were, that were the primary causes of the claims. More importantly, what this did is it created a dual compensation system that we had never seen before. I'm not sure there's one, frankly, that exists in America that, that is like this.

So for the first time we had 524(g) trusts that were funded by all these companies with approximately $30 million, in the ballpark, and that system became separate and apart from the tort system which continued with the regular litigation. So again, two compensation systems with no coordination between the two or the trust system where you could file an administrative claim and you could achieve compensation through that system and then the tort system continued against what were formerly considered "bystanders" suddenly became in this siloed tort system prominent players in the tort litigation. And as was recognized by the RAND Institute when they did a study on this -- kind of frightening the litigation was going on so long that RAND had time to study it -- when that happened the entire product exposure picture became siloed, that is:

> "Result from the review of interrogatories alone indicate that the longer the time between a firm's bankruptcy and the date a tort case is filed the lower

the likelihood that the bankrupt firm's products will be identified in the tort case. Likewise, the analysis provides empirical evidence that bankruptcy reduces the likelihood that exposure to the asbestos-containing products of the bankrupt parties will be identified in subsequent tort cases."

So where we once had this common knowledge of the product exposure allegations for a claim related to asbestos, we now had two separate systems where one system, the trust system, might have one set of product exposure allegations and the tort system might have another set of product exposure allegations.

So if you look at --

Next slide, please.

If, if, if you look, go back again at our claims filing history, we didn't become more responsible in 2002 and 2003, 2004. The case was exactly the same. The increased claiming makes no sense when you think about it that way and it further makes no sense when you think about the nature of the debtors' equipment that Ms. Maisano described to you, the fact that we were in the equipment business and not in the asbestos business. And it further makes no sense when you think about what our experience was prior to the dual system.

So when the -- when -- before the dual system existed, before all the bankrupts, everything was in one place and we

were clearly considered a very minor, as you can see from the filings and from the spending history that you saw, a very minor part of the harm.

So this same issue was recognized by Judge Hodges in Garlock where he said:

"It was a regular practice by many plaintiffs' firms to delay filing Trust claims for their clients so that remaining tort system defendants would not have that information. It is suppression of evidence for a plaintiff to be unable to identify exposure in the tort case, but then later (and in some cases previously) be able to identify it in the Trust claims."

So not only was there a dual system for compensation and, and a dual system for evidentiary proof in the form of the product exposure evidence, but the, the, the endless search for the solvent bystander that Mr. Scruggs described came with huge legal fees, right?

So if we go back for just a second to that, to that filing slide, when the filings increased this dramatically --

Oop, you were there.

When the filings increased this dramatically, then suddenly you've got, you got to get, you got to get lawyers in every state where the case is filed. You got to get, you got to get lawyers like me to coordinate those lawyers that you've

got in every state. You got to get, you got to file answers. You got to get dismissal motions. You got to attend depositions.

So even though the debtors were actually able to get dismissals in a large number of cases, those dismissals did not come without cost. For those cases that were not dismissed -- and, and the debtors were, fortunately, able to get dismissals in, roughly, two-thirds of the cases filed against them -- but for those cases that weren't dismissed, again after you spent the legal fees, after you attended the depositions, did all those things, then we were left with about a thousand cases a year, a thousand mesothelioma cases a year that had to be defended in dozens of states. Taking a mesothelioma case through trial is, it's, it's a long case, lot of experts, expensive proposition, can easily approach a million bucks to try a case.

So it was economically infeasible to fully defend all the cases. And this economic infeasibility was compounded by the incomplete product identification that was being created with the dual system. Again, before the dual system, the proof of exposure to products was transparent. It was transparent within one single system and the debtors were clearly viewed as an insignificant part of the harm. With the dual system, it was no longer transparent and as a result, the debtors were in a position of trying to, as the RAND, as RAND noted, the

debtors were in a position of trying to then come up with exposure evidence to paint the complete exposure picture, which was extremely difficult to do when the best source of that information, as you might imagine, is the plaintiff himself or coworkers of the plaintiff or family members of the plaintiff. In other words, it's -- it's a -- it's a system that is very difficult for the debtors to penetrate.

So the combination of all of this --

If you'd go to the, one more slide up.

The combination of all this really made it cheaper to settle the cases than it was to defend them. So if you look at this slide here, you'll see that 60 percent of the cases that the debtors had resulted in dismissals. An additional 34 percent, or a total of 94 percent of the cases -- and we, we can add. I want you to know I know it only adds up to 99 percent, but there was some rounding here -- 34, 34 percent of the cases were under a hundred thousand dollars. So 94 percent of the cases against the debtors resolved for under a hundred thousand dollars. You can't defend the cases for that. And then only 5 percent of the cases were over a hundred thousand of which only 1 percent were over $250,000.

So all of this, in the debtors' view, your Honor, and frankly, in the view of the Garlock court, demonstrates that the debtors were not a primary cause of the harm and the settlement history is not indicative of the debtors' liability.

So as to the first point that the debtors were not a primary cause of the harm, Judge Hodges in Garlock -- remember, Garlock was the manufacturer of gaskets. We were their customer. It was their primary business, the manufacture of gaskets. And Judge Hodges found that:

"It's clear that Garlock's products resulted in a relatively low exposure to asbestos to a limited population and that its legal responsibility for causing mesothelioma is relatively *de minimus*. The Sixth Circuit has noted in an individual pipefitter's case that the comparison is as a 'bucket of water' would be to the 'ocean's volume.'"

The debtors are one step removed from Garlock. We're the, we're the customer. So again, it doesn't fit.

As to the second point, the debtors' settlement history is not indicative of debtors' liability. You'll see that one of the big issues in this case about estimation is the ACC wants to extrapolate our liability from our tort system experience. We think, for all the, for reasons we just told you and many more, that our tort system history is not necessarily indicative of our liability. Judge Hodges found the same thing in Garlock. In Garlock he said, "Here claimants' claims must be estimated as of Garlock's petition date and pursuant to state law," which we agree with. "But the proper measure is of its liability and not simply its claims

resolution history."

So as you'll see, your Honor, as we get into this whole next steps in the case in terms of estimation, this is kind of the primary dispute between the parties. We believe Judge Hodges got it right. We believe that that's not the appropriate way to estimate our liability.

And unless your Honor has any questions, that's sort of ends your Asbestos 101.

I did eliminate all the ACC basketball analogies I'd made. So I appreciate --

THE COURT: I mean, you're welcome to make them. They're just going to fly over.

MR. EVERT: But your Honor, we, as, as indicated, as Mr. Erens indicated, the debtors would like to join the long line of 524(g) trusts and, and that's what we'd like to accomplish in the case.

I'm going to turn it over to my bankruptcy colleagues to talk about that since I don't know anything about it.

THE COURT: Thank you.

MR. EVERT: Thank you, your Honor.

MS. CAHOW: Good morning, your Honor. Again, Caitlin Cahow of Jones Day on behalf of the debtors.

So as you just heard from Mr. Evert and Ms. Maisano, there are a number of pre-petition events that are relevant to understand, to really understand the nature of these cases.

And one of those events is the pre-petition corporate restructuring. You're going to be hearing quite a bit about this, I would imagine, over the course of the case.

So as Ms. Maisano explained, the debtors are actually indirect subsidiaries of Trane Technologies plc. Trane's a global leader and innovator in various, in the climate industry that bring efficient and sustainable climate solutions to buildings, to homes, transportation, and the like.

But Trane's also an integral part of the local business here in North Carolina. Trane Technologies' executive offices are in Davidson. They've been there for over a decade and the debtors are also headquartered in Davidson as well.

The debtors themselves were formed in May of 2020 when Aldrich's predecessors -- and you heard Ms. Maisano talk a little bit about Ingersoll-Rand and Trane -- the debtors were formed through a pre-petition corporate restructuring under Texas law. So we call these divisional mergers. You'll be hearing that term. And these divisional merger statutes are not new. They exist on the books in a number of states and some of those statutes have been on the books for years. And through the divisional mergers in this case the debtors' predecessors ceased to exist and four new entities were formed. So you can see the debtors, Aldrich and Murray, and then their non-debtor affiliates, Trane Technologies Company and Trane U. S. Inc.

So as a result of the divisional mergers, Aldrich and Murray became solely responsible for their asbes, for their predecessors' asbestos liabilities. But to ensure that the debtors had the ability to fully satisfy their liabilities, the debtors also were allocated a number of assets. And so as you see here, they were each allocated an operating subsidiary. For Aldrich, that's 200 Park Inc. So 200 Park manufactures chillers for commercial HVAC and processed cooling applications. And then Murray was allocated ClimateLabs, which provides laboratory testing, analysis, and reporting services.

So those are the operating subsidiaries of the debtors.

The debtors were also allocated legacy insurance assets available to address asbestos liabilities and significantly, funding agreements with their non-debtor affiliates.

And so the funding agreements, I think, are important to take a moment on. Because the funding agreements, in conjunction with the other assets that were allocated to the debtors, ensure that each of these debtors has the same ability to satisfy their asbestos liabilities that their predecessors had prior to the corporate restructuring. And we say that because the funding agreements impose no repayment obligation. They're not loans. They obligate the non-debtor affiliates, New Trane Technologies and New Trane, to provide funding to pay

for all costs and expenses of the debtors. And those are costs and expenses that would be in excess of the value that their subsidiaries generate to help to pay those obligations. Importantly, those obligations exist whether or not we're in bankruptcy and they apply to both payment of ordinary course expenses and also the satisfaction of the debtors' asbestos liabilities. And that, of course, would include the funding of 5, of a 524(g) trust.

For their part, New Trane Technologies and New Trane were allocated the remainder assets and other liabilities of their predecessors.

So taking a moment to pause on this, why the divisional mergers? What is the benefit of a divisional merger? Well, your Honor, these divisional mergers at face allowed the debtors to evaluate whether they could resolve their asbestos liabilities through a bankruptcy process, through section 524(g), which is specifically designed to address these types of liabilities in a fair and efficient manner. And, and it allowed the debtors to consider that potential outcome without subjecting the entirety of the Trane enterprise to a bankruptcy filing itself.

Now Judge Whitley observed this in his preliminary injunction ruling, but I think your Honor will certainly understand this from your experience with chapter 11 debtors. But a chapter 11 process for a large operating enterprise like

Trane would have created serious negative consequences. So you have, not only massively increased costs and complexity with a large operating chapter 11, you also have employee considerations. You have potential trade contraction, loss of consumer con, confidence. Many, many challenges are posed by having a large operational bankruptcy process. And if you think about it, even if the Trane enterprise had filed for bankruptcy, the same key issue in that case is the same key issue as it is in this case. And as Mr. Erens talked about earlier, that one key issue is what is the appropriate level of funding for a section 524(g) trust to resolve these asbestos liabilities.

And so even with all of that added complexity, with all of that added cost, the claims still would be stayed in a Trane bankruptcy and the assets available to satisfy those liabilities would be exactly the same. Because we have the funding agreements in this case.

So really at the end of the day, the 2020 corporate restructuring streamlined the debtors' bankruptcy process. And that's exactly how the debtors approach the bankruptcy, hope, hopeful that this would lead to an expeditious resolution of their asbestos liabilities.

Once the cases were filed, however, two opposing strategies quickly emerged. And Mr. Erens touched on this in his introduction.

Next.

First, the debtors' strategy has been the pursuit of expeditious consensual resolution. And as Mr. Erens mentioned, a lot of that was based on the idea that we could probably truncate the learning curve because of the resolution in Garlock. As Mr. Erens mentioned, we have the same FCR in our case. There are a number of overlapping ACC member firms that also served in Garlock. And actually, the ACC in this case retained the same counsel and estimation expert.

So we are hopeful that this could lead to an expeditious resolution. Unfortunately, as Mr. Erens said, that's not been the ACC's strategy. So the ACC's strategy, generally, has been to end the case. And we'll talk a little bit about how they've done that.

So first, let's take a look at the debtors' approach to these cases. What have they been up to? Well, the debtors have been diligently prosecuting the cases. And you see here we've laid out just at a high level a timeline of some of the key events in the debtors' affirmative efforts to move the cases forward. And I apologize. The top of the slide's a little busy. You see some date ranges. What those date ranges really represent are some of the headwinds that the debtors ran into. We'll talk a little bit more about that. But the debtors' efforts to seek relief have often taken a lot of time to come to fruition. And so we'll take a look at how.

Thank you.

So starting at the beginning. Shortly after the petition date in June of 2020, the ACC was appointed following the motion filed by the Bankruptcy Administrator. Then in August, the debtors moved to appoint Mr. Grier as the FCR. To us, your Honor, he was the obvious choice. He's well known to the court. He's a local attorney, has extensive experience in various fiduciary capacities. And importantly to us, your Honor, he was the FCR in Garlock who had negotiated a consensual resolution and really had brokered peace in that case.

So to us, an obvious candidate. He was actually the consensus candidate in Garlock. So he wasn't opposed by the ACC in that case. Nevertheless, the ACC opposed him in this case. Judge Whitley ultimately did appoint Mr. Grier as FCR in this case, as you, as you see. And then important to note, the court found that his experience in Garlock was particularly of note.

On the petition date, in addition to various forms of typical first day relief, the debtors also sought to enjoin claimants from pursuing third parties for claims that were really against the debtors. So pursuing asbestos claims against non-debtor affiliates and insurance carriers and certain other parties.

So the debtors actually sought a preliminary

injunction, but they also sought a declaration that the automatic stay applied to that litigation. And your Honor, this type of relief is typical for bankruptcies. It's typical because for various reasons a stay of claims against third parties that are really claims against the debtors is necessary to preserve the bankruptcy process. So not at all uncommon relief. And recognizing the importance of the relief, the FCR supported the PI in our case. And, and frankly, the ACC in Garlock also didn't oppose the PI in that case, but they did oppose it in these cases, taking a different approach.

Now resolution of that matter required a multi-day evidentiary hearing. We did that in May of 2021. And prior to that hearing it required about eight months of pretty extensive discovery. You see here the various requests issued by the ACC. The ACC ultimately conducted 22 depositions, over a hundred hours of testimony, and the debtors and the non-debtor affiliates produced over 90,000 pages of documents in that proceeding, again stark contrast to the process in Garlock. The court ultimately granted the PI and importantly, entered summary judgment on the debtors' motion saying as a matter of law that the automatic stay applied to these claims.

So we've highlighted some of the court's findings here that we think are important to note. But also worth highlighting --

Next slide.

Also worth highlighting is the court's conclusion that entering the preliminary injunction was in the public interest. So this is what the court had to say about that:

"Aldrich and Murray's successful reorganization also would promote Congress' particular goal in section 524(g) ... that would efficiently and equitably resolve tens of thousands of asbestos claims. A section 524(g) trust 'will provide all claimants—including future claimants who have yet to institute litigation—with an efficient means through which to equitably resolve their claims.'"

And your Honor, this captures what is, in the debtors' view, exactly what these cases are about. And that is using the tools expressly provided in section 524(g) to establish an efficient and equitable means to compensate claimants. That's what these cases are about, from the debtors' perspective.

Next.

And so with that in mind, very quickly after the petition date and once the FCR was appointed the debtors engaged with the FCR early on to negotiate a plan of reorganization that would establish and fund a 524(g) trust. The debtors and the FCR invited the ACC to participate, as you heard from Mr. Erens. They declined.

Next slide.

And these weren't -- we say they were invited to

negotiate. These weren't cursory offers. These were considered efforts to bring the ACC to the table. We've shown some examples of some of the formal outreach.

Next.

But at the end of the day, the ACC declined the offer. And this is what Judge Whitley had to say about it. Unfortunately, with that failure to engage, it limited in some ways the debtors' ability to move the case forward.

Next.

But the debtors weren't going to be deterred in their desire to move the cases and reach a resolution. So the debtors and the FCR forged ahead. And as part of their plan negotiations they sought and obtained approval of a two-step process. So it was a bar date process, the kind that you're no doubt familiar with, but the second part of that process was submission of a personal injury questionnaire by current mesothelioma claimants who had submitted a proof of claim.

So we weren't asking for everybody involved in the case to submit a questionnaire, just those folks that were asserting a claim in the case. And that questionnaire sought basic information to help the parties assess the compensable claims in the case relevant to figuring out what the funding amount for a trust should look like, for figuring out estimation, ultimately plan confirmation.

So those facts would include facts supporting their

allegations of exposure to the debtors' products, exposures to other asbestos-containing products, economic losses, and recoveries from other parties. And we didn't make these up out of whole cloth, your Honor. These PIQs were based on PIQs that had been approved in other chapter 11 cases, including in Garlock. So this was somewhat well-trodden territory. Nevertheless, the ACC objected to the debtors' relief. The court ultimately overruled that and set the bar date for July of 2022 and then the PIQ deadline, roughly six months later. And since that time the debtors have been reviewing proofs of claim, the PIQs. We've actually been coordinating on a more informal basis with the law firms to try to resolve any deficiencies, incongruities that we've seen. And actually to date, a number, quite a few, actually, of the proofs of claim that initially were filed have been formally withdrawn. So we're still working through that process.

So though the debtors and the FCR had hoped to have the PIQ, the bar date and PIQ process completed much earlier, they didn't want to delay their efforts to resolve the cases. So they continued to work on and after extensive negotiations the debtors and FCR agreed on the terms of a plan, which was filed in September of 2021, as Mr. Erens said. We propose a $545 million trust, again substantially more than the trust that was proposed in Garlock.

What we did in this case was that we also proposed a

$270 million Qualified Settlement Fund. And so what this fund is, it's a fund that's irrevocably set aside for the payment of asbestos claims and that will occur whether under a plan process, but it would also occur in the tort system should the cases get dismissed. And we talk about this QSF as being sized to fully fund the plan and that's worth explaining a little bit.

So when we say it's "sized to fully fund the plan," what we mean is that it is sized to fund the amounts that will be required to pay into the trust that wouldn't otherwise be compensated from the debtors' insurance, which historically is, has compensated about 50 percent of the debtors' asbestos liabilities. So at the same time, in addition to the QSF, the debtors have agreed to fund upfront that insurance portion.

So the entirety of the 545 million will be funded on the effective date of the plan. We're just breaking it out into, into two different pieces. And frankly, the goal of the QSF was to demonstrate good faith, to demonstrate that there aren't concerns here, that the debtors and their non-debtor affiliates are fully committed to the plan and that there really are no concerns about whether or not the funding will be there when it's needed.

You know, we thought that this was a pretty good idea. It would ensure that the ACC had some comfort that we were going to be fully funding a trust for their claimant

constituency and even though we are trying to guarantee funding for that, they opposed the motion. That was what it was, but the court ultimately overruled that, their opposition, approved the QSF. And that, and that QSF has been fully funded since March of 2022. So it's been sitting there for two years ready to go.

Now with the FCR's support the debtors also sought estimation of their asbestos liabilities. And the debtors sought estimation for a couple of reasons and those reasons have continued to evolve over the course of the case. But primarily, it's to provide an objective judicial determination about the adequacy of funding for the trust. That's the most important piece of this entire case. We need to know what the appropriate amount is to fund a trust to compensate claimants, but we also know that it's going to aid in plan negotiations. The goal has always been a fully consensual plan with the ACC and the FCR, and, as Mr. Erens mentioned, an estimation process led to a consensual resolution in Garlock. It's led to a consensual resolution in a number of other cases. It can lead to a consensual resolution here.

The ACC opposed estimation here. They'd actually -- the ACC in Garlock had actually agreed to estimation in that case. They opposed it here. The court ultimately entered the estimation order and significantly, the court found that estimation in this case is required under section 502(c), in

addition to being necessary and appropriate.

So to support the debtors' estimation case, Mr. Evert talked a little bit about Judge Hodges' finding in Garlock. One of the things that Judge Hodges found to be persuasive was some of the evidence that was taken from trust discovery in that case.

So to support our case here, the debtors also sought court approval to issue subpoenas on a number of 524(g) asbestos trusts as well as Paddock Enterprises, LLC. That was a little bit different and what had been done in prior cases. The rationale is the same. Paddock was also a codefendant of the debtors in the tort system before it filed for bankruptcy. So you're really looking at the same types of, of information. It's really trying to find information for claimants that settled with the debtors in the tort system as to whether they asserted claims against and even recovered from other entities.

So again, as with the PIQs, we weren't reinventing the wheel here. Our trust discovery subpoenas were based upon discovery that was approved in other bankruptcy cases and that includes Garlock. It also includes cases like Bestwall and DBMP in this jurisdiction that are handling similar cases.

So the court approved the trust discovery. Unfortunately, that was not the end of the story. The debtors then had to litigate motions to quash the subpoenas in a number of jurisdictions. Some of those motions to quash got

transferred back to this court. So Judge Whitley had to do this a second time. And ultimately, all of the motions to quash were denied, but it took more than 18 months after the bankruptcy court order for that production of information to be complete.

Mediation. So in an effort to aid consensual resolution of the case, the Bankruptcy Administrator ultimately did seek to send the parties to mediation in July of 2022. From their perspective, the debtors, the FCR, the non-debtor affiliates agreed to the idea of the mediation concept, thought it sounded like a good idea. The ACC did not. They opposed mediation at any time. The court ultimately did direct the parties to mediation and we can't get into the details of those mediations, but, as your Honor can see from all of us here, that mediation ultimately didn't resolve in a resolution to date. We're still hopeful, but no resolution to date.

Okay. So that's, that's really a high-level summary of what the debtors have done to try and move these cases towards resolution.

So what's the ACC been up to? Well, it's been a slightly different approach. This is a high-level summary of the ACC's approach in this case.

So addition into the ACC's blanket opposition, as we just talked about to all of the debtors' requests for affirmative relief, the affirmalive, the affirmative relief

that the ACC itself has sought has really been along the lines of the sort of dismissal-at-all-costs strategy, really efforts to fundamentally end these cases.

So first, the debtors [sic] filed a derivative standing motion in October of 2021. There, they sought leave to pursue alleged causes of action against certain of the non-debtor affiliates, their officers and directors. And all of this was really related to the pre-petition restructuring, the divisional mergers. The court ultimately granted the derivative standing motion over the opposition of the debtors and non-debtor affiliates, but also of the FCR.

And then the day after the derivative standing motion, the ACC sought substantive consolidation of the debtors and their non-debtor affiliates. The debtors and non-debtor affiliates each moved to dismiss those actions and that was supported by the FCR, but the court ultimately denied in part and granted in part those dismissal motions and the debtors and defendant non-debtor affiliates have answered those complaints.

And then roughly two months after the court granted the derivative standing motion, the ACC instituted two derivative suits against various parties. So first was the fraudulent conveyance action asserting claims related to constructive and fraudulent transfer against the debtor and non-debtor affiliates -- the non-debtor affiliates have since answered that complaint -- and then the fiduciary duty action,

which alleged claims for breach of fiduciary duty against certain non-debtor affiliates, their officers and directors of the debtors. And that, that action was actually stayed by the court pending resolution of the other adversary proceeding.

So discovery's ongoing in the subcon action and the fraudulent conveyance action, but the fiduciary duty action has been stayed.

Your Honor, in full transparency and, and respectfully to Judge Whitley's decisions in this case, the debtors believe the court erred in authorizing the ACC to pursue and maintain the derivative actions and that's for a couple of reasons.

So just as an initial matter, the debtors don't believe that the adversary actions are the path to resolve these cases and we really need look no further than Garlock where related-party adversary proceedings were actually tolled and an estimation process went forward. The case ultimately resolved. We think there are lessons to be learned there.

But kind of bigger issue with the adversary proceeding is, is that they rely in substantial part on allegations regarding the debtors' insolvency, which we believe are just fundamentally at odds with the facts of the case. And because of this the debtors have taken a number of actions seeking to have the court re-examine the court's decision to allow derivative standing and potentially withdraw derivative standing, or at least to stay it through the estimation

process. Because at that point, the Court will have resolved the scope of the debtors' liability. It will be informative to a number of issues relevant to those actions. The court has, to this point, denied the debtors' efforts for that relief, but we, we don't think that's really the end of the story. We don't really think the issue is fully resolved. And the reason that is is because the ACC has more recently made very conflicting statements in some of their papers that call into question, really, the propriety of the derivative actions.

So almost three years into this case the Maune Raichle firm filed a motion to dismiss. The ACC quickly followed suit with their own motion to dismiss and in the dismissal motions both the ACC and Maune took the position that the court should dismiss the chapter 11 cases for lack of good faith because the debtors were not in financial distress.

So clearly, this position is in direct conflict with the position the ACC took in the adversary proceedings filed one year prior. And just to, just to lay this out. If we look at the derivative standing, if we look at the complaints and the derivative standing claims, they describe the debtors as insolvent more than 23 times. We've laid out some of those examples right here, insolvent, insolvent, insolvent. But fast forward one year, now all of a sudden the debtors are solvent. They're in no financial distress.

So these statements are plainly irreconcilable and

frankly, your Honor, the debtors submit they again call into question the propriety of maintaining the derivative actions. Ultimately, Judge Whitley issued a written opinion denying the dismissal motions and we've highlighted a couple of the key findings of that opinion. The judge found, as had Judge Beyer in a similar dismissal proceeding in Bestwall, that the Carolin test, the two-part Carolin test in the Fourth Circuit, hadn't been met with respect to bad faith. These cases are not objectively futile. The court also, importantly, found there's been no unreasonable delay by Aldrich and Murray. They've been trying to move these cases forward. And the court also rejected, like Judge Beyer did in Bestwall, the ACC's novel theory that the somehow, the court somehow didn't have jurisdiction over these chapter 11 cases under the U. S. Constitution. And I think, most importantly, Judge Whitley reiterated Judge Beyer's findings in Bestwall that it's really an uncontroversial principle that attempting to resolve asbestos claims through section 524(g) is a valid reorganizational purpose. Again, that's why we're here. We think it's, we think it's uncontroversial.

So Judge Whitley denied the dismissal motions. Again, that wasn't the end of the story. Both the ACC and Maune appealed the dismissal order. They requested direct certification, which Judge Whitley did grant. The Fourth Circuit, though, ultimately denied the request for the direct

appeal. So undeterred, the ACC and Maune took the unprecedented step of requesting *en banc* review of the Fourth Circuit's decision. And I think this is right, but, as far as we're aware, this was the first request of this kind ever nationwide. So this is pretty unprecedented. Both petitions for a hearing *en banc* were denied and now the appeals of the dismissal decision are sitting with the District Court. And so I, I believe that everything has been fully briefed at this point.

The pursuit of dismissal is not Maune's only activity in these cases. Prior to Maune's motion to dismiss, in January Maune filed the lift stay motion here on behalf of one of the claimants seeking to pursue that claim against the debtors. Judge Whitley denied that motion.

And then after four months -- about four months after the court's dismissal opinion, Maune filed another motion to lift the automatic stay on behalf of a claimant. That lift stay motion was almost identical to the first, the one that Judge Whitley had already denied. And in total, Maune has actually filed six significantly similar lift stay motions in these cases and also in the Bestwall and DBMP cases pending in this jurisdiction. All of those have been denied except for the last one, which was withdrawn. And you know, it was likely withdrawn because the courts at this point have recognized that permitting one as, one asbestos claimant to continue to pursue

its litigation against the debtors really would open the floodgates. It would defeat the entire purpose of the case and there would be no chance to get to resolution of these cases.

But also, I think it's, it's significant that the courts have expressed a certain degree of frustration with this type of approach with relitigating issues that are well trodden at this point and it's just something that we try to keep in mind as we think there's plenty of precedent for what we're trying to accomplish here and a positive consensual result that we're trying to reach. And at this point, there are lots of avenues forward to get to that resolution, but we really don't want to be bogged down anymore relitigating the same things that have been relitigated before.

And so with that, I will turn it over to Mr. Erens to wrap up unless you have any discrete questions for me.

THE COURT: Thank you.

MS. CAHOW: Thank you.

MR. ERENS: All right. Thank you, your Honor. I'll be relatively brief 'cause I think we've hit some of these topics and themes before either at the beginning or through the presentation. I think we're coming towards the end of our sort of hour-and-a-half before we turn it over to the, to the ACC -- excuse me -- to the FCR.

But bottom line and this tracks our case status report.

Let's go to the, the first myth.

I think there are a number of, frankly, we call them "myths" that, or themes that the ACC has tried to prosecute in these case, cases -- excuse me -- and you know, we think they're inappropriate and inaccurate and we want to set the record straight.

So No. 1, the ACC has a theme that the cases are unconstitutional because bankruptcy is only for companies that are in immediate financial distress. Your Honor, this has been litigated in this case and in the Bestwall case. The findings are uniform in this jurisdiction. There's no requirement that debtors be in immediate financial distress in the Bankruptcy Code or the U. S. Constitution. And so those motions to dismiss on, on that basis were denied.

Frankly, Garlock undertook a similar restructuring at the end of its case to get the parent liability in the bankruptcy. That wasn't challenged. Paddock is a recent case that came out of the Owens Corning corporate family. That was in Delaware, a very similar solvent restructuring. Nobody challenged those as unconstitutional.

So this theme has been denied and as Ms. Cahow indicated, the ACC tried to take that issue directly up to the Fourth Circuit and they were not interested in, in, in hearing it. So presumably, they also do not agree with the ACC.

And then the next slide just shows the chart I

mentioned at the beginning, a long history of numerous solvent asbestos 524(g) cases. So we don't think this is new.

Myth No. 2, the ACC has indicated that the proposed plan in this case unconstitutionally infringes on a claimant's due process and jury trial rights. Your Honor, No. 1, we're subject to 524(g). There are numerous protections for claimants in 524(g). Supermajority of votes in favor. The FCR is part of the process. And the Fourth Circuit, again, recognized this in the Bestwall PI decision, indicated that, "The mandatory reality of chapter 11 bankruptcy belies the Claimant Representatives' false narrative that some subterfuge will befall the claimants if this bankruptcy comes to a successful result."

No, your Honor, there are numerous protections for claimants under 524(g).

With respect to jury trial rights, I think this is implicit in what Mr. Evert indicated earlier. More than 99 percent of the cases in the asbestos tort litigation don't go to trial. There's so many of them, it's impossible, right? A jury trial is a very rare event in the tort system, but we do recognize that in the tort system claimants have a jury trial right, ultimately. We also recognize that the bankrupt, or the, 28 U.S.C. requires that jury trial rights be preserved in bankruptcy and that's always done in these asbestos 524(g) cases. The so-called trust distribution procedures always

allow a ultimate exit to the tort system if the claimant is unable to reach a resolution with the trust. And historically, your Honor, that never happens, or almost never happens. That's not what happens in these resolutions. Claimants realize the benefit of the trust and it's a rare event, if it ever occurs, that claimants actually exit to the tort system for a jury trial.

Next slide, please.

The ACC in their case status indicated that they're thinking about filing a, what we would describe as the dismissal plan, a plan similar to what was filed in the Bestwall case where claimants just can ultimately opt out and go back to the tort system. And they claim that Ortiz, the Supreme Court case that Judge Whitley referenced in his dismissal opinion, mandates that. I don't think, certainly in the interest of time, it's worth going into any great detail about Ortiz, but I'll say a couple things.

No. 1, Ortiz was not a bankruptcy case. It had nothing to do with bankruptcy, *per se*. It was an interpretation of Rule 23 of the Rules of Civil Procedure in class actions. And in fact, it indicated that the so-called mandatory non-optout settlement issue can be treated differently in bankruptcy.

Couple slides forward, please.

One of the quotes was that, "The general exception

that you need a limited fund to require no optouts." There are exceptions to that and the two exceptions that the Supreme Court noted were probate and bankruptcy. So if you read Ortiz carefully, arguably, it actually supports the idea that you can do the type of 524(g) case that's being proposed here, notwithstanding the solvency. And I think that's probably the main point.

And by the way, Judge Whitley did talk about what he did in that dismissal opinion Ortiz. That was not briefed. That was own, his own ideas thinking about this case. But if you think about it logically, the, the, the ultimate result of an argument that Ortiz applies in this fashion in bankruptcy would be that you could never have a solvent restructuring in chapter 11. That's contrary to the law. And the reason is if you have a solvent case, there's always more money by definition than is being paid to the claimants. Cause equity is retaining something, okay? So that means there's not a limited fund in, in the sense of it being discussed in Ortiz.

So the logic of Ortiz applying would be you could never have a solvent chapter 11 case because claimants could always opt out of the plant treatment because there's more money than being proposed for our creditors. But that's not the case, your Honor. There've been numerous solvent restructurings.

So we think, you know, taking Ortiz to that extreme is

just contrary to the law. But again, as Judge Whitley said, perhaps that's for another day.

Myth No. 3, the argument that these bankruptcies are causing claimants to go without compensation. I already addressed this at the front. Again, 97 percent of the money should still be flowing to claimants, notwithstanding our bankruptcy.

Myth No. 4, that the debtors and their parents are using the bankruptcy as a scheme to avoid paying asbestos victims and avoid lawsuits. Well, you just heard from Ms. Cahow about a half an hour what we tried to do to pay claimants, to get a trust in place and get them paid as promptly as possible through a system that's much faster and more efficient that the tort system itself.

Myth No. 5, the debtors' plan has no support. Well, the ACC, obviously, has not supported it, but the FCR is supporting the plan and the FCR represents about 80 percent of the liability in this case.

And then Myth No. 6, the debtors have an interest in and are causing delay. I dealt with this, again upfront. The debtors have done their best to prosecute these cases. The difficulty they have faced is the resistance from the ACC. That's been the cause of delay.

So finally, last slide and then we'll turn it over to the FCR. What should happen next, your Honor? Again, we've

been consistent here. Estimation is what should happen next. Unless there's a consensual resolution through mediation or otherwise, the only way this case gets resolved is through an estimation of liability. That would give the parties guidance as to what they need to do to negotiate a plan. Any plan proposed in this case, whether it be by the debtors or the ACC or any other party, has to be informed by a determination of the liability, again, unless it's settled.

So estimation is what we need to get to. Again, Judge Whitley indicated it's mandatory.

Next slide.

He indicated, you know, it's required in this type of case by 502(c). He said there's well-developed precedent over many years, the Robins cases, that it's not, not only required, but helpful. So that is the logical next step and the required next step in these cases. It's what resolved the Garlock case and as I indicated, if you were in the Garlock case before or in the middle, you would have thought that case might never resolve, but it did. And estimation was key to getting it resolved.

So from our standpoint, your Honor, the sooner we get to estimation, the better. We have had a problem, as Ms. Cahow indicated. The motion for estimation was filed in 2021. It was fairly promptly thereafter approved. The debtors prosecuted their discovery, got their trust discovery, got

their proof of claim, or their bar date, got the PIQs.

On the flipside, the ACC served discovery requests. We produced, I think, 150,000 pages of documentation, but the key issue is the claims files and it took us a year to get the ACC to agree to a claims file sample, which is typical in these cases and it's starting to take about another year to get them to agree to a, a protocol for collection of those materials. Now we hope we can get to the end and we think we may be to the end of that negotiation, but it's taking a very long time, much longer than it really should. We need to get the parties focused on estimation and get that process done and then we can figure out where these cases stand.

So unless your Honor has any questions, we would rest on that presentation subject, again, to rebuttal at the end of the day.

THE COURT: No. Thank you.

MR. ERENS: Thank you very much, your Honor.

THE COURT: I'm sure this is mind numbingly boring for a lot of you, but it is helpful to me, so.

All right.

MR. THOMPSON: Your Honor, so Jonathan, Mr. Guy has graciously allowed me to go ahead of him. Would you like me to start now, or do you want to take a break or --

THE COURT: What, what is the usual? How long is your presentation?

MR. THOMPSON: Thirty minutes.

THE COURT: Maybe a five-minute --

MR. THOMPSON: Okay.

THE COURT: -- short break.

MR. THOMPSON: That'd be great. Thank you.

(Recess from 11:29 a.m., until 11:37 a.m.)

THE COURT: Thank you.

MR. THOMPSON: So I appreciate the, working with me --

THE COURT: Oh, of course.

MR. THOMPSON: -- among counsel. We have an appeal that is getting argued in about an hour in, in Judge Bell's courtroom in the DBMP case.

So Clay Thompson with Maune Raichle Hartley French & Mudd on behalf of Robert Semian and 46 other mesothelioma claimants who moved to dismiss the bankruptcy case and that filed proofs of claims in this proceeding. We represent numerous other mesothelioma victims that were diagnosed since the bar date. I'd like to talk just a minute about who some of these folks are.

So this is Robert Semian. He has testicular mesothelioma. He was exposed to asbestos through 20 years of working at a Trane facility in Pennsylvania. He has what's called a Tooey claim. In Pennsylvania, you have to sue your employer if you develop mesothelioma for asbestos exposure. So he was the gentleman that we moved for relief from stay in

early 2023. We then moved to dismiss on his behalf in the summer of 2023. His case as to all defendants except Trane, who was the primary defendant in his case, has resolved in the Philadelphia courts.

This is Sean Bowden (phonetic). His case is filed in Massachusetts. He was, worked with boilers that were made by American Standard. He's living with mesothelioma. He was diagnosed at the end of last year. His claims against American Standard for insulation that was on those boilers is stayed. How the liabilities were divided up, I believe, is that American Standard liabilities would have gone to Murray Boiler.

This is Gloria Hall. Her exposure, she has a case in Philadelphia. She was diagnosed in March of 2024. A family member of hers worked at an Ingersoll-Rand facility in Corning, New York. So she has a take-home negligence exposure claim against Ingersoll-Rand, or Aldrich in this instance.

This is Doug DiCastro (phonetic), who's, was exposed in the military. His case is filed in New York. He was exposed to Ingersoll-Rand equipment, primarily compressors.

This is James Meehan (phonetic), who's passed away from mesothelioma. His case was also filed in New York. He was in the military, obviously.

Many of our clients that have Ingersoll-Rand exposure were exposed in the military working on equipment that Ingersoll-Rand supplied to the military.

So one of the things that I did not hear a lot of in the introduction by the debtors and their affiliates is about assets, about liabilities, about estimates of liabilities, about liquidity analysis, about their ability to pay people. It's not about resuscitating a financially troubled debtor. It's not about having employees whose operations we want to maintain. This is not a bankruptcy. We're in bankruptcy court. Trane has, has pushed papers around to generate a bankruptcy and to put it in bankruptcy court, but it's not really a bankruptcy case. And I say that based on clear instructions given by the Supreme Court and the factual findings that Judge Whitley has already made in this case.

And so just this summer in the Truck Insurance v. Kaiser Gypsum case the Supreme Court said that, "Bankruptcy offers individuals and businesses in financial distress a fresh start to reorganize, discharge their debts, and maximize the property available to their creditors." That's not what these debtors are. They have funding agreements, which I'll cover with, with what Judge Whitley found.

This is from the Purdue Pharma bankruptcy, also issued this summer. 5-4 opinion in that case. "The bankruptcy code contains hundreds of interlocking rules about "'the relations between'" a "'debtor and [its] creditors.'" And Purdue's different than this case, clearly. You had the Sacklers, who did not file for bankruptcy. You had Purdue Pharma that had,

but the Supreme Court is restating well-established principles that there is a simple bargain that if a debtor wishes to discharge its debts, it has to proceed with honesty and place "virtually all its assets on the table for its creditors."

And interestingly in the Purdue Pharma case -- this is from the dissent that Justice Kavanaugh wrote. The claims that Purdue Pharma was facing were for $400 trillion, $400 trillion because of the opioid crisis, OxyContin. So it was the -- and, and I think the Sacklers' estimated assets were 12 billion. And so you had the Sacklers who had not filed facing 12, 40 trillion in liability.

That is the exact opposite of this case. Here, we have a company that is, according to Judge Whitley's finding, findings, worth $54 billion, Trane, the Trane enterprise. Their subsidiaries that they created to enter into the funding agreements with Aldrich and Murray, those two entities are collectively worth about $15 billion. Their annual asbestos liabilities are $100 million, right? And even in the circumstances of, of Harrington v. Purdue Pharma, the Supreme Court struck down the plan in the instance where there was 12 billion in assets and 40 trillion in liabilities, in part because there has to be an exchange that's made between clean hands, coming with honesty, subjecting virtually all your assets to the bankruptcy court.

Not going to cover Carolin a lot here. As you know,

there was already a motion to dismiss. Mr. Semian was the one that made the motion to dismiss. We argued to Judge Whitley that under Carolin the purpose of the Bankruptcy Code is to resuscitate a financially troubled debtor, which is not Aldrich. With the funding agreements, Aldrich has the capacity to pay every claimant what it owes them forever in full.

So the statutory objective of the Bankruptcy Code would not be furthered by allowing them to remain in bankruptcy.

The other prong of Carolin, of course, is subjective bad faith. Trane and Aldrich and Murray's real motivation, in our view, was that they were abusing the reorganization process. They have benefited to date from a four-year litigation stay. So they benefited from a four-year litigation stay when they can pay everybody in full.

This is from Premier Automotive that talks about -- again, I understand that dismissal is not before your Honor. It is before the District Court on appeal. We have appealed to the District Court. Unfortunately, the Fourth Circuit did not take the case. Judge Whitley wrote a very thorough, thoughtful dismissal opinion denying our motion and the Committee's motion, identified, I think, several important issues. He certified the Fourth, for the Fourth Circuit to take the case. I had hoped the Fourth Circuit would take the case. It did not take the case. Judge Whitley hoped that it would take the

case. It didn't take the case. So now that's before the U. S. District Court.

So I'd like to point out a few of the things that Judge Whitley already found in this case that I think are important as we move forward.

The presentation that was give this morning is, in terms of Trane, Ingersoll-Rand, who are the predecessors of these debtors, their view of the tort system. That was their view four years ago. What I'd like to talk about is where we are now based on the undisputed record that's already in the case found by Judge Whitley, who took very seriously all of the arguments from all sides. And this is based on depositions and the evidentiary record before him, both in the PI ruling that he made in 2021 and the dismissal ruling that he made in 2023. Okay. Dismissal order at 13. "The Funding Agreements are the basis of Aldrich/Murray's bold proclamation that 'the Debtors have the same ability to pay asbestos claims as did their predecessors,'" who are referred to as Old IRNJ and Old Trane, right?

And here's what else he found at 14. So the debtors, according to their own estimation, have 240 million total, all in. In their view total, 240 million asbestos liabilities net insurance. And he says, "They were designed to be reliant on the Trane organization, through the Funding Agreement." So they have a funding agreement with this Trane enterprise.

Well, the Trane enterprise has 16 billion in annual, annual revenues, annual excess cash of 1.8 billion. They give away 600 million a year, at least in the most recent year, in dividends. They have a market cap of $54 billion.

In the record that was before Judge Whitley this is Allan Tananbaum, who's the Chief, or corporate representative for the debtors. I think he may be the Chief, Chief Restructuring Officer. I may be getting his title there. They'll correct me on that. But he's, he's a representative for the debtors. This was the deposition that we took, the Committee and I took of him before the dismissal hearing last summer. I asked him:

"Q If this case were dismissed, would the debtors be able to manage their asbestos liabilities in the tort system for approximately 100 million a year?

"A It's an open question. I'm hoping that's not in the offing. I'm hopeful that we could bring the liability back around that size, but, to be perfectly candid, I don't know if there's going to be some sort of short or medium-term penalty that the plaintiffs' bar seeks to impose upon us," you know.

But, but he's hopeful that they can get it, you know. We're, the plaintiffs' lawyers took kind of a beating this morning. We're getting blamed for things we haven't done yet, right? So I'm getting blamed for something that Scruggs said

40 years ago and now I'm getting blamed for stuff that no one's, no one's even done.

"Q But the essence is that, sitting here today, sir, there is no concern that future claimants could not be paid in the tort system ten years from now, is that right?

"A I guess I'm going to agree with you, but with the proviso that these future claimants would be subject to the vagaries of the tort system."

Okay? So what their own corporate witness is saying is they can pay a hundred million a year, just as they were before they filed for bankruptcy, for the next at least ten years. If I had asked him the next 20 years, he probably would have said the next 20 years. They can pay everybody in full, right? And as Judge Whitley noted in his dismissal order, "The Debtors and the Affiliates have enjoyed a respite from the tort system and a 'payment holiday' from the 100 million-of costs they were previously incurring."

He found in his Findings of Fact at Paragraph 41 that these predecessors, Old IRNJ and Old Trane, sought "a less expensive way of dealing with their asbestos liabilities." That's what this is. This is not really a bankruptcy. This is an effort from a $56 billion company, $54 billion company to pay less to a specific type of creditors that isolated and discriminated against. They knew, according to his Findings of

Fact in Paragraph 50, that the members of the Project Omega group that were setting forth this transaction knew that the case would last five or more years. They would benefit from that litigation stay for five or more years. And they, they filed this on the heels of Bestwall, which they knew had been going on by that point for 2-1/2 years. So they knew what they were doing when they filed with this strategy in this District.

So based on the conclusions that Judge Whitley has already made, these are not debtors that are financially, financially troubled in need of resuscitation, in my view. That's why we're appealing to the District Court. I think we'll ultimately be successful on the merits of that argument. These are debtors that knew they would receive a year's long break from the tort system and they've received it. They've received that. They haven't had to settle any claims in the tort system. They can easily pay all claimants in full forever. They can pay them outside of bankruptcy. This isn't just in bankruptcy. If the stay were lifted to any individual claimant and that claim was litigated in the tort system, they could pay that person whatever they owe that person.

So if Mr. Semian, if my motion had been granted and we had gone to trial in Philadelphia, a jury could have found that Trane owed him zero. It could have found that Trane wasn't liable. A jury could have found that they owed him, that Trane owed him ten million. It could have found that it owed him

$100,000 or the parties could have settled individually and Mr. Semian would have gone back in line to actually get paid on the value of his claim at the -- at the end of -- whenever allowance is entered by your Honor. There's no argument that they can make that they don't have the money to pay that.

So being cheap, which is what Trane is, isn't a valid bankruptcy purpose, okay? Wanting to pay less than you owe people under state law is not a valid bankruptcy purpose. This is not a bankruptcy. This is an effort by a $54 billion company to overcome the tort system. They don't want to be in the tort system. That much is clear. They don't like the tort system. They don't like that some states provide different remedies, right? They've referenced that. Some states, they apparently don't like that maybe one state has punitive damages that are available. May, most states don't.

Well, these are state law claims. These have nothing to do with bankruptcy. State law sets the rules that are to be followed within the boundaries of their own states and that's why what we're seeing when these cases have gotten to appeal in the Fourth Circuit in Bestwall or when the Committee petitioned for *certiorari* to the Supreme Court in Bestwall, we had bipartisan *amici* in our favor. Senator Durbin, Senator Hawley, both were against the Texas twostep in Bestwall's case. Twenty-four states' Attorneys General agree with us that this violates the powers of states to govern their own borders, the

law within their own borders.

So they are simply trying to abuse the Bankruptcy Code to obtain tort reform, which Congress rejected, and the Constitution and the Supreme Court prohibit. This is not a bankruptcy.

And so as, as Mr. Evert was speaking, I hastily put this together. I didn't anticipate showing this part of the FAIR Act, but I think it's worth a, a bit of discussion.

So in 2004, 2003 during this period of time that Mr. Evert was talking about several companies are filing for bankruptcy because of asbestos liabilities. There was consideration in Congress about addressing at that, at that time hundreds of thousands of asbestos cases. There were numerous bills considered.

One of them was the FAIR Act. This is at -- I put it on my slide. This is in the Congressional Record. This is Senator Hatch, who's introducing this bill in 2020, in 2004, 20 years ago, and he's making many of the same arguments that I listened to this morning from the debtor and their affiliates. We have a litigation crisis. They're citing the RAND Institute, more than 700,000 people with claims. Senator Hatch is, is contrasting, okay, we have this bill. Under the tort system it's a litigation lottery. The FAIR Act is a no-fault system. Under the FAIR Act you have a system of fairness. Under the tort system we're pushing companies into bankruptcy.

Under the tort system we have decades of delays. Under the FAIR Act we have, we would have expedited payments for a number of months. These are the same arguments that, that I've listened to the debtors in this case make, not just today, but previously.

These are policy arguments. This is bankruptcy court. This is not policy court. This is not the floor of the U. S. House. It's not the floor of the Senate. This is bankruptcy court and all of these arguments that Senator Hatch made in 2024 [sic] and other made in 2022, 2023, 2024, Congress rejected them. Congress did not take action and that was on the heels of the Supreme Court cases that were discussed this morning in Ortiz where the Supreme court did invite Congress to take action with asbestos litigation. They didn't pass anything.

And so then in 2019 or so Ingersoll-Rand is involved in an appeal to the Supreme Court of the United States and that case was about, it was a maritime law case whether the equipment suppliers, like Ingersoll-Rand, General Electric, and other companies that supplied equipment to the Navy, whether they had liability for failures to warn the sailors that worked with asbestos in this equipment and many of the same arguments that they make here now in 2024, they made in 2018 and 2019 in the Devries case. And this is from their, from their brief in the Devries case:

"The relevant question is not whether injured sailors can recover, but from whom can they recover. What is more, they can, in fact, recover from other sources, including dozens of asbestos trusts that have paid out billions of dollars to date."

And then they cite the RAND Corporation again, right?

And so these are all -- and, and they lost that case. The Supreme Court ruled against Ingersoll-Rand and others and found that they did, in fact, have liability to warn for asbestos-containing gaskets in their equipment to sailors.

So many of the same arguments that I listened to this morning, primarily from Mr. Evert, the Supreme Court heard those arguments and rejected them.

And so it was only after the FAIR Act and other congressional efforts failed, it was only after they tried to reduce their liability in the tort system, those failed, then they decided they're going to do policy arguments, but they're going to do them in bankruptcy court. And so now what, right? So that's sort of the backdrop.

One of the things that they said was that, you know, my firm is being wasteful, duplicative, potentially sanctionable. All that we've done is seek relief for individual claimants. That's all we've done. We've asked to have permission to go and liquidate our individual claims. Here's what I think is wasteful. Half a billion dollars, half

a billion dollars, $550 million in fees has been paid to bankruptcy professionals in the three North Carolina two-step cases, this one, talking these two, Aldrich and Murray, Bestwall, DBMP. That's according to an article in the New York, in the Charlotte Observer, okay? Five hundred million dollars. Now this says a few things, okay?

So the first thing it says is that these companies can pay the sick people whatever it is they owe them. They've got plenty of money to pay bankruptcy professionals. They can pay the sick people what they owe them. The frustrating part to the sick people is that they are saving money each year because even though -- and look, this is on all sides. This isn't just, this isn't just the debtors. This is all the professionals and they're all doing a bang-up job. But, but this is money that's being spent that absent this bankruptcy would have gone to the tort system victims. Now some of it would have gone to defense costs, I'm sure, but most of it would have gone to the victims. And Trane, to its credit, Trane was pretty effective at how it was resolving cases in the tort system, 75 percent of what they were paying in the tort system.

So they spent a hundred million a year and that's a lot of money. That's a lot of money unless you're worth $56 billion. But 75 percent of what they were spending was going to claimants and if claims are being dismissed, that means

those claimants shouldn't be paid. They have given away, Trane by itself, has given away $2 billion in dividends to equity holders. Now again, in bankruptcy normally, equity gets paid last. But why, when you do the divisive merger you can keep your equity holders over here. You can keep your creditors that you don't like, which are the asbestos creditors, over here. And so they can keep giving money away to shareholders.

So these companies are absolutely thriving and zero has been paid to victims. And so Trane says, "Well, we're trying" -- the debtors. I -- sorry. I don't mean to use them interchangeably. The debtors are trying, say they want to move these cases along. What they want to move the cases along to is an illegal resolution. They demand, they demand and will only accept an unconstitutional illegal resolution.

So they will say today -- they have said today -- they will say in future hearings that they want to move the case forward. Well, what they want to move the case forward to is an illegal resolution where they can cap their liabilities. When you have a company that admits that they could pay a hundred, or they could pay a billion over the next ten years, but they're saying that 500 million should be what resolves the case for all time, this isn't about moving the case along. This is about creating an artificially capped fund that won't withstand appellate review.

And so they mentioned that they've negotiated a $545

million plan and they've negotiated it with the FCR. This is from their status report at 44. And this, this assertion that the FCR represents 80 percent of the claims, many of the folks that are now current claimants that are sick now, including the people that I indicated at the outset, all of those people, save maybe one of them, was diagnosed after this deal was reached with the FCR.

So, so at the moment that Mr. Grier made the settlement with the debtor for this settlement that they've talked about, this plan, many of the current victims were future claimants in that moment, okay? And Judge Whitley found that the Future Claimants' Representative does not have a vote on a plan.

So the people that will decide on whether a plan is confirmed are the current claimants.

So this is -- wrapping up here. Judge Whitley identified this issue. He identified the problem and this is a problem that will not go away. We can spend years on estimation and discovery and all the other things that come up in these cases. The problem is is that this issue that Judge Whitley identified will not go away. And the issue is whether if you are solvent and nondistressed, you can create a limited fund to pay claims, anyway. And, and Mr. Erens alluded to that, right?

So to quote Judge Whitley at Page 40, well, he says,

"In sum, a 'no-opt-out' bankruptcy plan and trust is entirely appropriate for an insolvent or even a distressed debtor." And when they're saying that jury rights won't be impaired, yes, many of the asbestos trusts that have been set up, you can pursue the trust in a jury trial. The reason that's never done is because those trusts don't have enough money to pay everybody in full.

And so your remedy is to -- for example, Johns Manville, right? Johns Manville, you can sue the Manville Trust, but there are all of these barriers in the way such that no claimant would ever do that. And that was a necessary compromise that had to be made because Manville was overwhelmed by liabilities. And so the balance that was struck with 524(g) was either people can continue to sue Johns Manville, new reorganized Manville post chapter 11, and they can collect the full measure of their damages, which in what, which would very likely lead to Manville going bankrupt again. or we'll create a TDP that makes it such that it's difficult to pursue the trust for, you have capped damages, capped remedies, capped recoveries. So it's not done.

And so that's the balance that you have to make, as Judge Whitley, I think, recognizes, that yes, you can cap damages. You can impair jury access, to some extent, when you have a distressed debtor that cannot pay everybody in full, when you're having to make the most of a limited pot. And

unfortunately, that's not this case. It's not this case. And that's not disputed. They can pay everybody in full. There's no dispute in this case that Trane, and, and with the funding agreements that Aldrich and Murray have with Trane, they can pay everybody that's sick now and they can pay everybody that's sick for the foreseeable future in full in the tort system.

And so that's the context when Judge Whitley says, "If neither Aldrich nor Murray are insolvent nor financially distressed, the question lies: is that plan constitutional? Fortunately, that question is for another day." And so whether that question is sooner rather than later, that's going to have to be answered. And so my suggestion would be -- and I, I cite Ortiz here and I don't think I need to do that. I, I covered most of that.

My clients have a Seventh Amendment right to a jury trial. 28 U.S.C. 157(b) says that they are entitled to a jury determination to, to quantify, to liquidate the value of their claim. And 11 U.S.C. 1129(a)(7) says that they can't do worse in an 11 than they would do in a 7 if the, if the debtor was liquidated.

So any client that wants to, Mr. Semian, if he wants to -- and he does -- he'll want to quantify his claim before a jury before he can, have to be forced to vote on a plan. He's entitled to know what the liquidated value of his claim is. Those are rights that are found in the Seventh Amendment.

They're found in Congress. They're found in the statutes that I just provided. They're founded in state law.

But for the estimation, they don't have a constitutional right to estimation. It's an advisory opinion and Garlock was not this case. Garlock didn't have multiple motions to dismiss. Garlock did not have a funding agreement with a $54 billion company that -- and, and Garlock did not come into court and say, "We have the full funding to pay everybody in full." It wasn't contested the way it is here. And so this is a bolder -- I think it's -- I think it's -- estimation is a path to nowhere. Because they can pay everybody what they owe them.

And so this Court, I'm sure, will spend a very diligent amount of time and render a very thoughtful and thorough estimation opinion, but it's advisory. And when you have a debtor that, unlike Johns Manville, has a $56 billion company paying whatever it owes anybody forever, it's not going to advance the case.

They mentioned the plan that was filed in Bestwall. The Committee in Bestwall filed a plan that would have conformed with Ortiz. And, and Bestwall rejected it outright. Unfortunately, that's the only plan that can be confirmed and upheld on appeal. Because if it doesn't comply with Ortiz, a single claimant, Mr. Semian's case or someone else, can and will challenge any plan that impairs their state law remedies

and impairs their jury access. And that grounds by itself in a case like this where there isn't a limited fund, that will result in the plan being unconfirmable.

And so I think that the Committee will talk in great detail about what they see as ways forward, but from where I'm standing representing multiple people that are sick with claims against Ingersoll-Rand, claims against Aldrich, claims against Murray, this Ortiz problem is not going away. And I think that's what's unique about this case and why it doesn't belong in bankruptcy.

And with that, I thank you.

THE COURT: All right. Thank you.

So are we ready for a lunchbreak? Is that what's next?

MR. GUY: That's fine by us, your Honor. Whatever your preference is.

THE COURT: All right. Well, how -- I'm not familiar with Charlotte myself. How long do you typically need for lunch?

MR. ERENS: No more than an hour, your Honor. If you want to move it along, I think 45 minutes will be fine with the debtors.

THE COURT: All right. We'll -- so we'll aim for -- is that like -- so 1:00?

MR. ERENS: 1:00, perfect. Thank you.

THE COURT: All right.

(Lunch recess from 12:10 p.m., until 1:06 p.m.)

AFTER RECESS

THE COURT: All right.

MR. GUY: Thank you, your Honor. Jonathan Guy for the FCR.

I hope we haven't put you off this case, already.

THE COURT: I -- I was -- I was prepared by Judge Beyer.

MR. GUY: All right. Well, she's, she's the perfect person to prepare you.

Just want to respond to some of the things that Mr. Thompson said. I'm -- he's not here. So I won't take him too much to task.

Maune Raichle is on the Committee in this case. They have a client on the Committee. They were also on the committee in Paddock. And you'll hear a lot about Paddock, not today, but over the course of the case 'cause that case is, Paddock, in all substantive respects, is identical for this case. Different product line, different company, but there was a two, pre-petition restructuring. There were funding agreements. There was a solvent, publicly traded debtor, highly solvent, $2 billion. And in that case the committee reached a resolution within two years. Capped fund and that fund is paying claimants now. Maune Raichle's clients are

getting paid in that case. They're not getting paid in this case and there's only one reason. And the reason is because the plaintiffs' firms don't want this case to create a trust. They haven't given us an explanation why Paddock is different. They say it's different, but it's substantively the same. And if the objection to this case is, "Well, you're solvent," well, that was true in Paddock. If the objection to this case is, "You went through a pre-petition restructuring and isolated liabilities in a new entity and you had funding agreements from the solvent parent," that's this case, too.

Your Honor, Mr. Thompson also said that Judge Whitley decided the FCR can't vote. We have to ask Judge Whitley that, but, as far as I know, he didn't. That issue was up in Garlock. It was briefed, but it was never resolved. In fact, the case was settled before there was a ruling on that question. We're not going to get into the arguments around that, but 524(g) provides that a class of claimants should vote in support of a plan. As you know, the future claimants under the Fourth Circuit precedent are claimants. They don't know they're sick yet, but, because they were exposed, most of them were exposed prepetition, they are claimants. They are a class of claimants and that is the class the FCR is ordered by this court to protect.

Your Honor, the FAIR Act came up. I actually know a little bit about the FAIR Act 'cause my law firm was involved

in that years ago. I'm dating myself. I believe Mr. Evert was involved in it, too. That was a bipartisan effort by Congress to get prompt payments to asbestos victims without the need to go to court, without the need to hire a lawyer. And it was bipartisan and it had massive support in Congress. And it probably would have passed but for the unfortunate passing of Strom Thurmond. And then it got lobbied against by, among others, the plaintiffs' law firms, just as they are opposed to what we're trying to do here, which is to create a trust to pay claimants quickly and efficiently and fairly.

I do agree with Mr. Thompson that $550 million in legal fees is a terrible waste. I mean, it's extraordinary. In this case, we spent over a hundred million dollars in legal fees. And it's -- the ACC is 35 of that and the debtors are 65. I think you can see why the FCR is not a huge portion of that, but that's a lot of money. That's money that is not being used to benefit claimants a'tall during the pendency of this case. Yes, he's right. Probably 8,000 mesothelioma victims who were Mr. Grier's clients when the case began are now dead. That's unacceptable to us.

Your Honor, in his slides he says "the debtors can pay all claimants in full forever." Well, those of us who operate in bankruptcy courts know that "forever" is not an option that always applies. Many companies that we all know of that were fabulously successful at one point, they ultimately, Kodak, GM,

Blackberry, you can just pick any one, plus all those asbestos companies that filed for bankruptcy. Twenty years ago someone was probably, "Well, they're fine. Don't worry about them." It is not for the FCR to take a position that, well, we know for sure that they'll be around in 20 years. What we want to do is to create a trust which is funded so that claimants are paid in full and we know that they will be paid in full.

Your Honor, there was a lot of discussion about, well, Trane is trying to get away with paying them less, on the cheap, doesn't want to pay claimants. Here's the reality, your Honor. We met with Trane at the very beginning of the case and we said, "Are you serious about committing to creating a trust, a fully funded trust, to pay asbestos claimants?" And they said, "Yes." And they did that.

So the only question is is that number right? Is it too big? Is it too small? That's what the estimation is going to tell us. But what we do know is we have the experience of Garlock where the FCR is party to that trust that's operating right now. That trust is paying claims in full, in full.

So this idea that it's a limited fund and you're going to get a lesser recovery than you got in the tort system, that's not true. They're getting paid in full and the values, in fact, have doubled since the inception of the trust because it has provisions in it that the FCR fought for to ensure that only valid claims are paid. The trust has not been overwhelmed

like many trusts have been with many more claims than were expected and it's paying the people who worked around these products and legitimately got exposed to fibers in their specific jobs, specific occupations. And everybody's treated the same. The strongest claims, doesn't matter whether you're from Wyoming or Madison County or New York, California, you get paid the same. Doesn't depend on your court, these magical courts. It doesn't depend on that. Doesn't depend on your lawyer. It's just submit the claim. You get paid. It works as it works in the other 60 trusts that are operating right now.

What we've never heard from the ACC or any of the plaintiffs' firms who are on the ACC is what they think the right number is. They've never told us the number. They know what, I think, the number is because they have a claims expert who's done that work. We know that from the billing records, but they haven't shared it with us.

So this idea that the debtors and the FCR are sort of holding this process up, we want to move forward. The FCR desperately wants to move this forward. We want to get a plan confirmed just like happened in Garlock, just like happened in Paddock so that we can get money to people who are legitimately ill from working around the asbestos products that were in the debtors' equipment.

The truth is but for the objections of the ACC and the

plaintiff firms those people that he was talking about would have been paid now. How do I know that? Because many of those people would have the same claims in Paddock and they've been paid. Many of them would have the same claims in Garlock. In fact, they're going to have the same claims because it's the same product line as Garlock. Those people have been paid.

So it's, it's frustrating to us that the people who are not here, the people who are ill that we don't see -- we saw it on the slides -- they're not getting paid. And I hazard to guess if we were to ask them as a group, "Would you like to be paid? Here's money on the table. Would you like to take it," they would probably say, "Yes."

Your Honor, you, you mentioned sports. I'm happy that we're going to avoid sports going forward because I'm from England and they went right over my head, too. I had no idea what anyone was up talking about.

I want to talk just quickly about the FCR, your Honor. The FCR here is truly independent. He was appointed by this court to do a job. He's not aligned with the debtors. He's adverse to the debtors in the terms, in terms of how much should be funding in the trust. There's an agreement. We've reached an agreement on funding.

So we're aligned with the debtors in getting a plan confirmed. We are squarely adverse to the ACC and the plaintiffs' firms. Supreme Court has held that. And the

reason is simple. The plaintiffs' firms want to be paid as much as possible now for their individual clients. The focus on the -- it's not a focus on the class. It's the focus on the individual and they will -- they will take -- they want to take as much money out as they can now.

So there was a lot of talk about, "Well, they're solvent. They can pay us." Well, what about 20 years from now? So the Futures' job is to ensure that there's money there 20, 30, 40 years from now. Because these diseases all have, many of them have long latency periods. So there's no solace to say to us, "Well, don't worry. They have plenty of money now." That's the first issue.

The other issue is the tort system is not equitable. It's full of all the inconsistencies and vagaries and inequities and delays that the Court will be familiar with. You can recover "X" amount in Oakland, California, but, if you're in Wyoming, you might get nothing. It's dependent upon where you file and who your lawyer is what your recovery is.

So people with the same job, the same disease, the same objective factors, get widely disparate recoveries.

Now I understand why the individual law firms want to continue to pursue that. It's to their benefit, too, because of the arrangements they have with their clients. But from a class perspective, it's a disaster. It's the antithetical to the most basic bankruptcy principle of all, that you should

treat similarly situated people the same. And that's enshrined in 524(g).

Your Honor, we have an agreement here of $545 million. Ultimately, when the plan is confirmed that money will be paid by the debtors. Now it's a valid question to ask: Well, how does the FCR know that is enough? How can he be confident that that's the right amount? The reason we have confidence, your Honor, is quite simply that it's similar product line to Garlock where we had funding of less, where we have been paying claims in full, and the number of claims that are being processed by the trust is such that we've been able to double what we pay them.

Now there was a lot of talk about jury trial rights. Everybody understands that they have jury trial rights. Yes, they do. In the Garlock trust, as in with many other trusts, if the settlement offer that is made by the trust to the individual, if they deem it unacceptable, if they think that they can get more in the tort system, then they can go to the tort system and do that.

So it's a myth to say that the jury trial rights have been stolen. It's not, it's not the case a'tall.

Now do many people take that option? No. Why? Because it's a lot easier to submit a form, an administrative claim form. You submit it to the trust, you show your diagnosis, you show your work history, and, if you have a valid

claim, you get paid like that (snaps fingers). You don't have to wait years and years. That's the right result for the class and the FCR is a fiduciary for the class, just like the ACC is a fiduciary for the class of people who are currently sick. It is not the, it is not the part of any court fiduciary to represent and argue for the interest of an individual claimant, but that's what's happening here. That is what is holding this case up. We are not focused on what is best for the class.

Your Honor, I want to talk about Paddock for a little bit to show -- I think it demonstrates so clearly all the arguments you're going to hear about why this case is inequitable, illegal, unconstitutional, it's just the worst thing that's ever happened. Paddock had the pre-petition restructuring. Paddock had the funding agreements. Paddock had a capped fund, 610 million. Paddock has jury trial optouts. That case was confirmed over the, with the full support of the ACC, many of the same law firms. In our filing, we had a chart in the back that showed all these law firms and how they cross over in different cases. The same law firms supported Garlock, your Honor.

All we're try, all we have presented is a plan that's modeled on Garlock. We -- I even thought, well, this should work. It's been approved before. Same people accepted it. We've got more money this time. Surely, that's going to work, but it's not working. That's why we need to get to estimation,

your Honor. We need to move forward as quickly as we can. The sooner we can get to estimation, the sooner we can have the Court determine what a fair liability amount is and the sooner we can get to a possibility of confirmation.

And with that, your Honor, I have nothing more unless you have any questions for me.

THE COURT: I do have a question.

MR. GUY: Great.

THE COURT: I feel like I've been wondering this and you kind of alluded slightly that many -- I have the question again.

So if, with the trust -- so Paddock, Garlock -- there's a claimant. How is the payment apportioned?

MR. GUY: So the payment goes to the, the claimant.

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

MR. GUY: Let's say you are a mesothelioma claimant in Garlock. And if you're a pipefitter, you have a strong claim because you can show that you worked around the products. Let's say you set a hundred thousand dollars. The trust pays that. That goes directly to the claimant. It will go to the law firm 'cause nearly everybody has a law firm represent them. We actually wrote the, the Garlock TDP such that individuals could file if they want to, but, generally speaking, all these people, mesothelioma victims, are going to have lawyers because

it's complicated and there were multiple trusts and multiple defendants.

But yes, in terms of how it's apportioned, if your question is, well, how, who gets the contingency fee? How does that get paid?

THE COURT: So does -- does -- do they get the same amount from Paddock, from Garlock? I mean, are they only, can they only pick one?

MR. GUY: No, no. You can, you can submit multiple claims.

THE COURT: Right.

MR. GUY: Because Paddock made, they were a "big dusty." They made insulation.

THE COURT: Right.

MR. GUY: So if you worked in a factory, you could have had any job and you would have a legitimate claim to have an exposure to insulation fibers. 'Cause it's friable. It's in the air.

But if you also worked in the factory and you were a pipefitter and you worked around gaskets and you were grinding gaskets, then you could claim against both. And you --

THE COURT: Okay.

MR. GUY: -- would get paid by both.

THE COURT: But everyone gets the same, then, once they make a claim?

MR. GUY: Everybody -- each trust treats everybody who has the same claim the same. And that's the, that's the point.

Now some trusts may have different values, how they set them up. Because they're all controlled by individual fiduciaries and trustees. Like for example, we're not involved in the Paddock trust. We have no sight into, you know, how they determined those issues. But, yes.

So there's multiple trusts set up and most claimants with mesothelioma probably could bring up to, like, 30 claims against defendants and trusts. So in aggregate, they might, they might get millions, but from each defendant they might get a hundred thousand, 50,000, 70,000.

Does that answer your question?

THE COURT: Yes. Thank you.

MS. ABEL: Your Honor, sorry. Shelley Abel, Bankruptcy Administrator. I just wanted to share some jargon. We all have tons of jargon in bankruptcy. There's even more in this area.

TDP is trust distribution procedures. It's an attachment to the plan that was approved in previously confirmed bankruptcy cases, asbestos bankruptcy cases, in all jurisdictions, but including this one.

So it's negotiated as a portion of the plan and as an attachment. And so it varies. And Garlock is one that I'm familiar with. And in full disclosure, I represented the

debtor in that case. But it looked at various exposures, workplace exposures, and various disease types and it, and it produced a schedule of what would be paid in that case.

So it's worth looking at --

THE COURT: Right.

MS. ABEL: -- because it's just an example to understand how it worked.

But yeah, TDP is trust distribution procedures.

THE COURT: Thank you.

MR. GUY: Yes. And I'm sorry, your Honor.

So the reason why the FCR -- and all FCRs -- should be supportive of the creation of a trust --

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

MR. GUY: -- is because they have procedures that are approved by the court, by the various claimant constituencies. They look at them. They decide is this fair. So is -- what is the requirement of exposure? What is the requirement of your disease? And the Garlock trust is -- is -- it's not unique, but it's unusual because it has very clear objective factors.

So you can look at the trust and you can decide, you can figure out how much you're going to get paid and it's determined by your age, whether you, how many dependents you have, whether you're alive or dead, when the claim was made, and your disease. And critically, for an encapsulated product,

it's determined, in large part, by what your job was.

So we have tiers of claims, 1 through 5. Like a Tier 1 occupation is someone who would have definitely been around these gaskets and would have likely to have been exposed. And that's straight out of Judge Hodges' ruling in Garlock. We took the science ruling from that opinion and we put it in the trust. And that trust works.

Now you heard that the ACC were opposed to the appointment of the FCR in this case. They didn't like the fact that the FCR was saying, "We need these clear, objective, fair procedures to ensure that only valid claims are paid." They didn't like that, but that's not a reason to object. And the court overruled it, anyway.

But there's a lot of good lawyers in this room, your Honor, a lot of smart people. I've worked with many of these people for decades and they're great lawyers. I think it's a tragedy that we haven't got this case done and that we've spent a hundred million dollars in legal fees and we're still talking. But I'm still hopeful that we can get there.

Thank you, your Honor.

THE COURT: All right. Thank you.

MR. WEHNER: Good afternoon, your Honor. James Wehner from Caplin & Drysdale on behalf of the Official Committee of Asbestos Personal Injury Claimants. I'm going to provide the Court with a brief overview of our remarks, then my colleague,

Natalie Ramsey, will speak in more depth about issues like the debtors and the debtors' predecessors' history in the tort system, Texas twostep, and the post-petition tactics of the debtors.

And then my colleague from Winston & Strawn, Carrie Hardman, will speak about some of our adversary proceedings, the substantial consolidation adversary proceeding, the fraudulent transfer adversary proceeding, and the Committee's discovery efforts in those proceedings.

Before I get started on my remarks, I, I wanted to add just a little bit to Jonathan's answer, to Mr. Guy's answer to your question about TDPs and trusts.

THE COURT: Right.

MR. WEHNER: When a company that is financially distressed because of asbestos liability goes into bankruptcy, brings all its assets and all its liabilities into bankruptcy, and a trust is formed to pay asbestos claimants, we set up this thing called an asbestos trust. It's run by this trust distribution procedures that you heard about and the diseases have values in that particular TDP. As Mr. Guy mentioned, they vary from trust to trust.

An important thing, though, that Mr. Guy did not say is that all of those trusts have what is known as a payment percentage. Because, because the debtor who went into bankruptcy with all of its assets, all of its liabilities was

financially distressed, the amount of money that could be paid to asbestos claimants was less than fully paying all their claims.

So each asbestos trust has what's called the payment percentage. And so if a claimant comes to a trust and they have a claim that's valued at a hundred thousand dollars, they may very well get a fraction of that from the trust. Because they, they might get 10 or $5,000 from the trust because the trust doesn't have enough money, just like the debtor didn't have enough money to pay those claims.

So all these trusts you're hearing about about how great they are, to claimants represent just a teeny portion of what they could have gotten if those defendants were fully able to pay their claims. So it's a -- it's -- it's not quite as rosy as Mr. Guy talks about.

Ingersoll-Rand and Trane and then, before them, American Standard, made dangerous products that incorporated asbestos, as you heard, like pumps, boilers, HVAC equipment. These products injured and killed thousands of people, continue to do so today, people installing and servicing these products unfortunate just enough just to be around these products when they were being installed or serviced. Family members who were secondarily exposed have been sickened and killed by these products. They're continuing to kill people today even after they were discontinued because asbestos fibers, they come into

your lungs and other organs and they stay there and kill you slowly causing mesothelioma and lung cancer and other diseases over decades.

Because of this Ingersoll-Rand and Trane had to defend themselves in court against lawsuits for personal injury and wrongful death. Ingersoll-Rand and Trane were the subject of, roughly, a hundred thousand lawsuits filed throughout the United States and as you heard, they paid about a hundred million dollars a year mostly to claimants because of that litigation because of their asbestos products. But those companies were worth billions. They could pay those claims.

Now you heard a lot this morning, you know, about asbestos. You heard a litany of the usual things that asbestos defendants say. "It's not our asbestos. We used the good asbestos. We stopped using it. It's really somebody else's asbestos. Somebody else should be paying these claimants." These are all just defense arguments. The place to make those arguments and the place where they were made for decades was in front of state courts. It's not here in bankruptcy court.

We also heard some sort of complaints about greedy plaintiffs' lawyers. We heard about state courts being broken. We heard that, "Oh, maybe some other system is better than the tort system." The tort system, state court juries are how these claims are decided, if they're meritorious, and paid.

Ingersoll-Rand and Trane decided to do something

different. They had billions, but they decided to do something different, something new. Unlike all these companies you heard about that filed for bankruptcy before, Johns Manville. W. R. Grace, all these ones you saw on that chart, those companies went into bankruptcy with all their assets, all their operations, all of it. They came into bankruptcy and they were there.

Ingersoll-Rand and Trane decided to do a new thing and that's the Texas twostep. In a nutshell, just weeks before bankruptcy, before they filed here, they did that divisional merger you saw and split themselves into good companies and bad companies. The good companies got all the assets. The good companies got all the operations, huge, huge amounts of assets and operations. The bad companies got the asbestos liabilities and they then filed, those asbestos liability companies, the current debtors before you, in bankruptcy. These companies have no meaningful operations. They have no employees. They're shells.

Be, because of the Texas twostep the assets and operations of these good companies are currently, currently, outside this court's ambit. These nondebtors, these good companies, are also enjoying a stay of litigation via an, an indefinite, nationwide preliminary injunction previously granted by this court. Meanwhile, this group of creditors, these asbestos claimants, are here with no operating

businesses, no employees, vendors, suppliers, or customers providing motivation for the debtors here to do anything. They have no pressure to exit chapter 11. They're incent, incentivized to play a long waiting game, to engage in litigation tactics at a leisurely pace. The debtors and their solvent affiliate companies have every reason to prolong this bankruptcy where they don't have to pay asbestos victims or even their own costs of defense.

So four years after they're filed, these cases, we're still here and this was all by design. As you heard from an earlier presentation, the court, this court, found that, "Project Omega team members expected and planned for a long-term bankruptcy prior to the 2020 corporate restructuring, one which they estimated would last for five or more years." So this delay was part of the plan.

Structurally, the asbestos claimants are trapped in this process, deprived of their constitutional rights to seek timely redress for their injuries while they suffer and die from asbestos diseases like mesothelio, mesothelioma and lung cancer. And meanwhile, the operations and assets of those, Ingersoll-Rand and Trane, they're off doing corporate things. They're off on their merry way. Their creditors are being paid. Their operations are not supervised by the bankruptcy court. Even their shareholders are getting paid dividends. It's an inversion of bankruptcy. Equity holders are being paid

first.

The delay is, has a meaningful impact on asbestos claimants. As we've heard, mesothelioma claimants die and that death has even more horrible consequences in that once they die, they lose legal claims. Compensation for pain and suffering is often not available to a decedent's estate in certain jurisdictions. Critical evidence is lost as the years tick by. Witnesses die. Indeed, the Chief Legal Officer of the debtors admitted in deposition that it is impossible to assert there's no harm to asbestos claimants for delay.

We've heard a lot about, "Oh, it's the asbestos claimants' fault that they haven't agreed to this settlement offer." This is a settlement offer under duress. Current claimants are left in an untenable and incolorable dilemma. Either they knuckle under and accept pennies on the dollar for their claims, a capped fund, or they remain in bankruptcy forever. Justice delayed is justice denied for asbestos claimants.

This Texas two-step idea violates fundamental principles of law. I mean, as I explained it, you, you might ask yourself why don't other companies do this? Well, they've, they're trying right now. If you can separate your assets from your liabilities and put your liabilities in bankruptcy, you know, any company that hurts people, harms people, could do this. The Third Circuit in the Johnson & Johnson bankruptcy

dismissed an attempt to do this and concluded that this stratagem's inequitable features were deeply troubling. The twostep violates the principle of bankruptcy that was articulated by the Supreme Court in the Purdue case just this year that "a debtor can win a discharge of its debts if it proceeds with honesty and places virtually all of its assets on the table for its creditors." That's not what happens here in this twostep. In this twostep, the assets are over there. They're gone. It's just the, the BadCos that are here.

The Texas two, twostep also violates the principle that a bankruptcy offers individuals and businesses in financial distress a fresh start to reorganize, discharge their debt, and maximize the property available to creditors. The twostep violates the core principle of bankruptcy that companies should bear the burdens of bankruptcy in order to enjoy the benefits. The debtors told you today expressly and explicitly that they did the twostep so they could enjoy the benefits of bankruptcy without the burdens. This is not the fair process that Congress envisioned when it enacted chapter 11. Rather, it is an abuse of that process that is doing real harm to the creditor asbestos victims.

What the debtors have done is motivated by this desire to delay and trap the creditors here in this bankruptcy. We've heard a whole lot about estimation and its glories today. Estimation, in estimation the debtors have sought voluminous

records from other trusts and, and other asbestos debtors, but the estimation really is not going to do anything. The Garlock case, again which you've heard so much about, proves this. The Garlock estimation resulted in a finding that Garlock's liability was 1, $125 million. The plan that was confirmed was for four times that amount. Garlock demonstrates that estimation is pointless. It makes no difference. We're just churning.

You heard about their plan. Mr., Mr. Guy was saying, "Well, I think the claimants would love this plan." Well, the plan was put out in 2021. They haven't done anything further. They haven't solicited. They haven't pushed it forward. If it is obviously beneficial to the claimants, we can see if they vote for it.

The Committee in this case -- and this is what my colleagues will tell you about -- is seeking to undo the damage that have been in, that has been inflicted on this creditor body. We've done that in several ways. You've heard about the motion to dismiss and that's up on appeal right now. And then we have adversary actions that are pending. One is for substantive consolidation that would reunite the GoodCo and the BadCo. Another is for fraudulent transfer which has the same effect, that the divisional merger itself was a fraudulent transfer. It took money away. And we also have a fiduciary duty adversary action. And finally, we will be proposing a

creditor plan. My colleague, Mrs. Ramsey, will speak first and talk about the issues that I indicated she was going to, to do and then Mrs. Hardman will speak to you about the adversary actions.

Thank you, your Honor. And I'm going to pass the floor to Mrs. Ramsey.

THE COURT: All right.

MR. ERENS: Your Honor, I apologize. I think I'm having some issue with something I ate either at the break or this morning.

THE COURT: I'm so sorry.

MR. ERENS: If I can, if I can ex - I don't want to stop the presentation, but if I can excuse myself and take care, hopefully I'll be back shortly.

THE COURT: Yeah, of course.

MR. ERENS: Okay. Mr. Evert will take my seat at the, at the podium.

Thank you. I apologize.

THE COURT: And I apologize for the noise.

THE COURTROOM DEPUTY: They came in here, but they couldn't figure out what it was.

THE COURT: What it was? It's like some --

THE COURTROOM DEPUTY: It's -- it's -- it happens sometimes up above.

THE COURT: Oh, I don't know. It's like someone was

crawling around.

THE COURTROOM DEPUTY: Yes.

MS. RAMSEY: Your Honor, may we approach with a, a slide deck?

THE COURT: Yes.

MS. RAMSEY: Thank you.

(Slide deck presented to the Court)

MS. RAMSEY: Thank you, your Honor. Again, Natalie Ramsey, Robinson & Cole, for the Official Committee.

Your Honor, there's been an awful lot that has been reported to the Court today and I want to start by acknowledging that we're not going to be able to respond fully to each of the things that have been said by the debtors and the FCR, but our failure to respond to it today doesn't mean that we agree with the positions that they've articulated or that the Court will not be --

THE COURT: Right.

MS. RAMSEY: -- hearing --

THE COURT: I'm not deciding --

MS. RAMSEY: -- some of those --

THE COURT: -- anything today, so.

MS. RAMSEY: Thank you, your Honor.

So starting from the most basic premise, the debtors and FCR and, on the one hand, and the Committee and the claimants see these cases very differently. Our perspective is

somewhat not intersecting and what I want to start with today from a very big-picture perspective is what these cases are about from our perspective. And they really come down to, essentially, three points.

The first is asbestos victims. The Court has heard about the asbestos victims. We, the Committee and the claimant tort counsel, who you heard from earlier, and others like Mr. Thompson, represent present claimants. We are the only constituency out there that can vote. We are the only constituency that are here who are aware of what is happening directly and who are exercising their independent judgment with respect to this case.

You heard about, and the debtors acknowledge this, the truly terrible, horrible diseases that asbestos cause, causes and, and the individuals that are here assert that their injuries were caused by the products that did contain, as acknowledged by the debtors, asbestos and were used by IRNJ and Trane, the predecessors to the current debtors. That included HVAC equipment, furnaces, hot water boilers, and railroad equipment.

The second thing that we're talking about today is delay-to discount. The Committee and the claimants that we represent strongly believe that this, these cases are a manipulation and a misuse of bankruptcy. These are brand new entities that were manufactured for the sole purpose of filing

this case so that they could seek delay and leverage in aid of their ultimate goal of discounting what they were paying as liabilities.

And the third is bankruptcy relief without the burdens and this is a key aspect to these cases, which is the real beneficiaries of these bankruptcies are not the debtors. The debtors have a funding agreement that's a full backstop that allows them to pay their liabilities. What is at issue in these cases is the relief to the entities, both those that created the divisive merger from the beginning to keep the operational assets out of bankruptcy and those that are the funders who have the operations that are outside of bankruptcy. Those are the entities that these bankruptcies are being prosecuted and pursued for.

What are these cases not about? They're not about the proverbial honest,-but-unfortunate debtor. They're not about rehabilitation. There is nothing to rehabilitate. These companies are shells. They have no employees. They have no operations. They have provided no service or product to the communities that they serve. The two themes that I heard that came across most strongly to me, anyway, in the debtors' presentation were, "The tort system has been unfair to us. We think that we had to pay money that we shouldn't have." And the second theme was, "The Committee and the claimants have been unreasonable in their unwillingness to settle for a cap on

their liabilities. And as we go through today, those are the two themes I'm going to try to respond to, but they take a little bit of time.

So the --

Next slide, please.

Your heard Mr. Wehner say -- and he's correct -- that these cases deprive asbestos victims of fundamental constitutional rights. And Mr. Guy said, "Well," you know, "they're not being paid. That's awful. Isn't it terrible that they're not being paid?" That is not the failure, we believe, of the Committee or the claimants to settle for a cap. That is the responsibility of the debtors for filing these cases. It is the bankruptcy cases that are staying their relief and the unwillingness to settle we'll get to at the end is, is mostly about the criteria that the debtors seek to impose on any resolution here.

But I think it's important to note that the way that, you know, this bankruptcy is structured brings in very basic notions of federalism. The states have a right, Mr. Guy may not like it, but the states have a right to pass their own laws that regulate their own citizens and what Mr. Guy views as unfair because there's differing treatment is the way that this country has been governed from the beginning and it relates to all kinds of different rights and remedies, not just tort litigation.

But the tort litigation that was out there is the way that our system of justice works and it is those courts that are set up to determine whether a plaintiff has a claim against, a viable, payable claim, against a defendant. And those cases are tried all of the time. The debtor would, debtors would like for this Court to usurp all of those other courts and make determinations about this debtor's liability, in general, en masse, and without the benefit of the plaintiffs being able to participate in that at all or having their individual state rights.

How are these cases different from prior asbestos bankruptcy cases? There have been many asbestos bankruptcy cases and as you've heard, many of them have settled. They have settled for a trust that has been established under procedures that I'll get back to and talk a little bit more about that do the best that they can to distribute limited assets to the claimants who are never going to receive full recovery.

These cases, though, aren't those cases. These cases are two of five Texas two-step cases that follow, essentially, the same procedure that landed them in bankruptcy. But the really unique part of this is these five cases, and, and including these two debtors, come into bankruptcy saying, "We can pay. We -- we will -- we will pay and we can pay and we could pay. As far as the eye can see, we could pay. We have

no concerns, not now, not in the future, about our ability to pay, but we just would prefer not to. We really like to have a new system that allows us to cap this liability and go on with our operations through a bankruptcy process."

Now who does that put the risk on? A capping of liability puts the risk on the recipients of that payment and it removes it from the debtors, which is what they would like, understandably. But understandably equally, the claimants do not like that notion that suddenly they should bear the risk the cap will be insufficient. Judge Whitley in his Findings and Conclusions -- I'm sorry -- in connection with his order denying the motions to dismiss said:

> "The justification for capping an asbestos trust under a plan is pragmatic—the debtor company seeks a 'final' solution to end the litigation in the tort system. Typically, the claimants agree to a sum of money to be paid into a trust that will be sufficient to pay all claims or as much as can be obtained, given the Debtor's limited resources. This arrangement places the risk that the trust fund will be depleted and insufficient to pay all claims and demands on asbestos victims. The history of the nation's asbestos bankruptcy trusts has demonstrated this to be a real and considerable risk."

And in fact, it has. As Mr. Wehner said, the trusts

that are established have what's called a payment percentage, which is essentially a calculation of how much of a assumed value that claimants would receive under the trust will, would be paid as comparison with the assets of the trust. So it's a mathematical calculation of the percentage that the trust will be able to pay based upon the expected allowed claims. In some of the asbestos trusts that are referenced in the debtors' slide deck as part of the so-called "Bankruptcy Wave," the payment percentages are as low as .6 percent.

So if you have a scheduled value in a trust and, and this is, obviously, a much more technical and difficult thing to sort of big picture. And I don't mean to get ahead of it because I think it's going to be critical that the Court understands how the asbestos trusts work and how these are governed. But, but fundamentally, I think the takeaway today is there is, to my knowledge, not a asbestos trusts out there that does not have a payment percentage and of all of the asbestos trusts that were surveyed when we were trying to determine this earlier today, all of them are less than, are 60 percent or less. Only one was 60 percent, three or four in the 50ish percentile, and then it drops dramatically with many, many in the teens and twenties.

So --

THE COURT: So not trying to like --

MS. RAMSEY: Uh-huh (indicating an affirmative

response).

THE COURT: I'm just trying to understand this.

So is Garlock a percentage?

MR. GUY: No. Garlock pays claims in full and the plan, the order provides for that, the trust provides for that, and we have the funding for it.

So it doesn't, doesn't pay a percentage of a claim. If you -- it -- if you have a --

I'll stand up. I'm sorry, your Honor.

If you have, you meet the factors and you have a valid claim, the settlement offer is $200,000. You get $200,000. You don't get a percentage of that.

THE COURT: So what -- are you referring to a different type of percentage?

MS. RAMSEY: Yes, your Honor. I'm referring to payment percentages about -- Mr. Guy has only spoken about Garlock and I'll address that just briefly in a moment. But there have been many, many, over 50, bankruptcy trusts created and in those trusts, typically -- the Garlock trust is different, is set up differently than many, many of the asbestos trusts -- but when you look at this -- and, and what Mr. Guy said at the end I think is important that we're focused on what his definition of "in full" is. His definition of "in full" is a claimant accepts an offer. It's not -- whether that is payment in full or not is, is an issue that we will discuss,

I think, at another hearing or argue about over at another hearing.

But, but we certainly disagree with the characterization that the Garlock trust is paying claims in full.

THE COURT: Okay. So the other ones you're talking about where, say, it's .6 percent --

MS. RAMSEY: Uh-huh (indicating an affirmative response).

THE COURT: -- can you -- so that, the claim would be $200,000, but then they're getting .6 percent or are you saying that the claim --

MS. RAMSEY: That's what I'm saying, your Honor.

THE COURT: That's what you're saying. Okay.

MS. RAMSEY: You have that exactly correct.

And, and even then, again I don't want to get too in the weeds on the bankruptcy trusts because they are, they are all technical. They all have their unique aspects to them, but the Court also asked the question about, about the liability for these trusts.

So the liability for each asbestos trust is the same. It sort of inherits the, the defendants' asbestos liabilities. And so each trust is set up to fund that defendant's several liability. And so as Mr. Guy was explaining, to the extent that someone has multiple exposures, they would look to the

trust instead of the available defendant.

But my point, really, in bringing this up was to address something that Mr. Evert sort of suggested, which is that this trust system had somehow replaced the defendants and there was all this money available to claimants through the trust system. And on its face, the, the trusts were, you know, were funded and you can calculate what that total funding was. But in reality, when you look at what the trusts are paying, it is a fraction of, of what even the scheduled value was under the trust, an assumed value, let's say, just for, not, not getting too technical into the trust lingo. And, and so the notion that somehow as part of this there was, the, the claimants were getting paid unfairly, is one that we heavily dispute. And again, we can get further into, into that notion.

But as we go through this process -- and, and I apologize 'cause I feel like I've already gotten farther down that --

THE COURT: I'm -- I'm -- I'm --

MS. RAMSEY: -- rabbit hole than I intended to.

THE COURT: -- the one who's led you astray. So I take --

MS. RAMSEY: But --

THE COURT: -- full responsibility.

MS. RAMSEY: But -- but I -- the point I'd like you just to take, take away, I guess, two points on that.

No. 1, the debtors, I think, acknowledged that they want a cap. And we'll get to that.

No. 2, caps present, change the risk from the entity that has it and can fully pay it to the claimants who are injured victims looking for compensation and have a fully solvent entity that, if it is determined to be responsible, can pay to the extent of its responsibility.

And, and third, that this notion that trusts are some sort of wonderful, have turned out to be, anyway, some sort of wonderful system that is much better than the tort system is simply not proven to be correct.

So how are these cases different from other cases? Again, manufactured new entities. You have tort liability that was assigned from the actual tortfeasors. You don't have the tortfeasors filing for bankruptcy. You have asbestos creditors who are uniquely isolated in this new entity that has been created with limited assets and a funding agreement. And all of the other creditors of that entity have been assigned to the operating entity which goes ahead and pays all of those creditors in the ordinary course.

So the asbestos creditors have been structurally subordinated through this divisive merger process. There are no -- it's not a real company. There are no businesses. There's no operating businesses. Even the employees are what's called seconded. They're, they're loaned to this new entity.

It is propped up by a company that remains outside of bankruptcy. It's, it's a manufactured bankruptcy case. They don't need to restructure. They're not in it to rehabilitate anything. There's no benefit to the entities themselves that are debtors here. The benefit is to their equity holders and the benefit is to their affiliates who are currently benefiting from the preliminary injunction and who hope to benefit permanently from a permanent injunction.

But there is actual harm to the asbestos creditors. And this has been structured specifically. This is not accidental. This was planned this way, the, the very divisive merger and the structure of these. And you're going to hear more about this in a moment. And the contracts that go back and forth between the entities were specifically structured to impede the normal creditor protections that are in a bankruptcy. Mr. Thompson mentioned the fact that dividends are being paid by the entity that's out of bankruptcy, whereas if the entire original tortfeasor entity had filed, that would not be happening. I just mentioned the fact that other creditors are being paid in the ordinary course, whereas the asbestos creditors are held in abeyance. There are other structural aspects to this that are designed to inhibit protections, including the potential success of a creditor plan. And I'm going to talk more about that in just a moment.

But these entities filed for bankruptcy 48 days after

their creation. That's unheard of. They didn't do anything in those 48 days other than get ready for filing for bankruptcy. They were created and they filed because they were looking for a discount. They were looking for a way to limit the spend.

The real and intended beneficiaries of these cases are the non-debtor entities and this is one of the provisions that is most shocking in this case, to me anyway, which is when the funding agreements were created, which, again, was before bankruptcy, they provide that the only way that the funding agreement helps fund a plan is if the payors, Trane and TTC, the two entities that are outside of bankruptcy, get all the provisions of a permanent injunction under 524(g) relieving them of asbestos claims. I've never seen a provision like that and Judge Whitley had commented that he had not seen anything like that, either.

You heard from the debtors some early quotes about Judge Whitley when these cases were initially filed, but in the order denying dismissal, which was just shortly before he announced his retirement, Judge Whitley said as part of his plea to the Fourth Circuit to take direct certification of the denial of the dismissals, that:

> "Until the propriety of the 'Texas Two-Step' and its use by solvent 'non-distressed' corporations is determined by the higher courts, no progress will be made in these bankruptcy cases.... They're just

spinning round and around, to the growing frustration of all."

That is exactly the issue from the perspective of the claimants. The, the use by solvent entities of bankruptcy to try to obtain benefits and changes and take advantage of sections of the Bankruptcy Code that were specifically designed for companies that couldn't pay all of their debts is what is at issue from the creditors' perspective. The debtors have been enjoying a litigation holiday. They have no operating businesses. So they have, they have no pressure on them at all to try to move this case forward. As Mr. Wehner said, they can stay in this and play at litigation all they want. And you heard a little bit about, you know, it's an expensive process. It is an expensive process, but by our calculations the debtors are saving about $69 million a year over what they were spending in the tort system. So they're not really -- they're -- they're not spending nearly what they would be spending outside of a bankruptcy. And so this process is very, very beneficial to them.

So how do we bring these cases to conclusion? We can only think of three ways: Either the cases are dismissed, there's a confirmed plan, or, ultimately, there's a failure to be able to confirm a plan, which, presumably, at that point would result in dismissal, or there's the adversary proceeding litigation, which is intended and hoped to remedy the -- the --

the diff -- the unfairness and the, and the financial position that the creditors were put into when these two companies were separated out from one another.

So I'm going to go back and I'm going to try to take some of the points a little slower and also respond to some of the points that were made during the debtors' and FCR's presentation.

So the Court has now heard about asbestos disease, especially mesothelioma. It's an incurable cancer. Typically, from the date of diagnosis a person only has 4-to-18 months to live. Five-year survival rate is about 10 percent. So looking at the four years that this case has been in bankruptcy, it is very likely that all of the claimants that were alive at the time this case was filed have passed and that many that were diagnosed after the cases were filed have now passed from that disease.

Asbestos disease has a latency. And this is the, starting to get into and I think everyone has sort of jumped right in to 524(g) and asbestos relief and the asbestos trusts, which is, assumes a, a base of knowledge. I don't know whether the Court has had experience with that or not, but the, but the reason for 524(g) of the Bankruptcy Code is really -- and, and the creation of that in the John Mansville [sic] resulted that birthed it -- was really the latency period, which is why you have a Future Claimants' Representative because you have a

population of exposed individuals who don't know they're sick. And so the, these cases, therefore, require looking not just at valuing the present claims, but estimating what the liability would be for the rest of, of time. The symptoms for asbestos disease usually present themselves 20-to-30 years after exposure. So if you're looking at most of, a, a case like, like these, you're looking at 50 years in the future.

So the other thing about asbestos that is unique is that asbestos cases have to be individually tried. They -- each individual's circumstances are different and it is, it is simply in the class action process they have determined that you cannot have a representative class member. Because everyone's individual circumstances are different. Your age is different. Your personal circumstances, do you have children? Do you have, do you have a spouse? What was your income potential? And most importantly, what were your exposures to asbestos?

You, you heard during the presentation today a statement that, that the debtors' position is only certain types of people really could have been exposed to the asbestos that these debtors were responsible for. Well, if you were that person who worked for 50 years maintaining boilers and that's what you did, you might have three-or-four manufacturers of boilers that you serviced. If you're someone who worked in construction, you might have 20 or 30 different types of

products that you were exposed to. Those all go into the valuing of what an individual asbestos claimant's case is, in addition to the differences that are available under different state laws. As you heard earlier, some states allow punitive damages. Some states are joint. Some states are joint and several. There are all kinds of different components to the litigation.

You also heard earlier -- but this is also critically important -- each individual is entitled to a jury trial. A jury trial is a fundamental constitutional right and in 28 U.S.C. it specifically provides, 157 provides that personal injury and wrongful death cases have to be tried in the district court. They cannot be tried or resolved in the bankruptcy court.

So this will get into the conversation about estimation because estimation is not a binding decision. It doesn't determine the liability. It is a best estimate based on the information that is presented to the court. For living mesothelioma claimants, though, in particular, time is of the essence and not having the right to pursue your, your case in realtime does have real and, perhaps, lasting consequences to those individuals.

Next slide.

Pre-petition litigation. So the, the debtors spent approximately $2 billion resolving asbestos claims and about a

hundred million a year right before bankruptcy settling about 900 mesothelioma claims a year. Now you heard that this "Bankruptcy Wave" -- you saw the very pretty slide with the "Bankruptcy Wave" that the debtor presented -- but there are other reasons that claims have, would have been asserted against the debtors, including, and importantly, in the single case, the single verdict that was ever taken against the Aldrich debtor was a take-home exposure case. So this is a wife who was secondarily exposed, exposed through her husband's occupational exposure. The worker died at 59 from mesothelioma. The verdict for the plaintiffs was seven million plus costs and Old IRNJ settled for 9.2 million.

So the notion that -- the debtors' presentation of, "Gee," you know, "look. There's such a, a small liability here," is, is really belied by the fact that when cases do go to trial, this can be the result. And so there is an incentive to resolve cases aside from what the debtors would have you believe, which is that it's simply the financial realities of defending cases versus settling them.

And I wanted to bring to the Court's attention another case. When the Garlock case was pending, there was another case that was pending called Bondex, Specialty Products Holding Company. It was pending in the District of Delaware. The two cases were filed within a couple of months of each other and, and pursued somewhat similar paths, ultimately, but with very

different results. And in the Bondex case Judge Fitzgerald, who was presiding over that case, was faced with a similar argument to the one that the Court heard today, which is that settlements were often driven by the cost of the legal system and among other things in her estimation decision, she said:

> "Although, *arguendo,* we can accept the proposition that Debtors settled cases, in part, to avoid legal fees, we cannot accept the proposition that Debtors' historical payments must or should be reduced by those amounts that Debtors now attribute to implicit defense costs. Again, regardless of the quantification of defense costs developed" -- and I'll -- "by Dr. Mullin's" -- that was the debtors' expert -- "analysis, settlements are not unilateral deals and there is no evidence to suggest that tort plaintiffs would accept," there, "20,000 or less, on average, per settlement. While we agree that settlements typically include a statement that the settlement is neither proof of liability for the underlying conduct that led to the claim, nor that it represents all damages to which a plaintiff is entitled, it cannot be rationally doubted that the a settlement places a value on the claims that both parties agree to accept. Otherwise, there would be no settlement."

So just -- our, our position is exactly the same.

Settlements are reached for a variety of reasons and there are two parties that reach settlements. And the debtors' view of why it decided to make a particular offer, enter into a particular settlement is only one part of that equation.

So turning, then, to why, why then did they file for bankruptcy? The whole reason that the debtors are here is section 524(g). And you heard a couple of statements about this today, but section 524(g) was enacted in 1994 and it embodied some of the key elements of the John Mansville resolution of its asbestos liability.

What 524(g) does uniquely to any other provision in the Code, it is the sole exception to 524(e) in that it explicitly permits under certain limited circumstances for the court to provide a nondebtor with the benefits of a permanent injunction that is obtained in an asbestos case by a debtor. And this will go to, again, arguments that the Court will be hearing as we start to move forward, but the entire construct of the divisive merger and the agreements that were a part of that and the way that this bankruptcy has been commenced were all trying to thread needles to enable the debtors to try to provide the non-debtor affiliates with 524(g) protection without them having to be in bankruptcy themselves. And that is not how 524(g) came to be and that type of manipulation, the claimants believe, is simply wrong.

We talked about 524(g) requires a legal representative

for the purpose of protecting the rights of those purpose, persons that might subsequently assert demands. It is the FCR's role to represent the interests, protect the rights of future claimants. The FCR does not represent individually the rights of these unknown people. And that will become important because 524(g) expressly requires a 75 percent vote by present claimants, not future claimants -- we'll get to that in a moment -- and it authorizes a court to then issue an injunction, again within very, very specific and discrete criteria. But I think it is fair to say that 524(g) did not, when it was enacted, did not anticipate this type of case.

So the corporate restructuring. The Court has heard some of this, but just, again, some additional comments on the Project Omega, which is the name that Trane gave the divisive merger transaction.

The question that one of the debtors' representatives was asked during deposition was:

"Q Prior to the corporate restructuring did asbestos litigation have an impact on the day-to-day operations of Old IRNJ or Old Trane?

"A I would say not directly. Those entities were buying and selling and doing all the normal things that active companies would do."

And then the question was:

"Q After there was a determination that you were

going to do this divisive merger, was it your belief that it was probable that the Trane entities would end up paying out less money to claimants if the bankruptcies were filed?

"A In my mind from recollection, it was a probability."

This was a lawyer-driven transaction. This was not a financially required transaction that was, that was started with financial strain; and, therefore, a thought of bankruptcy. This was lawyer driven. How did -- how was it that, that they learned about it? They learned about it from the lawyers in the Bestwall case and they learned about it because their General Counsel had come across some pleadings from Bestwall and thought that this would be a legal strategy that looked interesting. They did all of this transaction, of course, knowing very much what was going on in the Bestwall case that had been filed a couple of years before this one.

And so when the debtors say, "We were surprised. We thought this would just be Garlock and we would come in and we would do exactly what we did there," it is hard to imagine that the debtors were thinking in light of the positions that were being taken in the Bestwall case and even in the DBMP case at the beginning of that case opposing these transactions that they really believed that this was a structure that would yield a settlement.

It's also notable that they say they wanted a settlement, but they didn't, as far as we're aware, reach out to anyone in advance of filing this and saying, "Hey," you know, "we know we're in constant settlement talks with you. We're thinking about this strategy as a means of resolving our liabilities." The filing was done under cover of confidentiality and non-disclosure agreements and the claimants learned about it only after it was underway.

Anatomy of the two-step. We had a, a cute little slide here, but I think the debtors' might have been better. But, but from ours, again this, this sort of summarizes our view of, of how the outcome of the twostep affected the asbestos creditors.

So the terminology, BadCo/GoodCo, was developed, I think, by Judge Whitley during the hearings on the preliminary injunction. But the BadCo, which is Aldrich and Murray, got the asbestos liabilities, got some equity interest in a subsidiary, a little bit of cash, and the asbestos insurance assets. And the entities, the GoodCo entities that are outside of bankruptcy got all of the non-asbestos liabilities, all of the other assets, all of the business.

Then you have this funding agreement which is fundamental to the assertion that the debtors make that they can pay everything, but we're going to get to some of the concerns with the funding agreement and the way that it

actually operates when it matters in these cases. It is conditioned on terms unilaterally determined by the funding parties. It is controlled by the non-debtor affiliates and it has a conditionality that renders it almost illusory in many respects.

So let's talk about the, the goal of Project Omega. You know, the Court, again, has heard some of this, but this was always the purpose. This transaction was completed for the express purpose, the sole objective was to spin off the asbestos liability and put it into bankruptcy. The funding of the debtors entity, debtor entities was very limited. We said "a little bit of cash." Aldrich got 26 million. Murray, 16. They each got equity in a subsidiary and they got these, these insurance rights. And Judge Whitley determined in his Findings and Conclusions in connection with the preliminary injunction hearing:

> "While we do not here estimate Old IRNJ/Old Trane's asbestos liabilities, it should be noted that their assets greatly exceeded their combined operating and asbestos liabilities. By contrast, and disregarding the Funding Agreements, Aldrich and Murray's assets were not then, and are not now, sufficient to satisfy their liabilities."

That was a determination that Judge Whitley could make on the face of the evidence at the preliminary injunction

hearing very near the beginning of these cases. The funding agreement is, are the difference between whether these entities can and will pay or will not.

So the intercompany agreements. And this is where some of the really difficult part of this comes in. We've mentioned Aldrich and Murray have no employees. The, the folks who are in charge of the day-to-day running of the really bankruptcy litigation are in-house lawyers that were seconded to the debtors. And New Trane Technologies Corporation provides strategic administration, finance, tax, and legal services to both debtors. So they have no internal control or actions that they're taking, even with respect to the most basic, normal business operations.

So the funding agreements. Judge Whitley found that the funding agreements are essential to the debtors' assertion that each has the ability to pay and resolve valid current and future asbestos claims and other liabilities as existed with the original Old IRNJ and Old Trane before the restructurings. That is so because New TCC [sic] and New Trane have committed to giving Aldrich and Murray, respectively, the necessary money at the appropriate time. However, the nondebtors have a stranglehold over the outcome of these cases. Without the financial support of the nondebtors, the debtors would be administratively insolvent, not to mention unable to pay their asbestos liabilities.

The debtors -- the nondebtors also have put provisions into the funding agreement that requires the Court to provide them with 524(g) relief whether the Court were to determine they qualify or not Otherwise, if they don't get it, they don't fund. It requires a plan to be acceptable to the nondebtors. It envisions a lump sum and a cap, which, again, requires the agreement by the payors. They argue now that this lump sum requires an estimation proceeding. We'll get back to that. And it prevents assignment of the funding agreements so that if there were to be a creditor plan that sought to utilize the funding available, they have cut off the ability of creditors to do that. And importantly, and again kind of astonishingly, practically, the, "Practicably, the only people who can enforce the agreements are the very people against who they would be enforced." Judge Whitley made that determination, again after the evidentiary hearing in the preliminary injunction trial.

So in sum, the funding agreements are not unconditional promises to pay. They are, instead, conditional agreements depending on New TC and New Trane's approval of a plan and a continued good health and willingness to pay.

So what did the debtors do? You know, they say, "Well, okay. In addition to the funding agreements, we've also shown our good faith by putting forward a, a qualified settlement fund of 270 million." However, the QSF documents

provide that it would automatically terminate if there were no bankruptcy and that, then the QSF would be dissolved and the money, of course, would go back to the payors.

So key rulings and developments in the bankruptcy case so far, from our perspective. First of all, the preliminary injunction. The preliminary injunction did, was filed on the petition date. Again, the whole purpose of the bankruptcy, from our perspective, is to render relief to entities that have decided not to come into bankruptcy. It sought to extend the protections of the automatic stay and to enter a preliminary injunction protecting protected parties that are described in there, which is over 200 non-debtor affiliates, 15 indemnified parties, and some 180 insurance, insurers.

You heard, I think, as part of the debtors' presentation, "Oh, this is just a normal, every-day thing, these preliminary injunctions." And in some respects, preliminary injunctions are routine in that very often they are entered to protect entities that are going to contribute to a bankruptcy and enhance the pot. That's the whole -- 524(g)'s purpose was, you know, if, if we're dealing with a need for trying to maximize the pot and we have insurance assets out there that haven't been liquidated and we have potential recovery actions, fraudulent-conveyance type actions, and we can settle all those and get a pot together that increases the funding that's available for creditors and we want to give them

interim protection so those assets aren't dissipated through the same litigation until we have a chance to put this together.

But here, the justification, to us, simply makes no sense. You have an entity that's saying "we can pay it in full." Nobody, nobody else could contribute in order to obtain the protections of this unless, again, it is manipulated in order to try to cross a "t" to obtain benefits for entities that do not, not entitled to them, were not the intended beneficiaries of this type of relief.

So the debtors moved for partial summary judgment. There was discovery. Ultimately -- and, and we mention some of this, In part, because the court has already found the need to disregard what he described as self-serving witness testimony proffered by the debtors and non-debtor affiliates who were attempting to use the attorney-client and work-product privileges as both a shield and a sword. That is an issue that, again, will be coming back to this Court if the debtor is able to obtain what it asks the Court to do, which is to continue on the estimation path.

So the court found as part of the adversary proceeding that the sole purpose of Project Omega was the bankruptcy filings. Also found that the funding agreements require as a precondition to funding that New TTC and New Trane received the protections of 524(g) and specifically noted that whether they

were legally entitled to it was an open question. And even if they were, expressly noted that the current asbestos claimants would need to agree by a 75 percent vote to approve the plan.

That is the same finding, your Honor, that the debtor was referencing when there was a reference to a quote that was taken out of context from the Fourth Circuit that talked about the, the creditors, the present creditors, being at risk of some sort of cramdown or involuntary result was belied by the requirements of the Code. And this is, this is what the Fourth Circuit was talking about, was this 75 percent vote by current creditors meant that the current creditors had some control to prevent that from occurring despite the fact that we've received quite a lot of criticism for not agreeing to what the debtors would like us to agree to. It is that 75 percent vote that ultimately has enabled the claimants to try to present some of these other very important, overarching issues to the Court.

Next slide.

However, at the moment the court found, "The divisional mergers had a material negative effect on the asbestos claimants' ability to recover on their claims." That was back in May of 2021 and we are now in October of 2024 and the material negative effect on asbestos claimants continues and it affects a greater number of asbestos claimants. And importantly, you heard some suggestion that this was a better

result for the asbestos claimants. "We were, we did this because it's better for us and it's better for them." The court has found, and we certainly agree, that these actions were not undertaken for our benefit. They were designed to isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy until such time as they agree to a plan. And that has been our experience, from our perspective, and that sums up our response to the debtors' complaints that it is the claimants' refusal to, to agree that has caused the delay in this case. We have been stranded in the bankruptcy. There is a path forward, but it is not the debtors' path.

So the preliminary injunction, though, has provided the nondebtors, in addition to the debtors, with a extraordinary level of bankruptcy protection without the normal protections. The -- Trane and TTC can go about their business. They can pay their other claimants. There are no reporting. There's no transparency. There's no restrictions on their incurrence of debt. They, no restrictions on dividends and at the moment, they continue to enjoy all of those protections while these cases continue.

And Trane plc is doing great. So as of today, it has continued to enjoy great jumps in its adjusted earnings every year. It has free cash flow of 2.2 billion, 103 percent of adjusted net earnings, and its annualized dividends as of 2024

were about 761.3 million. It's not affected at all by this bankruptcy and yet the asbestos claimants have received no compensation at all.

So moving to the FCR's settlement and the debtors' plan. First, I think it's important that the Court be aware -- the, the debtor said, you know, "We filed this plan in 2021." And Mr. Guy said, "If the claimants were here today and they were offered this pool of money, I'd bet they'd say yes." We have been saying since the motion that the debtor filed to estimate, "Let's get on with the plan process. You filed your plan. You put a number on the table. Let's go forward. Put your plan out to vote. Let, let's hear what the claimants say. Put the plan out to vote and if you get the vote and then there's some issue over whether the pot's sufficient, we can take it up as part of confirmation."

But this notion that estimation will advance this process is the debtors'. The debtor objected to that. The debtor didn't want to do it that way. The debtor said, "No, no. We, we need an estimation so we can enter into a dialogue with the current claimants." Respectfully, your Honor, there, there is no there there to that statement. These parties are all sophisticated. All of the experts that are involved, estimation experts in these cases, know each other. We know the debtors' expert extremely well. The debtors' expert is an experienced expert, does estimations outside of bankruptcy,

inside of bankruptcy. When the experts get together, they can figure out pretty closely, at least Dr. Bates can figure out, within a range what the claimants would assume liability is. These are not big secrets. This estimation Is not designed to facilitate a dialogue between the party.

And the Court heard earlier today from the debtors' presentation there's been a mediation for the last two years. It hasn't resulted in a resolution as of today.

This estimation process the debtor is asking the Court to continue on is, in part, in aid of this plan and it's, it's simply not going to get there. The, the settlement that the, the FCR and the debtor have reached is for 125 million for the present claims and 375 million for the future claims. The settlement amount is lower than the pre-bankruptcy projections of the debtors' asbestos liability.

In September of 2021, the debtors filed a plan with that figure in there. It attaches a trust distribution agreement that proposes how those claims would be resolved by a trust. The FCR executed a plan support agreement. And yet, the debtors haven't filed a disclosure statement. They haven't sought to solicit votes despite our urging that they move on with their plan. They could move forward with the plan process and test whether their plan is going to receive a confirming vote.

Even if it were to receive a vote -- and we believe

that it would not ever receive anything like a vote -- the proposed plan is patently unconfirmable. It provides for a future asbestos claims to be voted by the Future Claims' Representative. The Supreme Court in the Kaiser Gypsum case specifically said that the vote is for current claimants. Judge Beyer has said the vote is for current claimants. This court has said, Judge Whitley, the 75 percent vote is for current claimants. The FCR represents interests, very much like a committee. The Committee doesn't vote for the present claimants. The present claimants vote. The FCR can approve or oppose, but the FCR does not get a vote.

It provides for 524(g) relief to be provided to entities that do not satisfy the statutory requirements and that would be a two-day argument. So I'm not going to further explain that other than to say that that is our position.

Next slide.

The plan -- and the Court heard this earlier -- is patently unconfirmable because it does deprive the claimants from their due process and Seventh Amendment rights because it seeks to put them in a position where they would litigate against a trust at the trust expense and if they were to succeed, then they would take a larger portion of the money than the, than was anticipated, presumably under the trust, and that would then result in a payment percentage, which would not be a full-pay case. And so the --it, it's not -- it's not --

the way that the debtors' plan is structured, it does not preserve, truly, the benefits of the tort system. The only way that this works is with a full optout from the plan.

And so in connection with the order denying the motions to dismiss, some of these issues were presented and this court pointed out that asbestos claims as tort claims are subject to the right of trial by jury and that the bankruptcy court cannot determine those rights and specifically called into question the constitutionality -- and this was the Ortiz v. Fibreboard argument that the Court was hearing earlier -- of channeling asbestos claims to a capped fund without an optout.

So as part of the analysis in Ortiz, the Supreme Court concluded that a "mandatory 'no opt-out' settlement of a defendant's aggregate mass tort liability is unconstitutional if the defendant's resources are sufficient to fully pay all the claims."

Now the debtor has said that was in the context of an MDL. That wasn't a bankruptcy case. Well, that's correct, but it was a federal district court jurisprudence question. And if you -- the Supreme Court concluded that you cannot do that in a class action. It follows, from our perspective, that you cannot do it in a bankruptcy case. That was not what 524(g) was intended structurally or at its origin to ever permit.

Ortiz held that the defendant could justify depriving individual asbestos creditors of certain rights in a limited

fund case, but ultimately concluded, this court concluded that if the debtors have adequate resources to pay the claims against them, that "due process requires that the 'plaintiff must be provided with an opportunity to remove himself' from the aggregate resolution process."

So here, the Trane enterprise is undeniably capable of paying asbestos claims in full. It has a market cap of 88.485 billion as of October 8 and its Chief Legal Officer explained that if the funding agreements were honored, he would have no concern that the debtors would be capable of paying future claimants in the tort system until at least 2033. That was not his limitation. That was the question he was asked. That was the time period he was asked and his answer was that he would have no concerns. And this demonstrates, again, that the debtors' plan simply is patently unconfirmable and that may explain why the debtor has not pursued it. However, the debtor could amend it and if it believes that the right number is the number that it has settled with the FCR for, then we would urge that it do so.

What we really believe -- and we said this at the time of estimation -- that, that this is a tactic to avoid appropriate plan challenges. We could accelerate some of the important determinations, some of the important issues in this case if we have a plan process. Because those will necessarily raise these overarching questions that are unresolved by going

forward with something like estimation.

So what would the debtors, you know, like to do? They've told you over and over again. You heard Mr. Erens say it at the end of his presentation today, "We, we want to get on with estimation. We think that'll facilitate an agreement with present claimants." We've had two years. It, it hasn't facilitated anything. I understand today that some, some of the debtors' explanation is "it's taken us a really long time to get them to agree to this and agree to that. It takes two parties to agree." It has taken a long time to get to agreement on these things, but that is not, that is not the only thing that the debtor could have been doing during these cases. Again, the goal here was always, and the court found, to isolate these asbestos claimants and strand them in bankruptcy. And that has been the course these cases have taken.

You heard today, you know, again, about, "Oh, gosh," you know, "In Garlock, it worked." Garlock, first of all, was a very, very, very different case. Garlock was not a Texas twostep. Garlock had a parent that was prepared to help fund a trust, but Garlock had assets of its own, had litigation. Event, you know, the case went forward on estimation. It was, to my knowledge, before the Texas two-step cases. The Bondex case and the Garlock case were the only two cases, I believe, that had ever taken estimation before you got to a, a

confirmation process. Those, they sort of reversed the, the ordering. The eventual settlement on trust funding was four times the amount that, of the estimation value and it took a long time. The estimation was not, simply not part of what ultimately led to that resolution.

So estimation is a long road to nowhere. The debtors already have a number in their head. They insist on a cap. The claimants will not agree to a capped funding and estimation is simply going to result in delay. In our opinion, it will not advance at all a consensual resolution of this case.

So the motions to dismiss. The Court is aware that's, you know, one path here is the debtor, is the debtors' plan. Second path, dismissal. The Committee and the claimants filed their motions to dismiss. I'm going to run through this 'cause the Court, I think, is aware of it. Raised a number of questions about both the constitutionality of the case and also with respect to whether it's an appropriate bankruptcy, given the nature of the ability to pay; raised "new debtor" syndrome. It was joined in by the, at least the claimants' motion was joined in by a number of other claimants. It was not simply an individual claimant motion.

Ultimately, the court denied dismissal and denied dismissal finding that he did not agree with the constitutionality argument, Judge Whitley did not, and he found that Carolin was, prohibited him from dismissing under

applicable Fourth Circuit precedent. However, he made some key findings that reflect his discomfort with these cases. Again, this, these are just at the end of his tenure so he had had some time with the Aldrich and Murray case by the time he made these rulings.

First, he found the commonsense principle that "a solvent, non-distressed corporation should rarely consider bankruptcy—even less be afforded its protections." He said that there had not been a determination regarding the debtors' financial distress or lack thereof. And he agreed with the movants, the Committee and the claimants, that the Fourth Circuit's Carolin two-prong test may have been intended to only apply in the instance of a debtor that was already insolvent or at least distressed. And it was on that basis that he asked the Fourth Circuit to accept the cases. As you know, the Fourth Circuit declined and those cases are currently pending in the District Court.

There are other grounds for dismissal that the Court may hear in the future. One of the questions that we will have this time is whether the District Court will treat the current appeal the same way as it did appeals from motions to dismiss in the Bestwall case. In the Bestwall case, there was a denial of a motion to dismiss. It was certified. The Fourth Circuit denied the certification. The, the appeal went to the District Court and the District Court concluded that an appeal from a

motion to dismiss is interlocutory and declined to accept the interlocutory appeal.

So we are hopeful that the District Court this time, if it makes a determination that the appeal is interlocutory, will take it or will make a different determination that, that it's an appeal as a matter of right.

To round out sort of the dismissal conversation, the, there was also a motion in the Bestwall case to dismiss on the basis of lack of jurisdiction based upon the Constitution. Similarly to Judge Whitley, Judge Beyer denied that motion, but also certified it for direct appeal to the Fourth Circuit. The Fourth Circuit accepted that appeal and that appeal is pending before the Fourth Circuit likely to be argued in the early part of next year. It is currently in the process of being briefed.

So where are we today? We have the debtors' plan, which is stalled. And again, we believe if the debtors really have the conviction of what they say, they really want a settlement, they really want to get this case moving, they should move forward with their plan.

We have estimation. Estimation is, discovery's ongoing. There's a negotiation of a 502(d) order and discovery protocol. That's ongoing. We have adversary proceedings that you'll hear a little bit more about from Ms. Hardman that are ongoing.

So we have to look at the path forward. The debtors'

path, we think, is a path that will hold us in this case for an extremely lengthy period of time. Again, we agree very much with Judge Whitley's conclusion that the debtors' strategy is isolation and stranding. It is a litigation strategy designed to try to force agreement.

The debtors say -- and the Court probably got some sense of this -- "we want to settle, but," you know, "everything," anytime that, that the creditors disagree with anything the debtors have proposed, then they're unreasonable. So the, the settlement dialogue is, is somewhat, somewhat hard to accept.

The, the evidence reflects from the time that this Project Omega was planned, they were looking at a bankruptcy that would last five or more years. That was their plan, five or more years. Well, that, they're, they're perfectly happy to have this case continue. As the Court, I'm sure, is aware, the Bestwall case is about to celebrate its seventh year in bankruptcy. Estimation has been going on in that case for a much longer period of time and likely will last certainly more than another year.

So the effect of the debtors' plan. Delay, which has real and tragic consequences for the claimants. And also, the debtors' plan path is unlikely to result in any kind of ultimate consensual resolution.

So what do we propose? We propose dismissal and we

have moved forward with that. That is, again, moving forward through the court system, through the appellate system. To the extent that those appeals are ultimately unsuccessful, the Court may hear from us again on dismissal.

Move forward with the plan process. The Court has heard we are preparing a claimant plan. Our plan would intend to provide an optout to the tort system, one that will properly protect the claimants' due process and jury trial rights and would give them the option of proceeding in the tort system if they were to so conclude. An optout is essential in this case. If the debtor would propose an optout as part of a plan structure, that would enable a claimant to go into the tort system and try its case if it was unsatisfied with a resolution under a trust. That would be something that the claimants would talk about.

And your Honor, if you believe, again, what you're hearing from the debtor and the FCR, which is, "Most of them will take the, the easy money. They don't really do it because once the money's there, they take it. There are very few that are really going to want to push this forward. Look at our statistics where we only have about 5 percent that are really valuable," if that is true, what is the problem with an optout, especially if you're offering a fund that would otherwise suit your own interest?

With that, your Honor, I, again I apologize that there

is so much to talk about today that it's hard to adequately cover it and it gets at times a little bit disjointed. But we do look forward to continuing the dialogue with the Court and answering any questions that you have as we move forward in the case.

Ms. Hardman?

MS. HARDMAN: Thank you, your Honor. If you'll permit me, I'm going to bring up the caboose on behalf of the Committee here. And I will try to be brief. Carrie Hardman from Winston & Strawn and here with Mr. Neier, again as special litigation counsel for the Committee.

I -- Ms. Ramsey has referenced sort of the three areas that we've talked about as a path forward here and I, again, am dealing with the last of those three and that is the adversaries. I, I say "the adversaries," your Honor, but, as I'm sure you well know, there's other adversaries in the case, but I'm really referring to the three that the Committee has brought today. I'm going to try and go in a chronological order since that just seemed to make the most sense to me.

All three of our adversaries, your Honor, have a similar goal, as Mr. Wehner referenced. It's to seek available relief under applicable law to undo the harms of the corporate restructuring to the isolated creditors that are subject to this bankruptcy case. The Committee has had the benefit of some initial discovery conducted in the preliminary injunction

proceeding, as the debtors have alluded to. As you may suspect, in a preliminary injunction proceeding the discovery sought was intended to be limited, quick, and certainly would not replace the comprehensive investigation that a committee is entitled to as a matter of statute or otherwise in connection with these different litigations.

To start of the three adversary proceedings, we call it the substantive consolidation or subcon adversary proceeding. This matter was commenced through the general, the Committee's general bankruptcy counsel to seek to substantively consolidate the debtors' estates with those of their sister affiliates who, in the corporate restructuring, received all of the good assets, the enterprise itself, the assets, the liabilities, and their operations. We call them the GoodCos. Alternatively, the Committee seeks to reallocate the debtors' asbestos liabilities to those affiliates. Those two routes have the same end result. The asbestos claimants would have a full and direct access to recovery from the assets of the enterprise that caused their harm.

A motion to dismiss was lodged against the subcon action and the motion was denied as to Count 1, which is substantive consolidation itself. There are three leading standards adopted by other courts of appeals and Judge Whitley found that the Committee sufficiently pled all three standards and that substantive consolidation, which is an equitable

remedy, is viable, is a viable remedy that can be used to consolidate a debtor and a nondebtor and return asbestos claimants to an even playing field in this case.

Joint discovery among all the adversaries that I'll discuss today is being conducted and is ongoing.

Next slide.

Regarding the next two complaints, the Committee sought standing to investigate, and, if we determined appropriate, pursue estate litigation in the estates' stead. The Committee asserted through its standing motion practice that the estate, given all the players involved in the corporate restructuring, including their professionals, were all the same parties that are currently involved in administering these cases and as a result, they'd be hopelessly conflicted from pursuit of any actions to investigate or challenge the corporate restructuring that they themselves carried out.

The debtors objected to the Committee's request for standing to investigate their pre-petition actions. The court granted our relief. Then, when it came time to actually paper the order for the, granting our relief, there was an objection again, despite the court's clear intent. We were ultimately given standing. Then the defendants and the debtors filed a motion to clarify and/or reconsider the request for standing. The judge again denied that request as their third attempt to

challenge our investigation of their pre-petition actions. And now today, the debtors have signaled that they may try yet again a fourth attempt to refute our court-ordered position to investigate these actions.

Much ado has been made today about the discussion of our position regarding whether there's a solvency or insolvency with the debtors here as if, as those are grounds, as if those are grounds to upend the investigation into the pre-petition action of the debtors and the Trane enterprise.

Your Honor, the standard for whether or not derivative standing should be granted to the Committee has and remains met. Our chosen position on certain facts is not a factor in making that analysis. But more than that, Judge Whitley already adjudicated the very issue that was raised before your Honor today and, if you'll allow me, I have to use my phone to pull it up because I am not as sophisticated as I like to believe I am.

The judge said:

"Here, there is no basis to remove the Committee's derivative standing. The Committee has not prevailed on either of their adversary proceedings yet, nor the motion to dismiss, so there's no judicial estoppel present.

Regardless of the language in the Committee's motion to dismiss, the debtor is not currently solvent and

does not have the wherewithal to pay all claims as against the estate. Although the debtor is a party to a funding agreement, the agreement is contingent upon court approval, which in turn requires creditor approval of a plan or a cramdown. Neither scenario is guaranteed at this stage, and there also remains the risk of creditors' claims exceeding the amount guaranteed within the funding agreement."

Forgive me. My phone is hiding parts of this for me. There we go.

"Consequently, even if the Committee's motion qualifies as a party admission, the debtor currently remains insolvent.

Finally, the debtor's solvency status does not affect all of the Committee's colorable claims. An actual fraudulent transfer claim does not require an insolvent debtor, but an intent to utilize the bankruptcy system to hinder or delay payments to creditors. If the debtor is determined to be factually and legally solvent, the Committee's fraudulent transfer claim will still necessitate derivative standing."

And for that reason, he denied their request. And your Honor, for reference that is Docket No. 2046.

Based on the information the Committee has thus far

received through the preliminary injunction proceeding and main case discovery, we've brought the two remaining adversary proceedings I will discuss today.

The first is the fraudulent transfer proceeding. The estate representative brings these actions under both federal and applicable state law for actual and constructive fraudulent transfer. The defendants answered the fraudulent transfer action and thus, we're in the throes of the discovery phase.

The second is what we coin the "fiduciary duty action." Here, we bring estate claims for breach of fiduciary duty, aiding and abetting, where that law permits, and civil conspiracy against the individual defendants and certain corporate affiliates who had a significant hand in carrying out and authorizing the corporate restructuring. The prosecution of this action is stayed pending the outcome of the fraudulent transfer and subcon actions, but discovery is ongoing and such discovery that is currently ongoing is treated as being lodged and effective in the fiduciary duty action so that we don't lose any time, if need be, in that action once it's unstayed.

As to the discovery phase generally, there are issues where we have or are likely to reach an impasse in due course that we may seek your Honor's guidance on. But for now, we'll continue to proceed in hopes that we narrow those disputes before they make it to you.

Ms. Ramsey and Mr. Wehner have both done a superb job

of hitting some of the high points on the undisputed facts that the Committee knows so far that has led us to bring these estate claims, which is why I'm skipping a page, your Honor.

The crux of these three litigations stems from the Committee's statutory charge to investigate the prior dealings that the debtors are supposed to submit to the full examination of this Court under the Bankruptcy Code. In other words, the Committee is here to act as a stress test for the broad and conclusory statements of the debtors that the complex corporate machinations done in secrecy to isolate the asbestos creditors does not violate applicable law. Of course, the corporate restructuring's complex series of transactions made on, from our perspective, the relative eve of filing understandably raised a score of questions for us. Where did this whole idea come from? What was the internal pitch to do this? What was the business case to conduct this corporate restructuring? Why form or revive old subs? Why incorporate them in North Carolina, especially when at least a portion of your enterprise is based in New Jersey? Why move to Texas? Why commit the divisional merger in about three-to-four hours on a Texas day? Why so secretive about this? Why run this through all the lawyers? Why allocate only a small amount of operations to these two debtors? Why go through all of this? The answer we've received time and time again is to fully and finally adjudicate all asbestos claims of this enterprise. When we try

to implore further beyond that party line, we are blocked by claims of privilege.

That all said, based on the initial discovery we've seen there's a number of issues here that are not in dispute, nor are they truly novel in the scheme of, of my experience in bankruptcy at the least. Much of what the Committee has discerned happened in these cases is no different than other analogous circumstances that have been permeating the bankruptcy sphere for decades, if not hundreds of years. For instance, neither debtor here really needs a fresh start. Instead, the entities would receive the benefits inherent in a fresh start and those entities that would receive that fresh start are those that are not subjecting themselves to the dealings of this Court, but instead, are the non-debtor affiliates who maintain the enterprise.

This concept of manufacturing a debtor is no different from what is called "the new debtor syndrome" that Ms. Ramsey mentioned earlier. You form an entity for the sole purpose of isolating liabilities and receiving that all important discharge. Courts across the country have found that the new debtor syndrome is an improper misuse of bankruptcy. To that end, the factual analysis in the substantive consolidation proceeding does not suffer from any material dispute. Much of the facts that Ms. Ramsey denoted earlier about the operational structure, how these wholly-owned debtor subs report to and are

run by their parents and/or the GoodCo affiliate and so on, they all speak to how this divisional merger was simply a division in name only.

Another aspect of these cases is considering the run-of-the-mill fraudulent transfer analysis. When a debtor on the eve of filing conveys his home to his sister for a dollar, interested parties are going to consider whether that was an actual or constructive fraudulent transfer. While perhaps slightly more complex in transaction, the end result here is still just as straightforward. Many of the relevant facts for actual or constructive fraudulent transfer here are not in dispute. A series of transactions occurred to divide the two-part Trane enterprise into four. We have GoodCos and we have BadCos, one set with all the enterprise and the other with virtually no assets and all of the isolated asbestos liabilities.

Much hay has been made about the purported funding agreement as part of those minimal assets and the sufficiency of that asset. As a matter of law, the direct connection between asbestos creditors and the enterprise was hindered by and through the corporate restructuring, including with the replacement of direct access with a heavily conditional promise to pay from the entity that holds all the cards, including to whom the debtors are entirely beholden. It is not the same access as defendants have claimed. Knowing the intent was to

drop these entities into bankruptcy before they were even formed and that such bankruptcy process would take five or more years demonstrates a delay, not attendant to, but actually intended to be placed on asbestos claimants having to wind around in these cases.

As to defrauding the asbestos claimants, the Committee has seen in the preliminary discovery performed and the quick turnaround in the PI proceeding that this scheme was clearly withheld and done under a guise of secrecy to try and ensure that asbestos claimants had no idea that they would lose their direct access to the recoveries to which they are otherwise entitled. Of course, much of these same facts support claims for constructive fraudulent transfer.

The debtors and the non-debtor affiliates have argued that the spinning off of these liabilities into a bankruptcy vehicle is efficient and avoids subjecting the responsible enterprise from the detrimental effects of filing a bankruptcy. This is a policy argument for Congress, not a defense to the claim the Committee has brought, including the claim for fraudulent transfer. This is a policy, rather, that has the impact of hindering and delaying for years compensation owed to the asbestos claimants.

All of that said, your Honor, we are proceeding in discovery in these actions and anticipate proceeding to a jury trial in the District Court once that discovery is complete.

And that is my update as to the adversary proceedings or --

THE COURT: All right.

MS. HARDMAN: -- unless we have anything else. I think that's all from the Committee --

THE COURT: Are you -- you're finished?

MS. HARDMAN: -- in our opening.

THE COURT: All right.

MS. HARDMAN: Thank you.

MR. EVERT: Your Honor, Michael Evert for the debtors. Trying to be a taller version of Brad Erens, I guess.

We had talked about a short period for rebuttal. I think it might be wise to give us a few minutes to --

THE COURT: Yeah.

MR. EVERT: -- caucus, each side to caucus and then we can go from there.

THE COURT: How much time?

MR. EVERT: But I -- but I -- I'm, I'm certain, I think, we can probably be very brief.

Is that -- yeah.

THE COURT: So --

MR. EVERET: If that, if that works for the Court.

THE COURT: -- does 3:30 work to reconvene or do you need --

MR. EVERT: 3:30 would be great.

THE COURT: 3:30? Yeah.

MR. EVERT: Thank you, your Honor.

THE COURT: Okay.

(Recess from 3:16 p.m., until 3:31 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. What's the plan?

MR. EVERT: Thank you, your Honor.

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

MR. EVERT: Well, we, we really have just a couple comments that -- that I --

THE COURT: Okay.

MR. EVERT: -- won't take anywhere near 15 minutes. I'm hoping even less than five. So it, we'll lead with that and then I'm sure others will have short comments as well.

So I, I know walking into this case you are shocked to find out that we have disagreements. So not a sports analogy. Just like the line in Casablanca, right, "I'm shocked, shocked there's gambling going on in this establishment," right? "I'm shocked there's arguments going on here."

THE COURT: I thought we were going to finish it up today, that this, this was it, right? Yeah.

MR. EVERT: So -- and, and, and look, we, we both, obviously, tried to educate the Court today on the rulings that

have been made thus far in the case. I think we did, I think both sides did a good job of that. I think that both of us actually made substantial efforts to say to the Court the rulings we disagreed with and why we did. But quite frankly, we, we are where we are in the case. Rulings have been made. The motions to dismiss are on appeal. All of the estimation order is out there and we've been diligently working towards it.

THE COURT: Right. So that's one of my questions. I had a few, but that, that order in April that Judge Whitley signed suspending the deadlines, what's happening there?

MR. EVERT: The reason for that, your Honor, is that the, the, the current work in the estimation discovery is focused on discovery of the debtors' underlying tort claims files. And as we previewed a little bit for the Court today, we have very differing views of how the Court should estimate the debtors' liability. And one of those relates to a lot of Judge Hodges' finding in Garlock and how he did it, which the debtors believe was the appropriate way to do it. And as Ms. Ramsey pointed out today from the Bondex case, the way Judge Fitzgerald did it was, was different. And Ms. Ramsey and I were both involved in that case. In fact, that's where we met.

So in the -- the ACC in this case has sought to discover the underlying claims files of the debtors to

ascertain what issues the debtors focused on at the time they settled the cases. So we have agreed on a claims file sample of, roughly, 1400 claims. I'm going from memory. I think that's about right. And that sample of 1400 claims is the group of claims under which we've agreed to undertake discovery. Originally, the claimants asked for claims files for all of our historical asbestos claims. We thought that was overly burdensome. Ultimately, we agreed on a sample.

What we've been negotiating since then is the, exactly how we are going to collect documents from our lawyers for these claims files. We're talking about dozens of law firms over a, roughly, six-or-seven year period. We're -- our expectation is that, that whatever we ultimately agree on -- and we're, we're down to the last couple of issues on this -- whatever we agree on, it's going to result in many millions of pages of documents that are going to be discovered. And the reason that Judge Whitley suspended the deadlines was because at that point in time we really could not tell the court how long it was going to take.

So we, we had some deadlines coming up. We weren't going to -- neither side was going to be able to meet them. And so Judge Whitley said, "All right. Well, let's just call it off. You guys agree on a protocol for the collection of documents and then once you start collecting, come back and let me know how long you think it's going to take."

I don't -- maybe I should pause and ask Ms. Ramsey if she has a different view of the world.

MS. RAMSEY: No, your Honor. I think that's a fair summary of, of why the estimation --

THE COURT: Looks like --

MS. RAMSEY: -- order was --

THE COURT: -- you agree on something. That's great.

So that will be something that we, we need to start that up again?

MR. EVERT: Yes, your Honor.

THE COURT: Okay. And so do you have an idea yet of --

MR. EVERT: Well, I, I would hope -- look, I would hope we would be able to reach an agreement on, on the protocol in the next, in the next 30-to-45 days. I -- at last discussion I think I'm fair in saying that the Committee had asked us to put a pause on our discussions until your Honor got seated and we got in front of you. So -- which, which we did. But now that you're here --

THE COURT: Right.

MR. EVERT: -- and you're saying, "Okay, let's keep going," I would hope we only have enough left -- 30-or-45 days would be, would be my thought.

MS. RAMSEY: Your Honor, I --

Does that sound --

I have to consult with one of my colleagues who's also involved.

(Pause)

MR. WEHNER: That -- we, we could meet that deadline subject to --

MS. RAMSEY: Your Honor, I'm hearing, I'm hearing maybe, maybe 60. But -- but -- but -- yeah. I think, in, in short order, we can turn to that if that's the Court's instruction.

I think we would also ask -- and I -- and this is, obviously, not on for today -- but if the Court is inclined to move forward on the estimation, obviously this is a unique case. Each of the, the pending bankruptcies have their own unique aspects to them. But one of the things that we would hope to then have a dialogue about are some of the ways that the, lessons that we have learned, particularly from the Bestwall case, about how we might not have this turn into a multi-year litigation. With the volume of information and the nature of the issues that the debtor has identified, it is, it is very difficult to move through that level of documentation in a quick time period and, in particular, in this case.

In Bestwall, the FCR and the Committee are both on the same side opposing some of the debtors' positions. With respect to this case, I'm not quite sure whether, where the FCR will fall in that --

THE COURT: Right.

MS. RAMSEY: -- litigation. And I say that only because they're two parties who can sort of divide the work and work together in that case. And we have a good sense from what has happened there, what that looks like. If one party is doing all of it, all the work that's required, then that's going to, obviously, extend the time period.

So all of this is a little bit, again, getting a little ahead of ourselves, but, but my basic point to the Court would be, yes, we can certainly engage in a dialogue as quickly as we can, come back, and, and present the Court with, with an agreement on time.

But, but as part of that, your Honor, we will also be looking to present some other related motions or ideas to the Court with respect to how to control the process.

THE COURT: Right. Well, I mean, we have an order. Judge Whitley entered an order ordering estimation.

MS. RAMSEY: Uh-huh (indicating an affirmative response).

THE COURT: So at this point I, I certainly know there are issues you had. Also, I know, obviously, the change of the judge caused some delay, but I think getting a timeline back up and running on that is appropriate.

MS. RAMSEY: Okay.

MR. EVERT: Yeah, Judge. I would say it this way. If

we can't reach agreement, then in the next 60 days we'll get our dispute --

MS. RAMSEY: Uh-huh (indicating an affirmative response).

MR. EVERT: -- in front of the Court and --

THE COURT: Right.

MR. EVERT: -- judges can do what --

THE COURT: Right.

MR. EVERT: Your Honor can do what your Honor does, right?

THE COURT: So I would say by the end of 2025 would be fair, right? Right?

MR. EVERT: That -- that's --

MS. RAMSEY: Thank you, your Honor.

MR. EVERT: -- that's very fair. So we will move toward that.

And I think to Ms. Ramsey's point, your Honor, the, these, these protocols have, are very similar to what has been done in both the Bestwall and the DBMP case. And so I think she's referencing some, some changes that maybe they might wish to urge in light of their experience there.

So we'll, we'll, we'll work our way through that and we'll get issues in front of the Court as quickly as we can, to the extent we have.

THE COURT: Okay. All right.

MR. EVERT: Did you have more questions? You know -- did you have more questions, your Honor? Did you want me to keep --

THE COURT: Well, I had two other -- not -- that was a big question. I had two other.

And I'll just say this to everyone. Are there any other outstanding -- like, I'm just trying to tie up any loose ends from Judge Whitley. I could tell -- it looks like there might be an order or two missing. So I also want to put out there if anyone feels they need an order that, to, to finalize a bench ruling, kind of speak, or, or submit it now or forever hold your peace sort of thing.

MR. EVERT: We'll take care -- I think that ball's in our court, your Honor. We'll take care of that.

THE COURT: I think there are two possible ones.

MR. EVERT: I think there are two, both of which were motions that I think were, in which the debtors were the party that won the motion and --

Am I -- am I -- I'm right on that, right? Yeah.

So we will get, we will get the Court and get with the other side on an, on orders for those two motions.

THE COURT: Okay. And if I could have those within the next, you know, couple weeks. There shouldn't -- there -- we're just talking short orders, right?

MR. EVERT: Yes. Well, in fact, and, and in both of

them I believe Judge Whitley ruled from the bench. So we have, we have fairly precise --

THE COURT: Right.

MR. EVERT: -- language. So yes, we can certainly do that within the next two weeks.

THE COURT: Okay.

All right. So those were the little sort of housekeeping matters I had. But I, I'll let you finish your comments.

MR. EVERT: All right. Well, I, I was just, I was just going to say, your Honor, that we, we obviously have a lot of disagreements and, and our view is, as we said at the beginning and as Mr. Erens said before he had to leave, that, you know, our view is the big issue in the case ought to be what are the value of the liabilities. I know we talk a lot about our assets. That's not really the question, right? The question is what are our liabilities. And, and, and, you know, we're at a point now where we have this $545 million plan. That $545 million plan is fully funded between the QSF and the insurance assets and the assets of the debtors. But if that's not the right number, then let's talk about what the right number is.

And I did hear today -- so I'm going, I'm going to take a glass half full, right -- I did hear today that there were things that the Committee was willing to talk about.

There were things they're willing to talk about in terms of a, in terms of a plan. And we -- we just -- we want to get to the number and, and to us, that's where our efforts ought to be focused as we're getting ready to estimation. And as we said to Judge Whitley and as he ruled at the time, we believe estimation will help us get there, but we're not, we don't require it. If we can get to an agreement before that, we would, we would love to be there.

So I don't want to belabor our disagreements. So frankly, I think everybody's sort of had a good say. And --

THE COURT: Yeah.

MR. EVERT: -- we really appreciate your time.

MR. GUY: Your Honor, may I have a couple of minutes?

THE COURT: Yes.

MR. GUY: Thank you.

I also was encouraged by what we heard today. I'd love to see a plan from the ACC. I'd love to see opt-out language that they find acceptable. I continue to be confident that I think we can get there. Why do I feel that? It's because it's exactly what happened in Paddock, very similar genesis, and they got a deal done.

I know you had some questions before about the trusts and how they operate and I don't want to -- sometimes, it's more complicated than we need to relay. On the solvency issue, that, when I heard Ms. Ramsey arguing about, "Look, these

trusts run out of money. They're only paying cents on the dollar," she's, she's right. Because those trusts were created when the company was insolvent. So it only had -- the money it had, it had. Some of them had more. Some of them have less. The trusts that pay less, it's because they started with less. That's one of the reasons.

The way to guarantee that the futures are treated fairly and equitably is to take money from a solvent entity and that ensures that everybody is paid the same. And that's exactly what's happening in Garlock. Everybody is paid the same.

Your Honor, there was an issue about whether the FCR can vote. We're not arguing that today, but the Code provision says, "A separate class or classes of the claimants whose claims are to be addressed by the trust is established and votes by at least 75 percent of those voting." So it says "a class of claimants." The claimants that we represent are current claimants because they've already been exposed to asbestos in the debtors' products. The only reason we talk about currents and futures is to just distinguish between those who are currently sick, which would be a better description, and those who are exposed, but not yet sick. They're all claimants under all Circuits because the Rule that was in the Third Circuit that you'll know about, that's been reversed and they're aligned with all the Circuits now.

Your Honor, what I didn't hear a'tall in any of the presentations was any attempt to distinguish Paddock and why the result shouldn't obtain here. But as I said, I'm very hopeful that we can get there.

Thank you, your Honor.

MS. RAMSEY: Your Honor, we don't have anything further.

We really appreciate your attention. We look forward to continue to, to help the Court with any questions it has and we're available to answer anything --

THE COURT: Do --

MS. RAMSEY: -- as we go forward.

THE COURT: Is anyone expecting any need for hearings in the next month or -- I don't know how this usually works. I know we have dates that --

MS. RAMSEY: Uh-huh (indicating an affirmative response).

THE COURT: But --

MR. EVERT: Yeah, your Honor. We have the omnibus hearing set on a monthly basis.

THE COURT: Right.

MR. EVERT: There, there are Local Rules in regard to when motions need to be filed before the -- the -- I think 21 days is, right? We've got -- a motion needs to be filed more than 21 days before the hearing. We do not, at least on the

debtors' side, do not have anything in progress that we're going to file that would trigger the November hearing, that we're aware of right this moment.

I, I think the December hearing is actually, in light of the holidays, is actually earlier in the month than it normally is. It's like around the 15th --

THE COURT: Yeah

MR. EVERT: -- or something like --

THE COURT: It's a Friday, too.

MR. EVERT: So that sounds super convenient for everybody.

THE COURT: Yeah, yeah.

MR. EVERT: Yeah. So -- so --

THE COURT: So I mean, I think it's kind of, in my mind, it's November or it's January.

MR. EVERT: I -- and I think --

THE COURT: Is that what we're all thinking?

MR. EVERT: And I think January, honestly --

THE COURT: Yeah.

MR. EVERT: -- probably looks more likely, yes.

MS. HARDMAN: One thing to add to that is I believe that the hearing on December 13th had a very explicit instruction from our prior judge that it was essentially very clearly articulated that unless you really needed to go forward, don't.

So I think we all took that to heart, so.

THE COURT: I'll adopt that.

MS. HARDMAN: Okay.

THE COURT: I think a Friday in December is not what anyone wants to do. It certainly -- I don't want to be coming to Charlotte on, on a Friday, so.

MR. MILLER: Your Honor?

THE COURT: Yes.

MR. MILLER: One other question regarding scheduling. With Judge Whitley, it was fairly -- we, we usually let him know, you know, five days or a week before the hearing if we thought we weren't going to need to go forward. You obviously have more complicated travel plans.

Would there be a time frame that would be best, that you would prefer that we let you know sort of if we would like to cancel the hearing or if -- obviously, if we have a motion pending that's noticed up for hearing, then you'll know that we plan to go forward.

THE COURT: Right.

MR. MILLER: But cancellations, is there any preference?

THE COURT: I think, if you can do the week, you know, that's nice for me. But if you can't, I mean, obviously, if you're going to cancel it, I'm not going to come down here and sit by myself in the courtroom, so.

But you know, that just opens up my, you know, my schedule and -- but I, really, I'm, we're pretty accom, I'm pretty accommodating. I don't think you'll find any, you know. As soon as you know, you know.

Also, if you know something's going to be especially long, though I'm getting the sense everything is long. So I'll just assume that it's long. But if for some reason there's something very brief, short, you know, we can also do a phone or something like that. I don't know, you know. We can just sort of play that.

MR. EVERT: Just to provide one more hint of optimism.

We have had a number of hearings that have only taken the morning.

THE COURT: Oh.

MR. EVERT: So yeah. So, so it's -- it's -- have faith, your Honor. Have faith.

THE COURT: I've heard there's a yoga class here on Thursdays. So I -- I -- like -- in the afternoon.

THE COURTROOM DEPUTY: 12:30.

THE COURT: 12:30. So --

MR. EVERT: Sadly, that is -- I cannot tell you anything about that, so.

THE COURT: Oh. So I mean, I, you know, I'm not going to pretend that, you know, this is going to be easy to resolve, anyway. All I can say is maybe. I'm also not going to pretend

I'm an expert in any way in anything that's happened here, but I did read everything and then hearing it again from your mouths and just seeing you, you know, I feel like I'm starting to get the feeling and, and I will also ask you to just maybe look at having a new, you know, a new judge. Losing -- Judge Whitley is, you know, a huge, huge wealth of knowledge, but there's a little bit of a clean slate here. So I offer you that. And so I -- because I, you know, would love to see everyone in this room make some progress in this case, so.

So I'll look for the proposed orders.

MR. EVERT: Yes, your Honor.

THE COURT: And if I don't have some deadlines by the end of the year, then in January we will be fighting about that, right?

MR. EVERT: Sounds great.

THE COURT: All right.

MS. RAMSEY: Thank you, your Honor.

MR. EVERT: Thank you, your Honor.

MS. HARDMAN: Thank you, your Honor.

(Proceedings concluded at 3:50 p.m.)

CERTIFICATE

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

/s/ *Janice Russell* November 4, 2024

Janice Russell, Transcriber Date