

1 APPEARANCES (continued):

2 For Plaintiff, ACC:

Caplin & Drysdale

BY: JAMES P. WEHNER, ESQ.

3

NATHANIEL R. MILLER, ESQ.

One Thomas Circle, NW, Suite 1100

4

Washington, DC 20005

5

Robinson & Cole LLP

BY: NATALIE RAMSEY, ESQ.

6

DAVIS LEE WRIGHT, ESQ.

1201 N. Market Street, Suite 1406

7

Wilmington, DE 19801

8

Robinson & Cole LLP

BY: ANNECCA H. SMITH, ESQ.

9

280 Trumbull Street

Hartford, CT 06103

10

Robinson & Cole LLP

11

BY: RACHEL J. MAUCERI, ESQ.

1650 Market Street, Suite 3600

12

Philadelphia, PA 19103

13

Winston & Strawn LLP

BY: CARRIE V. HARDMAN, ESQ.

14

DAVID NEIER, ESQ.

200 Park Avenue

15

New York, NY 10166-4193

16

Hamilton Stephens

BY: GLENN C. THOMPSON, ESQ.

17

525 North Tryon St., Suite 1400

Charlotte, NC 28202

18

For the FCR:

Orrick Herrington

19

BY: JONATHAN P. GUY, ESQ.

1152 15th Street, NW

20

Washington, D.C. 20005-1706

21

Grier, Wright & Martinez, PA

BY: A. COTTEN WRIGHT, ESQ.

22

521 E. Morehead St, Suite 440

Charlotte, NC 28202

23

24

25

1 APPEARANCES (continued):

2 For Individual Fiduciary
3 Duty Defendants:

Brooks Pierce
BY: JIM W. PHILLIPS, JR., ESQ.
AGUSTIN M. MARTINEZ, ESQ.
P. O. Box 26000
Greensboro, NC 27420

5 For Trane Technologies
6 Company LLC and Trane
7 U. S. Inc.:

McCarter & English, LLP
BY: GREGORY J. MASCITTI, ESQ.
825 Eighth Avenue, 31st Floor
New York, NY 10019

7

8

McGuireWoods, LLP
BY: BRADLEY R. KUTROW, ESQ.
201 North Tryon St., Suite 3000
Charlotte, NC 28202

9

10

McGuireWoods, LLP
BY: K. ELIZABETH SIEG, ESQ.
800 East Canal Street
Richmond, VA 23219-3916

11

12

13

McGuireWoods, LLP
BY: JOSEPH A. FLORCZAK, ESQ.
77 West Wacker Drive, Suite 4100
Chicago, IL 60601-1818

14

15

Cordes Law, PLLC
BY: STACY C. CORDES, ESQ.
1800 East Boulevard
Charlotte, NC 28203

16

17

18 For Robert and Marcella
19 Semian, *et al.*:

Maune Raichle
BY: CLAYTON L. THOMPSON, ESQ.
150 West 30th Street, Suite 201
New York, NY 10001

19

20

Waldrep Wall
BY: THOMAS W. WALDREP, JR., ESQ.
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103

21

22

23 ALSO PRESENT:

SHELLEY K. ABEL
Bankruptcy Administrator
402 W. Trade Street, Suite 200
Charlotte, NC 28202-1669

24

25

1 Audio Operator: COURT PERSONNEL

2

3 Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
4 1418 Red Fox Circle
5 Severance, CO 80550
6 (757) 422-9089
7 trussell131@tdsmaill.com

6

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

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 (Call to Order of the Court)

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

11 THE COURT: Good morning, everyone.

12 (Counsel greet the Court)

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

14 MR. ERENS: Yes, your Honor.

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

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

19 THE COURT: All right.

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

23 THE COURT: All right. I appreciate that.

24 MR. ERENS: Okay.

25 THE COURT: All right.

1 MR. ERENS: Thank you.

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

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

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

10 THE COURT: Okay.

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

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

15 THE COURT: All right.

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

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

24 THE COURT: Okay.

25 MR. FLORCZAK: Good morning, your Honor. Joseph

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

3 THE COURT: All right.

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

7 Thank you.

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

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

14 THE COURT: Okay.

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

17 THE COURT: Anyone else over there?

18 (No response)

19 THE COURT: All right.

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

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

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

4 Nice to meet you.

5 THE COURT: Nice to meet you.

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

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

12 MR. NEIER: Good morning, your Honor.

13 THE COURT: Morning.

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

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

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

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

22 Thank you.

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

25 MS. MAUCERI: Good morning, your Honor. Rachel

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

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

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

8 THE COURT: Thank you.

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

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

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

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

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

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

25 THE COURT: You're welcome.

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

3 Thank you.

4 THE COURT: All right. Thank you.

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

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

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

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

1 remain professional, so.

2 So I will hand it over.

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

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

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

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

25 THE COURT: All right.

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

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

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

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

25 MR. ERENS: Okay.

1 THE COURT: Any other comments?

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

4 (No response)

5 MR. ERENS: Okay.

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

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

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

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

16 MR. ERENS: Okay. Thank you.

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

20 THE COURT: Yes.

21 MR. ERENS: Yeah, that's --

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

25 (Pause)

1 (Debtors' presentation distributed)

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

9 THE COURT: Okay.

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

11 THE COURT: So you're all set.

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

14 All right. Thank you, your Honor.

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

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

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

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

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

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

1 to have occurred in the tort system before the bankruptcy.

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

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

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

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

1 litigate.

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

10 So we spent time over the course of the next year or
11 so negotiating with the FCR and by the summer of 2021 we did
12 reach resolution on a \$545 million asbestos trust under section
13 524(g).

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

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

1 close to the same liability.

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

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

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

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

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

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

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

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

1 everybody? Now we could understand the ACC saying, "Well,
2 that's all good, but," you know, "the amount you're, you're
3 proposing for the trust, we think, is insufficient." But
4 that's not what happened. They never engaged. They never gave
5 us a number. They said, "Okay, we think this is the right
6 amount and we need to negotiate." They were uninterested in a
7 524(g) resolution. So why is that?

8 First slide, please.

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

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

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

1 system benefits anybody else other than plaintiffs' counsel.
2 We cited the RAND study in our papers that shows that, roughly,
3 58 percent of the costs in the tort system go to lawyers, not
4 claimants. Now that's not only the plaintiffs' lawyers. That
5 includes defense lawyers. But a system where 58 percent of the
6 money is just going to lawyers really, we don't think, is
7 beneficial to the claimants.

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

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

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

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

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

19 So the real question of what this case is about or
20 the, the question as to what it really should be about is what
21 is a fair and reasonable amount for these debtors to pay for
22 resolution of their asbestos liability that can be placed in a
23 524(g) trust for the benefit of all parties. That is what this
24 case really should be about, but unfortunately, to date it's
25 been about the plaintiffs' bar's resistance to that type of

1 resolution.

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

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

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

5 THE COURT: Thank you.

6 MR. ERENS: All right. Thank you.

7 MS. MAISANO: Good morning, your Honor.

8 THE COURT: Good morning.

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

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

17 Go to the next slide, please.

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

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

3 Go to the next slide, please.

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

10 Next slide, please.

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

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

19 And we can go to the next slide, please.

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

24 Go to the next slide.

25 So what are we talking about here, the gaskets that

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

9 The next slide, please.

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

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

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

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

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

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

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

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

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

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

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

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

17 You can go to the next slide, please.

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

25 We can go to the next slide, please.

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

11 Go to the next slide, please.

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

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

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

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

22 And so the asbestos litigation has been sort of a, an
23 evolving process for the debtors and their involvement was
24 minimal until some certain events took place in the early
25 2000s. The original asbestos litigation began in the 1970s and

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

8 Go to the next slide, please.

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

20 Go to the next slide, please.

21 The number of mesothelioma claims asserted against the
22 debtors increased twofold in one year alone between 2001 and
23 2002 and we ultimately landed on about 2,500 claims a year by
24 the end of the decade. And so you'll see here that it started
25 out not too much and then all of a sudden we ended up with a

1 pretty big jump.

2 Go to the next slide, please.

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

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

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

22 THE COURT: Thank you.

23 MS. MAISANO: Thank you, your Honor.

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

1 can --

2 THE COURT: Sure.

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

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

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

10 But yes, I'll speak up.

11 THE COURT: Okay. Thank you.

12 (Pause)

13 MR. EVERT: So your Honor, it's, it's a little ironic
14 that the, the old guy's getting up here and talking about the
15 21st century. As, as Ms. Maisano was speaking, I thought,
16 well, this was stupid. I should have gotten up and talked
17 about the old days instead of the new days, but we, we are
18 where we are.

19 So I wanted to go back to this slide for just a minute
20 because one of the things that's not immediately apparent to
21 your Honor is that these are the, the mesothelioma claims filed
22 against the debtor. During this period of time, actually the
23 first mesothelioma claims were filed in the, in the early
24 1970s. And then, in fact, the largest manufacturer and the
25 leader of the asbestos industry, Johns Manville, went bankrupt

1 in 1982 with the then inconceivable amount of 26,000 asbestos
2 claims pending against it. But during this whole period of
3 time you see on this graph there were literally thousands of
4 asbestos claims being filed every year. And so it, it occurred
5 to me that we might should have showed the Court sort of the
6 total filings up against the debtors' filings. But if, if they
7 were there, then the, the total filings would all be around the
8 2500-to-3,000 range because that's how many mesotheliomas were
9 being diagnosed, roughly, on an annual basis in the United
10 States. But --

11 THE COURT: So the total filings have been constant?

12 MR. EVERT: Relatively constant --

13 THE COURT: Okay.

14 MR. EVERT: -- since the 1980s.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 So if you look at --

14 Next slide, please.

15 If, if, if you look, go back again at our claims
16 filing history, we didn't become more responsible in 2002 and
17 2003, 2004. The case was exactly the same. The increased
18 claiming makes no sense when you think about it that way and it
19 further makes no sense when you think about the nature of the
20 debtors' equipment that Ms. Maisano described to you, the fact
21 that we were in the equipment business and not in the asbestos
22 business. And it further makes no sense when you think about
23 what our experience was prior to the dual system.

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

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

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

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

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

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

21 Oop, you were there.

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

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

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

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

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

8 So the combination of all of this --

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

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

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

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

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

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

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

1 resolution history."

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

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

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

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

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

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

19 THE COURT: Thank you.

20 MR. EVERT: Thank you, your Honor.

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

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

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

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

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

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

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

11 So those are the operating subsidiaries of the
12 debtors.

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

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

1 for all costs and expenses of the debtors. And those are costs
2 and expenses that would be in excess of the value that their
3 subsidiaries generate to help to pay those obligations.
4 Importantly, those obligations exist whether or not we're in
5 bankruptcy and they apply to both payment of ordinary course
6 expenses and also the satisfaction of the debtors' asbestos
7 liabilities. And that, of course, would include the funding of
8 5, of a 524(g) trust.

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

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

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

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

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

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

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

1 Next.

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

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

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

1 Thank you.

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

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

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

25 So the debtors actually sought a preliminary

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

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

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

25 Next slide.

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

4 "Aldrich and Murray's successful reorganization also
5 would promote Congress' particular goal in section
6 524(g) ... that would efficiently and equitably
7 resolve tens of thousands of asbestos claims. A
8 section 524(g) trust 'will provide all claimants—
9 including future claimants who have yet to institute
10 litigation—with an efficient means through which to
11 equitably resolve their claims.'"

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

17 Next.

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

24 Next slide.

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

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

4 Next.

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

9 Next.

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

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

25 So those facts would include facts supporting their

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

17 So though the debtors and the FCR had hoped to have
18 the PIQ, the bar date and PIQ process completed much earlier,
19 they didn't want to delay their efforts to resolve the cases.
20 So they continued to work on and after extensive negotiations
21 the debtors and FCR agreed on the terms of a plan, which was
22 filed in September of 2021, as Mr. Erens said. We propose a
23 \$545 million trust, again substantially more than the trust
24 that was proposed in Garlock.

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

1 \$270 million Qualified Settlement Fund. And so what this fund
2 is, it's a fund that's irrevocably set aside for the payment of
3 asbestos claims and that will occur whether under a plan
4 process, but it would also occur in the tort system should the
5 cases get dismissed. And we talk about this QSF as being sized
6 to fully fund the plan and that's worth explaining a little
7 bit.

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

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

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

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

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

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

1 addition to being necessary and appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So these statements are plainly irreconcilable and

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

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

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

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

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

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

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

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

16 THE COURT: Thank you.

17 MS. CAHOW: Thank you.

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

24 But bottom line and this tracks our case status
25 report.

1 Let's go to the, the first myth.

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

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

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

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

25 And then the next slide just shows the chart I

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

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

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

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

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

8 Next slide, please.

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

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

24 Couple slides forward, please.

25 One of the quotes was that, "The general exception

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

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

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

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

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

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

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

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

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

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

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

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

11 Next slide.

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

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

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

2 On the flipside, the ACC served discovery requests.

3 We produced, I think, 150,000 pages of documentation, but the
4 key issue is the claims files and it took us a year to get the
5 ACC to agree to a claims file sample, which is typical in these
6 cases and it's starting to take about another year to get them
7 to agree to a, a protocol for collection of those materials.

8 Now we hope we can get to the end and we think we may be to the
9 end of that negotiation, but it's taking a very long time, much
10 longer than it really should. We need to get the parties
11 focused on estimation and get that process done and then we can
12 figure out where these cases stand.

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

16 THE COURT: No. Thank you.

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

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

20 All right.

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

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

1 MR. THOMPSON: Thirty minutes.

2 THE COURT: Maybe a five-minute --

3 MR. THOMPSON: Okay.

4 THE COURT: -- short break.

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

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

7 THE COURT: Thank you.

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

9 THE COURT: Oh, of course.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Well, the Trane enterprise has 16 billion in annual, annual
2 revenues, annual excess cash of 1.8 billion. They give away
3 600 million a year, at least in the most recent year, in
4 dividends. They have a market cap of \$54 billion.

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

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

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

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

1 40 years ago and now I'm getting blamed for stuff that no
2 one's, no one's even done.

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

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

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

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

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

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

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

1 \$100,000 or the parties could have settled individually and
2 Mr. Semian would have gone back in line to actually get paid on
3 the value of his claim at the -- at the end of -- whenever
4 allowance is entered by your Honor. There's no argument that
5 they can make that they don't have the money to pay that.

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

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

1 law within their own borders.

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

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

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

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

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

6 These are policy arguments. This is bankruptcy court.
7 This is not policy court. This is not the floor of the U. S.
8 House. It's not the floor of the Senate. This is bankruptcy
9 court and all of these arguments that Senator Hatch made in
10 2024 [sic] and other made in 2022, 2023, 2024, Congress
11 rejected them. Congress did not take action and that was on
12 the heels of the Supreme Court cases that were discussed this
13 morning in Ortiz where the Supreme court did invite Congress to
14 take action with asbestos litigation. They didn't pass
15 anything.

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

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

6 And then they cite the RAND Corporation again, right?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 And with that, I thank you.

12 THE COURT: All right. Thank you.

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

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

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

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

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

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

1 THE COURT: All right.

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

3 AFTER RECESS

4 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 So there was a lot of talk about, "Well, they're
7 solvent. They can pay us." Well, what about 20 years from
8 now? So the Futures' job is to ensure that there's money there
9 20, 30, 40 years from now. Because these diseases all have,
10 many of them have long latency periods. So there's no solace
11 to say to us, "Well, don't worry. They have plenty of money
12 now." That's the first issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: I do have a question.

8 MR. GUY: Great.

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

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

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

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

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

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

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

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

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

11 THE COURT: Right.

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

14 THE COURT: Right.

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

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

22 THE COURT: Okay.

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

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

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

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

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

13 Does that answer your question?

14 THE COURT: Yes. Thank you.

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

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

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

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

4 So it's worth looking at --

5 THE COURT: Right.

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

8 But yeah, TDP is trust distribution procedures.

9 THE COURT: Thank you.

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

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

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

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

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

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

2 So we have tiers of claims, 1 through 5. Like a Tier
3 1 occupation is someone who would have definitely been around
4 these gaskets and would have likely to have been exposed. And
5 that's straight out of Judge Hodges' ruling in Garlock. We
6 took the science ruling from that opinion and we put it in the
7 trust. And that trust works.

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

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

20 Thank you, your Honor.

21 THE COURT: All right. Thank you.

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

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

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

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

13 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

25 Ingersoll-Rand and Trane decided to do something

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

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

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

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

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

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

1 first.

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: All right.

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

11 THE COURT: I'm so sorry.

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

15 THE COURT: Yeah, of course.

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

18 Thank you. I apologize.

19 THE COURT: And I apologize for the noise.

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

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

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

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

1 crawling around.

2 THE COURTROOM DEPUTY: Yes.

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

5 THE COURT: Yes.

6 MS. RAMSEY: Thank you.

7 (Slide deck presented to the Court)

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

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

17 THE COURT: Right.

18 MS. RAMSEY: -- hearing --

19 THE COURT: I'm not deciding --

20 MS. RAMSEY: -- some of those --

21 THE COURT: -- anything today, so.

22 MS. RAMSEY: Thank you, your Honor.

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

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

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

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

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

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

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

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

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

4 So the --

5 Next slide, please.

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

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

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

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

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

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

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

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

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

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

10 So if you have a scheduled value in a trust and, and
11 this is, obviously, a much more technical and difficult thing
12 to sort of big picture. And I don't mean to get ahead of it
13 because I think it's going to be critical that the Court
14 understands how the asbestos trusts work and how these are
15 governed. But, but fundamentally, I think the takeaway today
16 is there is, to my knowledge, not a asbestos trusts out there
17 that does not have a payment percentage and of all of the
18 asbestos trusts that were surveyed when we were trying to
19 determine this earlier today, all of them are less than, are 60
20 percent or less. Only one was 60 percent, three or four in the
21 50ish percentile, and then it drops dramatically with many,
22 many in the teens and twenties.

23 So --

24 THE COURT: So not trying to like --

25 MS. RAMSEY: Uh-huh (indicating an affirmative

1 response) .

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

3 So is Garlock a percentage?

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

7 So it doesn't, doesn't pay a percentage of a claim.

8 If you -- it -- if you have a --

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

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

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

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

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

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

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

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

10 THE COURT: -- can you -- so that, the claim would be
11 \$200,000, but then they're getting .6 percent or are you saying
12 that the claim --

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

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

15 MS. RAMSEY: You have that exactly correct.

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

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

1 trust instead of the available defendant.

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

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

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

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

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

22 MS. RAMSEY: But --

23 THE COURT: -- full responsibility.

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

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

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

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

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

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

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

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

25 But these entities filed for bankruptcy 48 days after

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Next slide.

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

1 hundred million a year right before bankruptcy settling about
2 900 mesothelioma claims a year. Now you heard that this
3 "Bankruptcy Wave" -- you saw the very pretty slide with the
4 "Bankruptcy Wave" that the debtor presented -- but there are
5 other reasons that claims have, would have been asserted
6 against the debtors, including, and importantly, in the single
7 case, the single verdict that was ever taken against the
8 Aldrich debtor was a take-home exposure case. So this is a
9 wife who was secondarily exposed, exposed through her husband's
10 occupational exposure. The worker died at 59 from
11 mesothelioma. The verdict for the plaintiffs was seven million
12 plus costs and Old IRNJ settled for 9.2 million.

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

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

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

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

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

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

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

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

25 We talked about 524(g) requires a legal representative

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

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

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

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

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

24 And then the question was:

25 "Q After there was a determination that you were

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Next slide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Next slide.

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

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

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

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

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

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

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

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

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

1 forward with something like estimation.

2 So what would the debtors, you know, like to do?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So what do we propose? We propose dismissal and we

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

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

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

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

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

6 Ms. Hardman?

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

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

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

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

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

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

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

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

6 Next slide.

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

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

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

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

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

18 The judge said:

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

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

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

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

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

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

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

25 Based on the information the Committee has thus far

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: All right.

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

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

7 MS. HARDMAN: -- in our opening.

8 THE COURT: All right.

9 MS. HARDMAN: Thank you.

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

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

14 THE COURT: Yeah.

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

17 THE COURT: How much time?

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

20 Is that -- yeah.

21 THE COURT: So --

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

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

25 MR. EVERT: 3:30 would be great.

1 THE COURT: 3:30? Yeah.

2 MR. EVERT: Thank you, your Honor.

3 THE COURT: Okay.

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

5 AFTER RECESS

6 (Call to Order of the Court)

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

8 MR. EVERT: Thank you, your Honor.

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

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

13 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Looks like --

6 MS. RAMSEY: -- order was --

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

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

10 MR. EVERT: Yes, your Honor.

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

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

20 THE COURT: Right.

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

24 MS. RAMSEY: Your Honor, I --

25 Does that sound --

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

3 (Pause)

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

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

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

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

1 THE COURT: Right.

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

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

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

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

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

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

24 MS. RAMSEY: Okay.

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

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

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

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

6 THE COURT: Right.

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

8 THE COURT: Right.

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

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

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

14 MS. RAMSEY: Thank you, your Honor.

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

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

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

25 THE COURT: Okay. All right.

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

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

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

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

15 THE COURT: I think there are two possible ones.

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

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

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

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

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

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

3 THE COURT: Right.

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

6 THE COURT: Okay.

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

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

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

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

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

11 THE COURT: Yeah.

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

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

14 THE COURT: Yes.

15 MR. GUY: Thank you.

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

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

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

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

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

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

5 Thank you, your Honor.

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

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

11 THE COURT: Do --

12 MS. RAMSEY: -- as we go forward.

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

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

18 THE COURT: But --

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

21 THE COURT: Right.

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

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

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

7 THE COURT: Yeah

8 MR. EVERT: -- or something like --

9 THE COURT: It's a Friday, too.

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

12 THE COURT: Yeah, yeah.

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

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

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

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

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

19 THE COURT: Yeah.

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

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

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

2 THE COURT: I'll adopt that.

3 MS. HARDMAN: Okay.

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

7 MR. MILLER: Your Honor?

8 THE COURT: Yes.

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

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

19 THE COURT: Right.

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

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

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

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

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

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

14 THE COURT: Oh.

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

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

19 THE COURTROOM DEPUTY: 12:30.

20 THE COURT: 12:30. So --

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

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

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

10 So I'll look for the proposed orders.

11 MR. EVERT: Yes, your Honor.

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

15 MR. EVERT: Sounds great.

16 THE COURT: All right.

17 MS. RAMSEY: Thank you, your Honor.

18 MR. EVERT: Thank you, your Honor.

19 MS. HARDMAN: Thank you, your Honor.

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

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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